

**EARLY HEAD START – CHILD CARE PARTNERSHIP AGREEMENT  
FOR CHILD CARE SERVICES  
BETWEEN THE CITY OF SAN ANTONIO  
&  
YOUNG WOMEN’S CHRISTIAN ASSOCIATION OF SAN ANTONIO, TEXAS**

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This Agreement 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 \_\_\_\_\_, and Young Women’s Christian Association of San Antonio, Texas (hereinafter referred to as “Center”) (individually “the Party” and collectively “the Parties”), to set forth the objectives, understandings, and agreements between the Parties in connection with the use of Early Head Start – Child Care Partnership (hereinafter referred to as EHS-CCP”) grant funds as described herein.

**PURPOSE:**

WHEREAS, the City has received a grant pursuant to the Head Start Act (42 U.S.C. §9831 *et seq.*, as amended) (the “Grant”) for the purpose of providing EHS-CCP services in the San Antonio and Edgewood Independent School District areas of Bexar County; and

WHEREAS, the City’s Department of Human Services is designated as the managing City department (hereinafter referred to as “DHS”) for administration of EHS-CCP program services for City, as grantee of the EHS-CCP Grant; 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, to execute an agreement with Center to provide full-day, full-year child care services to children and their families (hereinafter referred to as the “Project” or “Program”); and

WHEREAS, the City has adopted a budget for the expenditure of EHS-CCP grant funds (hereinafter referred to as “Grant Funds”), and included therein is an allocation for Center to provide child care and education services; and

WHEREAS, Center desires, and is appropriately licensed and qualified, to enter into this Agreement with City and agrees to deliver the services described herein in accordance with applicable Head Start Performance Standards and other requirements more fully set forth below;

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

The Parties hereto agree as follows:

**I. SCOPE OF WORK**

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

applicable), 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 any other directives applicable to the Program, as such requirements exist as of the date of this Agreement and as such requirements may be established or modified (by amendment, deletion, addition or otherwise) during the period of the Agreement.

- (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 Center shall establish and implement policies and procedures governing personnel, financial management, and programmatic management, as specified more fully in 2 C.F.R. 200 *et seq.*, 45 C.F.R. Parts 1301 *et seq.*, and/or 45 C.F.R. Part 75. 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 EHS-CCP services in the San Antonio and Bexar County area. Center agrees to allow the City's other EHS-CCP service providers access to the facilities leased and/or owned by Center in order to provide said services, so long as access would not cause disruption of Center's child care or educational activities, or purpose as an educational entity. Center agrees to cooperate with City and third-party EHS-CCP service providers to establish, modify and comply with a set of policies and procedures and/or a program design manual governing the City's EHS-CCP Program and the protocol for collaboration between service providers. Center agrees that, notwithstanding the fact that another service provider under the City of San Antonio EHS-CCP program may be contracted to provide a category of service, Center, under the leadership of its EHS-CCP Program Director, will be responsible for coordinating with other Program service providers and working with the City to ensure provision of full array of services to which the children are entitled under the Terms of the Grant.

## II. TERM

- 2.1 Except as otherwise provided for pursuant to the provisions hereof, this Agreement shall begin on August 1, 2016 and shall terminate on July 31, 2017. The City, subject to its continued award of EHS-CCP grant funds, shall have the option to renew this Agreement, with appropriate revisions to the budget 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 EHS-CCP Grant activities, for 2 additional one-year terms without the necessity of further City Council approval.

## III. CONSIDERATION

- 3.1 In consideration of the services to be delivered by Center, the City will reimburse Center a total amount not to exceed \$ 137,200.00 ("the Federal Share") during the period in which this Agreement is in effect for costs incurred in accordance with the Program Budget attached hereto and incorporated herein for all purposes as Attachment II. Center'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 Center fail to raise all of the non-Federal Share funds (20% of the total Program Budget, or \$ 34,300.00) it is required to raise for the operation of its Program, City reserves the right to limit its reimbursements to Center proportionately. For instance, if Center succeeds in raising only eighty percent (80%) of its required non-Federal Share funds, City may limit its reimbursements to Center to eighty percent (80%) of City's total obligation to Center. Center may provide additional non-Federal share funds if Center, in its discretion, determines such funds are available. To meet the requirements of this Agreement, all claimed non-Federal Share must meet the requirements of 2 C.F.R. 200 *et seq.*, and 45 C.F.R. §75.306, as applicable.

- 3.2 Prior to commencement of the Agreement, Center shall submit to City for its approval Center's proposed monthly budget by line item for the entire term of the Agreement along with its program Budget, including detail by category alone. Center understands the budget may not include indirect costs. Until the City receives the initial proposed monthly budget for the entire term of the Agreement and prior to the City's approval, the City reserves the right to redirect the funding City has proposed be allocated to Center under this Agreement. City shall notify the Center of the amount redirected and the revised Agreement funding. Additionally, throughout the term of the Agreement, Center shall submit on or before the last day of each month a forecast of the projected monthly expenses for each month remaining in the Agreement so that the City may review and compare actual expenses to projected expenditures and address issues associated with Center's expenditure rate (e.g., on or before March 31, 2015, Center shall submit the projected expenses by month for April, May, and so on until July 31, 2016). Center'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 Agreement in which case this amount shall be reduced proportionately unless the Parties otherwise agree.
- 3.3 Approval required. Center shall seek and obtain City's (City's Head Start Program Administrator and the 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 Center must make request in writing or via email to the City's Head Start Program Administrator. Center's written request must be accompanied by a justification for the change and indicate which lines items are affected by such change
- 3.4 Center understands and agrees that should Center fail to work in collaboration with the City's staff to meet or maintain the Program's funded enrollment level as set forth in the Scope of Work, City may reduce Center's funding by an amount equal to the difference between funded and actual enrollment at the per capita rate.
- 3.5 The funding level of this Agreement is based on an allocation from the following funding sources:
- U.S. Department of Health and Human Services (HHS) – Head Start Funds Catalog of Federal Domestic Assistance # 93.600
- Consequently, Center agrees to comply with the Terms of the Grant and the Special Provisions, affixed hereto and incorporated herein for all purposes as **Attachment III**.
- 3.6 It is expressly understood and agreed by the City and Center that the City's obligations under this Agreement are contingent upon the actual receipt of adequate grant funds from HHS to meet City's liabilities hereunder. This Agreement 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 Agreement accordingly. City will promptly notify Center of any such HHS action.

#### IV. PAYMENT

- 4.1 Center 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 Center in accordance with the terms of this Agreement. 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 Agreement, 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 the DHS in cases where the total Agreement Budget remains the same, or (b) an amendment has been approved and signed by the Director of the DHS pursuant to Section 24.1 of this Agreement in cases where there is an increase or decrease to the total Agreement Budget.

Approved budget revisions and amendments modify the Budget attached hereto, and in such cases Center's requested reimbursed costs must be consistent with the last revised, approved budget. Approved budget revisions and amendments supersede prior conflicting or inconsistent agreements with regard to the referenced Project Budget, and all references in the Agreement to the budget shall mean the budget as revised through approved budget revisions or amendments. In no event shall the City be liable for any cost of Center not eligible for reimbursement as defined within the Agreement. Center 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.

- 4.2 If specific circumstances require an advance payment on this Agreement, Center must submit to the Director of the DHS a written request for such advance payment, including the specific reason for such request in the form prescribed by City. Center 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 the DHS may, in the Director's sole discretion, approve an advance payment on this Agreement. It is understood and agreed by the parties hereto that (a) each request requires submission to the Director of the 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 the DHS on a case-by-case basis, and (c) the decision by the Director of the DHS whether or not to approve an advance payment is final. For purposes of this Agreement, 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) Center'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 Center is notified that an advance payment check is available from the City.
- (B) The Center must deposit Agreement funds in an account in a bank insured with the Federal Deposit Insurance Corporation (FDIC). In those situations where Center's total deposits in said bank, including all Agreement funds deposited with said bank, exceed the FDIC insurance limit, the Center must arrange with said bank to automatically have the excess collaterally secured. A written copy of the collateral agreement must be obtained by Center from the Center's banking institution, maintained on file and be available for City monitoring reviews and audits. Advanced funds that cause the Center'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. Center shall maintain the FDIC insured bank account in which Agreement funds are deposited and its recordkeeping in a manner that will allow City to track expenditures made with Agreement 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 Agreement term, or from a single subsequent monthly reimbursement the full amount previously advanced to Center. The City may consider factors such as projected allowable costs and other indicators such as Center's financial stability. Center shall maintain a financial management system to account for periodic, or a lump sum, deduction from reimbursements.

- 4.3 Center shall submit to City not later than the fifteenth (15<sup>th</sup>) 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) Center 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 the 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 the DHS may require the Center's submission of original or certified copies of invoices, cancelled checks, Center's general ledger and/or receipts to verify invoiced expenses.

- 4.4 City shall make reimbursement payments of eligible expenses to the Center 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 Center as soon as reasonably practicable, but not later than 30 calendar days of receiving a valid and approved Request for Payment.
- 4.5 The Center shall submit to City a full accounting of the Program Income, if applicable, and non-Federal Share funds received and total Program costs incurred, along with all requests for payment for the period February 1, 2015 through July 31, 2016, no later than September 16, 2016. In the event of early termination of this Agreement, Center shall submit the information 45 calendar days from the early termination date of the Agreement. These deadlines may be adjusted only if Center receives written authorization from the Director of the DHS allowing Center to submit a request for payment at a later specified date.
- 4.6 Center agrees that the City shall not be obligated to any (sub)contractors or third party beneficiaries of the Center.
- 4.7 Center shall maintain a financial management system and acceptable accounting records with City's assistance and to City's satisfaction, in accordance with this Agreement and applicable HHS and Head Start regulations and federal directives such as 2 C.F.R. 200 *et seq.* or 45 C.F.R. 75.302 *et seq.*, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 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 Agreement. 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, unobligated 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 Agreement;
  - (D) comparison of actual outlays with budget amounts for each award. Whenever appropriate or required by the City, financial information should be related to performance and unit cost data;
  - (E) procedures to minimize the time elapsing between the transfer of funds from the City and the disbursement of said funds by the Contractor;
  - (F) procedures for determining reasonable, allowable, and allocable costs in accordance with the provisions of any and all applicable cost principles, including but not limited to the cost principles referenced in Article XII 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 Center agrees that Center costs or earnings claimed under this Agreement may not be claimed under another contract or grant from another agency, organization, business entity or governmental entity.
- 4.9 Center 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 by this Agreement. 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 Grant funds provided hereunder do not subsidize other program(s). Center must ensure that costs allocated and charged to the Grant are not charged to other Federal, State or Local awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the Federal awards, or for other reasons. Center shall provide to City prior to the beginning of the Agreement term (i) a matrix identifying the shared use of such facilities and/or program services; and (ii) the Cost Allocation Plan and supporting documentation, along with its Budget, financial statements and audit that are applicable to the Center's Project. City shall have the right to approve the Cost Allocation Plan.
- 4.10 Center agrees to reimburse the City for any Center overpayment based upon reconciled adjustments resulting from Center's balance and/or Statement of Revenue and Expenditure sheet as of July 31, 2016, which balance or Statement sheet shall be due to the City no later than September 1, 2016. Reimbursement shall be made within 20 calendar days of written notification to Center of the need for reimbursement.
- 4.11 Upon expiration or early termination of this Agreement, or at any time during the term of this Agreement, all unused funds, rebates, advances exceeding allowable costs, or credits on-hand or collected thereafter relating to the Project, shall be returned by Center to the City within twenty (20) days of receipt of written notice.
- 4.12 Upon execution of this Agreement or at any time during the term of this Agreement, the City's Director of Finance, the City Auditor, or a person designated by the Director of the DHS may review and approve all Center's systems of internal accounting and administrative controls prior to the release of funds hereunder.

## V. PROGRAM INCOME

- 5.1 For purposes of this Agreement, "program income" shall mean earnings of Center realized from activities resulting from this Agreement or from Center'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 Agreement-supported services of individuals or employees or from the use of equipment or facilities of Center provided as a result of this Agreement; and if applicable, payments from clients or third parties for services rendered by Center pursuant to this Agreement. At the sole option of the Director of the DHS, if Center obtains program income under the Agreement, Center 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, Center 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 Center is required to return program income to DHS, Center 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 Center to return program income to City, then Center must return such program income to City on the same date that Center submits its statement of expenditures and revenues to

DHS set forth in Article V, Section 5.4 of this Agreement. If the Director of DHS grants Center authority to retain program income, Center must submit all reports required by DHS within the timeframe specified in the Agreement.

- 5.3 Center 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 Center shall fully disclose and be accountable to the City for all program income. Center 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 the DHS. Failure by Center to report program income as required is grounds for suspension, cancellation, or termination of this Agreement.
- 5.5 Center 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 Agreement-funded project without the prior written approval of the Director of DHS. However, Center may engage in general school activity that is not specifically targeted at Head Start families.
- 5.6 Center shall include this Article V, in its entirety, in all of its subcontracts involving income-producing services or activities.

#### **VI. ADMINISTRATION OF THIS AGREEMENT**

- 6.1 The Center agrees to comply with all the terms and conditions that the City must comply with in its award document from HHS. A copy of said award document is attached 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 Agreement 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 Agreement or its governing rules, regulations, laws, codes or ordinances, the City Manager or the Director of the 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. In the event that a dispute arises with regard to interpretation of regulations or law as it applies to this Agreement, Center may request that the City secure, and the City shall request an interpretation or opinion from HHS in order to assist in resolution of the dispute.
- 6.3 Center shall not use funds awarded from this Agreement as matching funds for any federal, state or local grant without the prior written approval of the Director of the DHS.
- 6.4 The City shall have the authority during normal business hours to make physical inspections to all operating facilities occupied to administer this Agreement and to require such physical safeguarding devices as locks, alarms, security / surveillance systems, safes, fire extinguishers, sprinkler systems, etc. as reasonably necessary, to safeguard property and/or equipment authorized by this Agreement.
- 6.5 The Center Board of Directors or Board of Trustees, as applicable, and Center's management staff shall adopt and approve an Employee Integrity Policy, or similar policy, in the event that Center has none, 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 such erroneously received grant funds or property to the Center, or to the applicable service provider from whom such grant funds or property was received, if other than Center, and shall specify any other consequences to Center's employees and vendors involved in such illegal activities and may include but not be limited to termination and prosecution where necessary. Said

policies and procedures shall be provided to the DHS upon request by the DHS. In the event that the DHS finds the policies and procedures to be lacking, the DHS may recommend revision.

- 6.6 If Center writes or handles checks under this Agreement, Center 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. Center agrees that the aggregate amount of petty cash reimbursement shall not exceed \$500.00 for any given calendar month during the term of this Agreement unless Center receives prior written approval from the DHS to exceed such limit. Such requests for petty cash must be supported by the submission to the DHS of an original receipt.
  - (C) Checks issued by City to Center shall be deposited into the appropriate bank account immediately or by the next business day after Center'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 three (3) Center business days from the date of issue, such checks shall be investigated by City and stop-payment orders issued, as applicable. City agrees that stop payment orders shall not be issued due to the financial institution's posting policies that result in posting of checks for credit beyond the required timeframe so long as the checks are deposited within the required timeframe. Upon cancellation of any outstanding check, if deemed appropriate by City, such check may be reissued to the Center or if deemed by City not to be a valid expense, such check shall be immediately returned to the City.
- 6.7 Center agrees to provide City with a copy of all proposed communications to the public, EHS-CCP Program parents and employees as it may relate to the City's implementation of the City's Program model, the transition of Program contracts or transition of the Program, and to obtain the City's approval prior to dissemination.
- 6.8 Wherever in this Agreement, Center is required to perform an action within a specified number of days or hours, Center may request additional time to perform. City shall give Center's request for additional time due consideration and shall grant Center's request whenever reasonable practicable, unless immediate compliance is required.
- 6.9 If the starting date of the Agreement term has already passed at the time of approval of the Agreement by Center, all deadlines imposed on Center for providing information to the City on or before the date of approval or within seven (7) Center business days of approval shall be extended in order for the Center to reasonably comply with the City's requirements; except and unless, the information has already been provided to the City. City and Center agree to confer and make best efforts to reasonably permit Center to comply with the extended deadlines.

## VII. AUDIT

- 7.1 If Center 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 Center shall have completed an independent audit of its financial statements for the Head Start program 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 Center's fiscal year, expiration or early termination of this Agreement, whichever is earlier. Center understands and agrees to furnish the DHS a copy of the audit report including the corrective action plan(s) of the Head Start program 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.

Center agrees and understands that upon notification from federal, state, or local entities that have conducted program reviews and/or audits of the Center or its programs of any findings about accounting deficiencies, or violations of Center's financial operations, a copy of the notification, review, investigation,



and audit violations report must be forwarded to the DHS within a period of ten (10) days upon the Center's receipt of the report.

- 7.2 Center agrees that if Center receives or expends more than \$750,000.00 in federal funds from the City, the audit shall be made in accordance with the Single Audit Act Amendments of 1996, the State of Texas Single Audit Circular, and U.S. Office of Management and Budget Circular (Uniform Guidance). Center 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 (9) 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. Center may submit reports through the following website: <https://harvester.census.gov/fac> and may also contact the Clearinghouse by telephone at (301) 763-1551 (voice) or 1-888-222-9907 or 1-800-253-0696 (toll free).

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

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

Center agrees to reimburse the City or supplement any disallowed costs with eligible and allowable expenses based upon reconciled adjustments resulting from Center's Single Audit. Reimbursement shall be made within twenty (20) days of written notification regarding the need for reimbursement.

- 7.3 If Center expends less than \$750,000.00 of City dollars during the term of this Agreement, then the Contactor shall complete and submit an unaudited financial statement(s) within a period not to exceed nine (9) months immediately succeeding the end of Center's fiscal year, expiration or early termination of this Agreement, whichever is earlier. Said financial statement shall include a balance sheet and income statement prepared by a bookkeeper and a cover letter signed by Center 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 Agreement at any and all reasonable and necessary times required 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, so long as it is limited to Center's Head Start program. In accordance herewith, Center agrees to make available to City all accounting and Project records.

Center shall during Center's normal business hours, and as often as deemed reasonably 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 Agreement and shall continue to be so available for a minimum period of four (4) years or whatever period is determined necessary based on the Records Retention guidelines, established by applicable law for this Agreement. Said records shall be maintained for the required period beginning immediately after Agreement termination, save and except there is litigation or if the audit report covering such agreement has not been accepted, then the Center 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 Center in accounting for expenses incurred under this Agreement, all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Agreement.

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

- 7.6 When an audit or examination determines that the Center has expended funds or incurred costs which are questioned by the City and/or the applicable state or federal governing agency, the Center 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 Center shall promptly refund such amount to the City no later than twenty (20) Center business days from the date of notification of such disapproval or disallowance by the City. At its sole option, the DHS may deduct such claims from subsequent reimbursements and shall notify Center prior to exercising this option. Center shall provide to City a full refund of such amount no later than twenty (20) Center business days from the date of notification of such disapproval or disallowance by the City. If Center 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, cashiers check or money order. In the event that a dispute arises as to the allowability of an expenditure or charge pursuant to the federal regulations, then Center may request that the City secure, and the City shall request an interpretation or opinion from HHS in order to assist in resolution of the dispute. Should the City deduct such claims from subsequent reimbursements, the Center is forbidden from reducing Project expenditures and Center must use its own funds to maintain the Project.

Center agrees and understands that all expenses, fees, fines and penalties associated with the collection of delinquent debts owed by Center shall be the sole responsibility of the Center and shall not be paid from any Project funds received by the Center under this Agreement. Delinquent debts that would otherwise be identified as allowable costs may be paid with Project funds with approval of the DHS.

- 7.7 If the City determines that Center 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 Center pay for such audit from non-City resources. If after the audit is conducted it is determined that Center is in compliance with the contract then the cost of the audit, specifically the auditor's bill alone, shall be borne by the City. Center may recommend the hiring of alternate auditors, but the final decision on the selection of auditors shall rest with the City.

## **VIII. RECORDS, REPORTING, MONITORING AND INTELLECTUAL PROPERTY**

- 8.1 In addition to those listed in this Agreement, the Center shall submit to the DHS any and all reports as may be required of Center by HHS or as may be reasonably required of the City. Center shall incorporate and use a City-approved tracking or information system, such as ChildPlus, for the delivery of comprehensive EHS-CCP Services and collect, input and update all data required for the Program Information Report in accordance with the City's reasonable timeline to ensure the reporting of accurate and consistent information to HHS.
- 8.2 Additionally, Center shall maintain and furnish to City the appropriate financial and programmatic information and reports, in such forms as the City may require or prescribe, as required under the Head Start Act, as amended, or as required under federal regulations, such as 2 C.F.R. 200 *et seq.* or other applicable regulations.

Center agrees to 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 Center shall provide to the DHS all information reasonably requested by the DHS relating to the Center's Board functions, if applicable, including but not be limited to:
- (A) Roster of current Board Members (name, title, address, telephone number, fax number and e-mail address);
  - (B) Names and terms of Officers;
  - (C) Schedule of anticipated board meetings for current Fiscal Year;
  - (D) Board agendas relating to the Head Start Program to be submitted by electronic or facsimile transmission at the time of posting prior to each Board meeting. Prior to the time of posting, Center's administration shall attempt to notify City when a Head Start program item is anticipated to be placed on the agenda; and
  - (E) Minutes of every board meeting relating to the Head Start Program.
- 8.4 City reserves the right to reasonably request Center 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 Agreement.
- 8.5 Center shall report all notices served, violations found or complaints filed with regard to licensing, or lack thereof, of Center's centers within one (1) business day of receipt of written notice from the State licensing, certifying or permit-issuing authority of a violation or complaint not counting weekends. Center shall also sign an Authorization For Release of Information giving the Texas Department of Family and Protective Services (TDFPS) permission to share licensing information about the Center with the Grantee.
- 8.6 Center shall comply with federal Head Start Performance Standards (federal Head Start regulations), and all applicable federal, state and local laws relating to child safety. Center shall establish and implement mutually agreeable administrative procedures to respond to medical, dental and other health emergencies with which all City and Center staff should be familiar and trained. These procedures shall include, among other things, methods of notifying parents in the event of a health emergency involving their children and established methods for handling cases of suspected or known child endangerment, abuse or neglect that are in compliance with applicable federal, state and local laws. If Center has knowledge of a claim or report of, or is aware of a program crisis related to, or suspects that media coverage would be negative due to, an incident of child endangerment, neglect or abuse of a child while in Center's EHS-CCP program, Center shall contact the City's designated representative immediately, but not later than 24 hours, for the purpose of notification of the incident. Center shall contact the City's designated representative even if the incident of child endangerment, neglect or abuse is not fully investigated by Center. If Center is unable to reach the City's designated representative, Center shall leave a verbal or written message via electronic mail notifying the City that Center is attempting to notify the City of an incident. Center further agrees to notify the parent of the child immediately, in any of the instances cited above, to include a situation in which the parent's child has received physical discipline, whether or not the instance may be characterized as suspected child abuse.
- 8.7 Within a period not to exceed forty-five (45) calendar days after the expiration or early termination date of the Agreement, Center shall submit all final client reports and all required deliverables to City. Center understands and agrees that in conjunction with the submission of the final report, the Center shall execute and deliver to City a receipt for all sums received and a release of all claims for said sums against the Project.
- 8.8 Center shall maintain financial records, supporting documents, statistical records, and all other books, documents, papers or other records pertinent to this Agreement 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 the Head Start regulations, as applicable, whichever is longer. Notwithstanding the foregoing, Center shall maintain all Agreement 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 retention period, Center agrees to maintain the records until

the end of the retention period or until the audit, litigation, or other action is completed, whichever is later. Records for real property and equipment acquired with Grant funds shall be retained for four (4) years after final disposition.

- 8.9 Center shall make available to City, HHS, or any of their duly authorized representatives, upon appropriate notice and unless otherwise prohibited by law, 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 Center's facility and to Center's personnel for the purpose of interview and discussion related to such documents. Center 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 unless otherwise prohibited by law, and subject to Center's right to use "educational records" as that term is understood under the Family Educational Rights and Privacy Act of 1974 ("FERPA").
- 8.10 The Center agrees to incorporate and use any City-approved tracking or information system for the delivery of comprehensive Program services. Center shall enter current, accurate and complete client data.
- 8.11 The DHS is assigned monitoring, fiscal control, and evaluation of certain projects funded by the City with General or Grant Funds, including the Project covered by this Agreement. Therefore, Center agrees to permit City and/or HHS to evaluate, through monitoring, reviews, inspection or other means, the quality, appropriateness, and timeliness of services delivered under this Agreement and to assess Center's compliance with applicable legal and programmatic requirements. At such times and in such form as may be required by the DHS, the Center shall make available to the DHS and the Grantor of the Grant Funds, if applicable, such statements, reports, records, personnel files (including evidence of criminal background check as required by Head Start regulations and Texas State Child Care Licensing), client files, data, all policies and procedures and information as may be requested by the 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 Agreement. Center 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 Agreement. Regarding evidence of criminal background check, the parties agree that City will accept a written statement that the checks have been conducted and that all persons who are employed have passed. If, at any time, HHS informs the City and / or Center that such written statement does not satisfy the requirements of the Terms of the Grant, Center agrees to provide additional information as may be legally permissible and as may be required by HHS or to cooperate with the City and HHS in order to resolve any conflict associated with provision of information related to criminal background checks.
- 8.12 City may, at its discretion, conduct periodic, announced monitoring visits to ensure program and administrative compliance with Head Start Performance Standards and Texas State Child Care Licensing and with Program goals and objectives for the agreement period. City reserves the right to make unannounced visits to Center Program sites when it is determined that such unannounced visits are in the interest of effective program management and service delivery. Center Program staff shall be informed by City representative(s) upon arrival at Center's site of the expected purpose and length of visit so that accommodations may be made. City's representative(s) shall provide proper identification to ensure the safety and security of all parties.
- 8.13 Center understands that the City will timely inform Center of the findings of any such review or monitoring, specifically any default under the Agreement or deficiencies in performance, and will inform Center in writing of Program strengths and weaknesses and specify a deadline for corrective action based upon contract or federal deadlines and the time needed for City to review, monitor and approve when necessary. The City will assist Center in finding solutions for Program improvement if and as appropriate.
- 8.14 Unless otherwise provided herein, all reports, statements, records, data, policies and procedures or other information requested by the DHS shall be submitted by Center to City within five (5) business days of the request made to Center via electronic communication or by other form of written correspondence. In the event that Center fails to deliver the required reports or information or delivers incomplete information

within the prescribed time period, the City may, upon reasonable written notice, suspend reimbursements to Center until such reports are delivered to City. Furthermore, the Center ensures that all information contained in all required reports or information submitted to City is accurate.

- 8.15 (A) Unless disclosure is authorized by the City or is required by the Attorney General for the State of Texas or his duly authorized representative, Center 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, 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 Agreement. Center shall protect the Confidential Information and shall take all reasonable steps to prevent the unauthorized disclosure, dissemination, or publication of the Confidential Information.
- (B) If disclosure is permitted by law or required by order of a governmental agency or court of competent jurisdiction, Center shall give the Director of the DHS prior written notice that such disclosure is required with a full and complete description regarding such requirement.
- (C) Center shall establish specific procedures designed to meet the obligations of this Article VIII, Section 8.15, including, but not limited to execution of confidential disclosure agreements, regarding the Confidential Information with Center's employees, contractors and subcontractors prior to any disclosure of the Confidential Information to third parties. This Article VIII, Section 8.15 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 Agreement. Upon termination or expiration of this Agreement, Center shall return to City upon request all copies of materials related to the Project, including the Confidential Information and subject to Center's right to use "Educational Records" as that term is understood under FERPA. All confidential obligations contained herein (including those pertaining to information transmitted orally) shall survive the termination of this Agreement. The Parties shall ensure that their respective employees, agents, and contractors are notified of the requirement to comply with the aforementioned obligations.
- 8.16 The Public Information Act, Government Code Section 552.021, requires the City to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body, 2) for a governmental body and the governmental body owns the information or has a right of access to it or has spent or contributed public money for the purpose of its writing, production, collection, assembly or maintenance. Therefore, if City receives a request under the Public Information Act (i.e., ORR) for information within Center's possession pursuant to this Agreement, Center shall forward the requested documents to the City within two (2) business days of Center's designated liaison's receipt of the written request. If the requested information is confidential or may be kept confidential pursuant to state or federal law, the Center shall submit to City the list of specific statutory authority mandating and/or authorizing confidentiality no later than three (3) business days Center's designated liaison'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. The parties shall cooperate with each other to preserve confidential information or records that may be excluded from disclosure under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) and/or the Texas Public Information Act; and the parties shall coordinate efforts to seek any required Attorney General decision for the protection of such information from release.
- 8.17 In accordance with Texas law, Center 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, Center agrees that no such local government records produced by or on the behalf of Center pursuant to this Agreement shall be the subject of any copyright or proprietary claim by Center; however Center shall be entitled to maintain the confidentiality of "educational records" as that term is understood under FERPA and to use such records for educational purposes.

With the exception of student records, Center acknowledges and agrees that all local government records, as described herein, produced in the course of the work required by this Agreement, are public information and shall be made available to the City at any time unless otherwise prohibited by law. The parties agree that educational records created pursuant to Section 1.1 shall be maintained and utilized by Center as required by law. Center further agrees to turn over to City all such records upon request, or termination of this Agreement, unless otherwise prohibited by law. Center agrees that it shall not, under any circumstances, release any records created during the course of performance of the Agreement to any entity without the written permission of the Director of the DHS, unless required to do so by a court of competent jurisdiction or the Texas Attorney General or his designee, or as may be required or permitted by Center due to the record being an "educational record" as that term is understood under FERPA. The DHS shall be notified of such request as set forth in Article VIII, Section 8.15 of this Agreement.

- 8.18 **Ownership of Intellectual Property.** Center 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. City 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 subject to confidentiality obligations as may be required by federal and /or state law for "educational records." Center 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 Center'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, Center hereby irrevocably designates and appoints City and its duly authorized officers and agents as Center's agent and attorney-in-fact, to act for and in Center'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 Center. Provided, however, nothing herein contained is intended nor shall it be construed to require Center to transfer any ownership interest in Center's best practice and benchmarking information to the City
- 8.19 In the event that Center desires to copyright material or to permit any third-party to do so, Center must obtain City's prior written approval to do so and must appropriately acknowledge City's support in any such materials.
- 8.20 Subject to obligations to maintain confidentiality under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the HIPAA Business Associate Agreement, attached hereto and incorporated herein for all purposes as Attachment V, and subject to the requirements of the Family Educational Rights and Privacy Act ("FERPA") and the limitations imposed under law regarding transfer of information, any and all writings, documents or information in whatsoever form and character produced by Center pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Center. Center understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction;

subject, however to Center's continuing rights regarding "educational records" as that term is understood under FERPA. City agrees that it will not release to the public "educational records" that come into its possession unless otherwise authorized by law.

#### IX. INSURANCE

- 9.1 Prior to the commencement of any work under this Agreement, Center shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Department of Human Services, which shall be clearly labeled "YWCA - EHS-CCP" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Department of Human Services. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- 9.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.
- 9.3 A Center's financial integrity is of interest to the City; therefore, subject to Center's right to maintain reasonable deductibles in such amounts as are approved by the City, Center shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Center's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury *d. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. *e. Explosion, Collapse, Underground f. Sexual Abuse / Molestation	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. *Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

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6. *Builder's Risk	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.
*if applicable	

- 9.4 Center agrees to require, by written contract, that all (sub)contractors providing goods or services hereunder obtain the same insurance coverages required of Center herein, and provide a certificate of insurance and endorsement that names the Center and the CITY as additional insureds. Respondent shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the (sub)contractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.
- 9.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Center shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Center shall pay any costs incurred resulting from said changes.

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

- 9.6 Center agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
  - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
  - Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
  - Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- 9.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Center shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Center's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- 9.8 In addition to any other remedies the City may have upon Center's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the



right to order Center to stop work hereunder, and/or withhold any payment(s) which become due to Center hereunder until Center demonstrates compliance with the requirements hereof.

- 9.9 Nothing herein contained shall be construed as limiting in any way the extent to which Center may be held responsible for payments of damages to persons or property resulting from Center's or its subcontractors' performance of the work covered under this Agreement.
- 9.10 It is agreed that Center's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.
- 9.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided..
- 9.12 Center and any Subcontractors are responsible for all damage to their own equipment and/or property.

#### **X. LIMITED LIABILITY**

- 10.1 **CENTER covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CENTER'S activities under this AGREEMENT including any acts or omissions of CENTER, any agent, officer, director, representative, employee, consultant or subcontractor of CENTER, 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 CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CENTER 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 CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 10.2 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. Center shall advise the City in writing within 24 hours of any claim or demand against the City or Center known to Center related to or arising out of Center's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Center's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Center of any of its obligations under this paragraph.
- 10.3 Defense Counsel - Center shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Center fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Center shall reimburse City for all costs related to retaining defense counsel until such time as Center retains Counsel as required by this section. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing
- 10.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of Center, 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 Center or any subcontractor under worker's compensation or other employee benefit acts.

**XI. THIS ARTICLE INTENTIONALLY LEFT BLANK**

**XII. APPLICABLE LAWS**

- 12.1 Center, and all of the work performed under this Agreement, 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. Center agrees to abide by any and all future amendments or additions to such laws, rules, regulations, policies and procedures as they may be promulgated. Center may request additional time to come into and demonstrate compliance, unless immediate compliance is required by the applicable Head Start regulations, the Head Start Act, or Public Information Act request requirements. Should the City need to abide by some other law, rule, regulation, policy or procedure, such requirement will be made known to Center upon consideration of Center's request for additional time.
- 12.2 The Center understands that certain funds provided it pursuant to this Agreement are funds which have been made available by the City's General Operating Budget and/or by Federal, State, or other granting entities. Center agrees to comply with all laws, ordinances, codes, rules, regulations, policies, and procedures, including licensing and accreditation standards applicable to the funds received by Center hereunder or as required in this Agreement, including but not limited to:
- (A) The Head Start Act (42 U.S.C. §9831 *et seq.*, as amended);
  - (B) 45 C.F.R. Part 1301 *et seq.*;
  - (C) The Terms of the Grant;
  - (D) As applicable, 45 C.F.R. Part 75 (Uniform Administrative Requirements, Cost Principles and Audit Requirements for HHS Awards");
  - (E)
  - (F) Texas Child Care Licensing laws; and
  - (G) The Office of Management and Budget (OMB) Circular at 2 C.F.R. Part 200 *et al.* titled "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," ("Uniform Guidance"), as applicable to the funds received by Center hereunder.
  - (H) Official record retention schedules as established by the Local Government Records Act of 1989
  - (I) The Texas Public Information Act, at Chapter 552, The Texas Government Code
- 12.3 Center agrees to:
- (A) comply with all standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. §§1251-1387), as amended and as applicable. Center 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 Agreement and the appropriate EPA Regional Office. Additionally, Center agrees to include these requirements in

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each subcontract to this Agreement exceeding \$150,000 financed in whole or in part with federal funds.

- (B) 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) 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) include a provision requiring compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. §874 and 40 U.S.C. §276 and §3145) as applicable under Appendix II of the OMB Uniform Guidance and as supplemented by Department of Labor regulations at 29 C.F.R. Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or In Part by Loans or Grants from the United States."
  - (E) to comply with the Davis-Bacon Act, as amended (40 U.S.C. 3141-3144, and 3146-3148) as applicable under Appendix II of the OMB Uniform Guidance and as supplemented by Department of Labor regulations at 29 C.F.R. Part 5, implementing regulations, and the relevant Additional OMB Provisions attached hereto and incorporated herein for all purposes as Attachment VI, and to include a provision requiring compliance with each in any construction contracts of more than \$2,000.00, and report all suspected or reported violations to HHS.
  - (F) 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) comply with the applicable standards under the McKinney-Vento Homeless Assistance Act (42 U.S.C. §11301 *et seq.* and 42 U.S.C. §11431 *et seq.* ), and any applicable implementing regulations, as may be applicable.
  - (H) comply with the Contract Work Hours and Safety Standards Act, (40 USC 3701-3708), as applicable under Appendix II of the OMB Uniform Guidance, and as supplemented by Department of Labor regulations (29 CFR Part 5), relating to all contracts that involve the employment of mechanics or laborers, and the relevant provisions in Attachment VI, which provides, in part, that each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours, that work in excess of the standard work week be compensated at 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) comply with the prohibitions contained in the Pro-Children Act of 1994, relating to smoking within any indoor facility (or portion thereof) owned or leased or contracted for by Center 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 Center who provide such services.
  - (J) comply with section 6002 of the Solid Waste Disposal Act (42 U.S.C. 6962), as amended by the Resource Conservation and Recovery Act, including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247, and to ensure compliance of any and all subcontractors when applicable.
- 12.4 Center certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 701-707 and 8101-8106, as amended).. Failure to comply with the above-referenced law could subject the Center to suspension of payments, termination of Agreement, and debarment and suspension actions.

- 12.5 Center 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, and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age, disability, or political belief or affiliation, unless exempted by state or federal law, or as otherwise established herein. Consistent with the foregoing, Center agrees to comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Orders 13665 and 11375, and as supplemented by regulations at 41 C.F.R. Part 60. Additionally, Center 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 Center 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, Center must comply with the Equal Employment Opportunity provisions in Attachment VI and all of the Executive Order and Code of Federal Regulations provisions previously cited in Section 12.5, and must include the provisions in any of its subcontracts.
- 12.6 The Center warrants that any and all taxes that the Center may be obligated for, including but not limited to, Federal, State, and local taxes, fees, special assessments, federal and state payroll and income taxes, personal property, real estate, sales and franchise taxes, are current, and paid to the fullest extent liable as of the execution date of the Agreement. The Center 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 (29 U.S.C. Chapter 18).
- 12.7 Center agrees to comply with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.*, and all regulations thereunder.
- 12.8 All expenditures by the Center or any of its contractors must be made in accordance with all applicable federal, state and local laws, rules and regulations.
- 12.9 If applicable, Center shall submit to the DHS its most recent form 990 or 990T and also submit any that are filed with the Internal Revenue Service subsequent to its last submission to the City if filed during the term of the Agreement.

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

- 13.1 Center acknowledges that no person or selling agency or other organization has been employed or retained to solicit or secure this Agreement 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 Center or the City. For breach or violation of this section, the City shall have the right

to terminate this Agreement without liability or, at its discretion, to deduct from the Agreement or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as legally may be available.

- 13.2 Center covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Center further covenants that in the performance of this Agreement, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.
- 13.3 Center 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.
- 13.4 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 Agreement shall:
- (A) Participate in any decision relating to this Agreement which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest; or
  - (B) Have any direct or indirect interest in this Agreement or the proceeds thereof.
- 13.5 Center 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 or any City agency such as City owned utilities. 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; 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 City contract, a partner or a parent or subsidiary business entity.
- 13.6 Center warrants and certifies, and this Agreement is made in reliance thereon, that neither the Center nor his or her spouse, parent, child, sibling or first-degree relative is a City officer or employee as defined by Section 2-52 (e) of the City Ethics Code. If Center is a business entity, the Center representative further warrants and certifies that no City officer or employee nor any spouse, parent, child, sibling or first-degree relative of a City officer or employee owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity). Center further warrants and certifies that is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

#### XIV. TERMINATION

- 14.1 (A) Termination for Cause – Upon written notice in accordance with Article XXVI, Official Communication, CITY may terminate this Agreement as of the date provided in the notice in whole or in part, upon the occurrence of either:
- (i) Failure to fulfill, in a timely and proper manner, obligations under this Agreement to include performance standards established by the City, or if the Center should violate any of the covenants, conditions, or stipulations of the Agreement, 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.

- (B) Termination for Convenience - This Agreement may be terminated in whole or in part upon providing notice in accordance with Article XXVI, Official Communication, which shall specify a date which shall not be sooner than 120 days following the day on which notice is sent, unless earlier terminated under any other provision herein.
- 14.2 The Center 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 reasonably determined by the City, and its decision shall be final. To the extent that compliance with an Agreement matter falls under HHS authority to review, or in the event that a dispute arises with regard to interpretation of regulations or law as it applies to this Agreement, Center may request that the City secure, and the City shall request an interpretation or opinion from HHS in order to assist in resolution of the dispute. It is further expressly understood and agreed by the Parties that Center's performance upon which final payment is conditioned shall include, but not be limited to, the Center's complete and satisfactory performance, of its obligations for which final payment is sought.
- 14.3 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 Center for failure to comply with the terms and provisions of this Agreement. Specifically, at the sole option of the City, the Center may be placed on probation during which time the City may withhold reimbursements in cases where it determines that the Center is not in compliance with this Agreement. The Center shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement, and the City may withhold funds otherwise due as damages, in addition to retaining and utilizing any other remedies available to City.
- 14.4 If a Program employee of Center is discharged or otherwise leaves employment with Center, then the Center shall pay in full to such employee all of such employee's earned salaries and wages, within the timeframe specified by law.
- 14.5 Should the Center be debarred by the federal government or the City pursuant to a debarment policy currently existing or hereafter adopted, or loses its license, said occurrences may be grounds for termination.
- 14.6 This Agreement 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 Agreement accordingly. City will promptly notify Center of any such HHS action.
- 14.7 In all instances of termination, Center shall not incur new obligations after the effective date of termination, and shall cancel as many outstanding obligations as possible. Center shall submit to City all required reports including a final financial statement which shall be a statement of all expenditures incurred by Center under this Agreement. City shall pay Center 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 Center prior to termination or expiration. The foregoing shall constitute full and complete reimbursement for all of Center's performance under this Agreement.

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

- 15.1 Center 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 Agreement be assigned to work for or on behalf of any partisan or non-partisan political activity.

- 15.2 Center agrees that no funds provided under this Agreement 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.
- 15.3 The prohibitions set forth in Article XV, Sections 15.1 and 15.2 of this Agreement 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.
- 15.4 To ensure that the above policies are complied with, Center shall provide every member of its personnel paid out of Agreement funds with a statement provided by Center 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 the DHS. Center shall list the name and number of a contact person from the DHS on the statement that Center's personnel can call to report said violations.
- 15.5 Center agrees that in any instance where an investigation of the above is ongoing or has been confirmed based upon then current reasonable evidence of impropriety, salaries paid to the Center under this Agreement may, at the City's discretion, be withheld until the situation is resolved.
- 15.6 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, Center and staff members are not prohibited from participating in political activities on their own volition, if done during time not paid for with Agreement funds.

#### **XVI. PERSONNEL**

- 16.1 Center 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 Program operations. Center 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.
- 16.2 Center acknowledges and agrees that Head Start guidelines and City policy require that Center shall staff each Early Head Start classroom at ratios of one qualified Early Head Start Teacher for every 4 children with group sizes of no more than 8 at all times., Center shall staff each classroom with a volunteer in addition to the paid staff persons when possible. Additionally, Center will have adequate staff to fully

implement all areas of program operations, including those having the specific management functions and expertise set forth in the Scope of Work.

- 16.3 At the beginning of this Agreement period, Center shall submit to City a report which specifically (a) lists the number and percentage of classroom personnel in its center based program having child development associate credentials or associate, baccalaureate or advanced degrees; and (b) describes to City Center's compliance with the goals described in Sections 16.3, 16.4 and 16.5 of this Agreement.
- 16.4 Center understands that the Head Start Act requires that grantees and their contractors, if any, can assure, and demonstrate, upon request, that all of the teachers staffing its Early Head Start center-based program classrooms have a minimum of a child development associate credential, and have been trained (or have equivalent coursework) in early childhood development with a focus on infant and toddler development. Center guarantees that teachers not meeting this requirement be enrolled in coursework toward obtaining, at a minimum, CDA certification. Center will have a documented professional development plan on file for any such teacher.
- 16.5 Center agrees and acknowledges that each of its Early Head Start teachers shall attend not less than 15 clock hours of infant and toddler professional development per Center fiscal year. The term "professional development" means high-quality activities that will improve the knowledge and skills of Early Head Start teachers and staff, as relevant to their roles and functions, in program administration and the provision of services and instruction, as appropriate, in a manner that has a positive and lasting impact and improves service delivery to enrolled children and their families. The professional development must be specific to working with infants and toddlers.
- 16.6 Center understands that the Head Start Act requires grantees and their contractors, if any, ensure and demonstrate upon request that all Head Start staff have the knowledge, skills, and experience they need to perform their assigned functions responsibly. Therefore, at a minimum, Center agrees that all Center or Program directors, as well as personnel in the classroom, must have education and/or training in the area of early childhood education. Center will only employ such directors and personnel meeting the necessary qualifications of Early Head Start and state licensing. To meet these obligations, Contractor will:
- (A) only employ an Early Head Start director and classroom personnel meeting the necessary qualifications;
  - (B) promptly notify City of any transfers and/or disciplinary actions affecting the Early Head Start personnel referred to in subsection (A) of this section; and
  - (C) ensure, in the event an Early Head Start position referred to in subsection (A) of this section is vacated for any reason, that a replacement meeting the necessary qualifications is hired within 45 calendar days or, following notification to City of a delay, as soon as reasonably practical, but not later than 60 days after the position first became vacant unless the parties come to a new mutually acceptable deadline.
- 16.7 Center shall create, in consultation with each of its employees, and implement a professional development plan for all Program employees who provide direct services to children. Center shall regularly evaluate such plans to determine their impact on teacher and staff effectiveness.
- 16.8 Center understands that the City shall periodically perform its own wage and salary comparison and shall issue such results to Center. Center understands and agrees that City shall have no obligation to reimburse Center in excess of wages to an employee that exceed the average rate of compensation paid to persons providing substantially comparable services in the area. Although the City may consider factors such as training and experience as affecting compensation levels, the City shall have the sole and absolute authority to determine the rate of City's reimbursement under the Agreement 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 16.10, Center may compensate its employees above the rate the City will reimburse, so long as the additional compensation is not charged to the Agreement budget.
- 16.9 Center expressly understands and agrees that in accordance with 42 U.S.C. §9848, no portion of the Agreement funds provided hereunder may be used to pay its employee if compensation (including non-federal funds) to that employee exceeds \$183,300.00, or the maximum authorized compensation as may be



adjusted from time to time. Furthermore, Center agrees that all employees must devote to Center's Program the time proportionate to the percentage of their compensation funded through the EHS-CCP grant (e.g., employees who are one hundred percent (100%) funded through the Grant must devote one hundred percent (100%) of their time and effort to support Center's Program). Center agrees to submit employee certifications if requested by the City or HHS.

- 16.10 Center 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.
- 16.11 Center agrees to comply with all applicable federal regulations regarding the setting of, and maximum amount allowable for, salaries of Center's employees.
- 16.12 Center agrees to continue to work on placing written job descriptions for Program personnel in individual personnel folders for each position in the organization, or to have them placed online, until completed, but that all descriptions shall be filed or online no later than the expiration date of the Agreement. Center agrees to provide to the City specific job description(s) upon request.
- 16.13 Center agrees to provide the City with the names and license registration of Center and any employees of Center if applicable, regulated by State law whose activities contribute towards, facilitate, or coordinate the performance of this Agreement.
- 16.14 Chief Executive Officers (CEOs), directors and other supervisory personnel of Center 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 Agreement funds. Relatives, however, may be co-workers in the same Project in a non-supervisory position.

#### **XVII. ADVERSARIAL PROCEEDINGS**

- 17.1 Except in circumstances where the following is in conflict with federal law or regulations pertaining to the Program, Center agrees to comply with the following special provisions:
  - (A) Under no circumstances will the funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City or any other public entity; and
  - (B) Center, at the City's option, could be ineligible for consideration to receive any future funding while any adversarial proceeding against the City remains unresolved.

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

- 18.1 This Section is applicable to all EHS-CCP publicity, public 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 Center. Center 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 EHS-CCP Program affiliation between City and Center described herein shall be planned and implemented as mutually agreed to in advance by the Parties. Center agrees that all public notices and any publicity, signs and/or marketing materials regarding any program which is funded by this Agreement shall provide a written statement acknowledging the role of the Federal funds provided by HHS through City hereunder, which shall read as follows: "The Early Head Start - Child Care Partnership Program services provided by this Center are funded by the City of San Antonio, Department of Human Services, through a federal grant received from the U.S. Department of Health and Human Services." These 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 Center's Program services shall note that the Program is operated on a non-discriminatory basis.

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

#### **XIX. PROPERTY, EQUIPMENT AND SUPPLIES**

- 19.1 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 Agreement's termination, for whatever reason. Center 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 Agreement. Equipment that has reverted to Center through a City-paid lease agreement with option to buy will be considered the same as though the equipment was purchased outright with Agreement funds. It is understood that the terms, "equipment" and "property", as used herein, means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit and shall include not only furniture and other durable property, but also vehicles, but shall not include supplies and consumables.
- 19.2 Center agrees that no equipment purchased with Agreement funds may be disposed of without receiving prior written approval from the DHS. In cases of theft and/or loss of equipment, it is the responsibility of Center to replace it with like equipment. Agreement funds cannot be used to replace equipment in those instances. All replacement equipment will be treated in the same manner as equipment purchased with Agreement funds.
- 19.3 Center shall maintain accurate and complete records on all equipment and property obtained with Agreement funds to include:
- (A) A description of the equipment, including the model and serial number or other identification number, if applicable;
  - (B) The date of acquisition, cost and procurement source, purchase order number, and vendor number;
  - (C) An indication of whether the equipment is new or used;
  - (D) The vendor's name (or transferred from);
  - (E) The location of the property;
  - (F) The property number shown on the property tag; ("City of San Antonio Head Start Program"); and
  - (G) A list of disposed items and disposition
- 19.4 Center is fully and solely responsible for the insuring, safeguarding, maintaining, and reporting of lost, stolen, missing, damaged, or destroyed equipment/property purchased or leased with Agreement funds. Center shall inform the City of incidents of loss, theft, damage or destruction of equipment (as defined in 19.1 above) or property, excluding supplies and consumables, purchased or leased with Agreement funds.
- 19.5 All equipment purchased under this Agreement shall be fully insured against fire, loss and theft. Center shall, at a minimum, provide the equivalent insurance for real property and equipment acquired with Agreement funds as provided to other property acquired or owned by Center.
- 19.6 Upon request, Center shall provide an annual inventory of assets purchased with funds received through the City to the DHS.
- 19.7 Center shall fully comply with the property and equipment requirements of 45 C.F.R. Part 75, including but not limited to Sections 75.316 through 75.323, related to the following:
- (A) Insurance Coverage
  - (B) Real Property

- (C) Federally-owned and exempt property
  - (D) Equipment
  - (E) Supplies
  - (F) Intangible property
  - (G) Property trust relationship
- 19.8 Relative to property, equipment and supplies purchased with Head Start grant funds, Center shall route all written correspondence through the 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, Center shall obtain prior approval from the DHS. Center shall not split the purchase of a line item with a value greater than the preceding thresholds in order to avoid obtaining approval from the DHS.
- 19.9 Center will maintain a system for tracking, on an ongoing basis, inventory of equipment and supplies purchased with Grant funds that either (i) has a purchase price of \$5,000.00 or greater; or (ii) meets such other criteria as City may prescribe (and which City shall notify Center as appropriate). Upon request, Center 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 Center's inventory tracking system.
- 19.10 City reserves the right to require transfer of property acquired with funds awarded under this Agreement as provided in 45 C.F.R. Part 75, including but not limited to §75.316 *et seq.*
- 19.11 Center acknowledges and agrees that City is an intended third-party beneficiary of any and all facility leases with third-parties to which Center is or becomes a party in connection with approved Program sites, or as a consequence of this Agreement. As such, Center shall use its best efforts to cause the lessor of any such lease to execute an acknowledgment prepared by City that City is an intended third-party beneficiary of such lease. Center shall honor all of its material obligations under any and all such leases. Center shall stay in good standing under any and all such leases and Center shall immediately notify City in writing in the event of any breach or alleged breach of any such lease that could result in the termination of such lease. Center shall submit to City for review and approval all non-disturbance, subordination and similar agreements it is requested to execute in connection with any such lease. In the event of an event giving rise to a right of first refusal in favor of Center under any such lease, Center shall promptly notify City of such event and allow City to step into Center's shoes as tenant under such lease in order to exercise such right.

## XX. TRAVEL

- 20.1 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) Center agrees that mileage reimbursement paid to Center'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. Center 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 fully comply with its own established mileage recording policies. Mileage records are subject to spot-checks by City auditors and monitors. Center 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 Center.
  - (B) Center agrees that in order to obtain reimbursement of the costs associated with budgeted out of town travel for business in connection with this Agreement, Center shall:
    - 1) obtain City's prior approval, unless such expense has been previously submitted and approved as part of Center's budget, and provide City with detailed documentation of such business travel expense(s), (any amount over approved budgeted amounts must be pre-approved by

- City or such overage will not be paid),
- 2) ensure that any and all costs associated with out-of-town travel (including per diem rates) 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.

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

- 21.1 Center 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.

#### **XXII. DEBARMENT**

- 22.1 Center 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.
- 22.2 Center 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 Agreement, including any renewals hereof, Center learns that its certification was erroneous when made or have become erroneous by reason of changed circumstances.

#### **XXIII. ASSIGNMENT**

- 23.1 Center shall not assign or transfer Center's interest in this Agreement 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.

#### **XXIV. AMENDMENT**

- 24.1 Any alterations, additions or deletions to the terms hereof shall be by amendment in writing executed by both City and Center and evidenced by passage of a subsequent City ordinance, as to City's approval; provided, however, the Director of the DHS shall have the authority to execute an amendment of this Agreement 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 24.1(E) below) of this Agreement in an amount not exceeding (a) twenty-five percent (25%) of the total amount of this Agreement 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 Agreement funding during the term of this Agreement 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 Agreement remains unchanged (these modifications may be accomplished through Budget Revisions);
  - D. modifications to the insurance provisions described in Article IX of this Agreement that receive the prior written approval of the City of San Antonio's Risk Manager and the Director of the DHS.

Contract #:

- E. decreases (and increases if the City agrees to allocate additional enrollment slots to Center) in Agreement funding based upon Program enrollment levels, and modifications to Agreement terms related to enrollment; provided, however, that the cumulative total of all EHS-CCP Program contracts, as amended, shall not exceed the City's total budget for the EHS-CCP Grant budget for the applicable grant year. Center shall execute any and all amendments to this Agreement that are required as a result of a modification made pursuant to this Section 24.1(E).
- 24.2 Center further agrees that except when the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to the terms hereof shall be by amendment in writing and approved by HHS.

#### XXV. SUBCONTRACTING

- 25.1 None of the work or services covered by this Agreement shall be sub-contracted without the prior written consent of the City and the Grantor of the Grant Funds, if so required by Grantor. If allowed, subcontracting methods must meet City requirements; subcontractor compliance with this Agreement must be the responsibility of the Center to monitor.
- 25.2 If City grants a request to subcontract, Center 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

#### XXVI. OFFICIAL COMMUNICATIONS

- 26.1 Except where the terms of this Agreement expressly provide otherwise, any communication required or permitted to be given under this Agreement shall be in writing and deemed valid 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 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, TX 78205

Center:  
Young Women's Christian Association of San Antonio, Texas  
Attn: EHS-CCP Director  
314 N. Hackberry Ste.101  
San Antonio, Texas 78202

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

#### XXVII. VENUE

- 27.1 Center and City agree that this Agreement 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 Agreement or adjudicate any dispute arising out of this Agreement shall be brought in a court of competent jurisdiction in San Antonio, Bexar County, Texas.

#### XXVIII. GENDER

- 28.1 Words of any gender used in this Agreement 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.

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

- 29.1 The signer of this Agreement for Center represents, warrants, assures and guarantees that (s)he has full legal authority to execute this Agreement on behalf of Center and to bind Center to all of the terms, conditions, provisions and obligations herein contained. Whether a non-profit or public entity, Center 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. Upon request by the City, Center shall provide DHS verification of the foregoing requirements.
- 29.2 This Agreement is based on the representation of Center 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 Program; and that Program funds disbursed to Center will be expended only for allowable costs in the implementation of the Program which is the subject of this Agreement. 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 Agreement.
- 29.3 In the event that circumstances arise which might result in interference with Center's ability to provide the services which are the subject of this Agreement, Center agrees to inform City of those circumstances immediately upon their discovery. Center agrees that reimbursement to Center, 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 Agreement.

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

- 30.1 Center warrants and certifies that Center, and Center's employees and its (sub)contractors 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.

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

- 31.1 It is expressly understood and agreed that the Center 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.
- 31.2 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.
- 31.3 Any and all of the employees of the Center, wherever located, while engaged in the performance of any work required by the City under this Agreement shall be considered employees of Center 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 Center.

#### **XXXII. SEVERABILITY**

- 32.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of City, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or

Contract #:

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 this 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.

### **XXXIII. NON-WAIVER OF PERFORMANCE**

- 33.1 No waiver by City of a breach of any of the terms, conditions, covenants or guarantees of this Agreement 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 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.

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

Contract #:

**XXXV. ENTIRE AGREEMENT**

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

This Agreement has been executed as of the date of the last party to sign below, the \_\_\_\_\_ day of \_\_\_\_\_, 2016 and is effective for the term hereof.

**CITY OF SAN ANTONIO:**

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

\_\_\_\_\_  
Date

**CENTER:**

Young Women's Christian Association of San Antonio, Texas

\_\_\_\_\_  
*Alma Smith*  
Alma Smith, Chief Executive Officer

\_\_\_\_\_  
5-6-16  
Date

**APPROVED AS TO FORM:**

\_\_\_\_\_  
*K. J. D. P.*  
Assistant City Attorney

**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



**ATTACHMENT I**  
**SCOPE OF WORK**

**1. Summary**

The Center (within this Scope of Work referred to as "Contractor") shall work with the City to ensure full enrollment and shall serve the number of income and age eligible children as indicated below, and perform Early Head Start services in accordance with the Head Start Performance Standards and the terms of this Agreement. The Contractor will operate full day classroom(s) (minimum of 10 hours a day) at the City approved sites for a minimum of 240 days of planned class operations for the Early Head Start – Child Care Partnership grant period. EHS hours set by the Center must be approved by the City.

Number of children in full day care on the first day of the program:	20
Minimum number of children with disabilities:	10% of the number of children in care
Service Area:	Families living and working within the Edgewood and San Antonio Independent School Districts.

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

A. To achieve and maintain full enrollment, Contractor must ensure that once it and the City determines that a vacancy exists, no more than 30 calendar days may elapse before the vacancy is filled. Contractor will work with the City in its efforts to fill all vacancies within 30 calendar days.

B. Contractor will work with the City staff in developing, at the beginning of each enrollment year, and maintain during the year, a waiting list that ranks children according to the program's selection criteria and ERSEA policies. If Contractor is under enrolled and does not have a waiting list City shall have the right to temporarily move enrollment slots, in coordination with the Contractor and as a last resort, to maintain compliance with Federal enrollment standards.

C. In accordance with the Head Start Act, Contractor shall work collaboratively with the City to ensure that a minimum of 10% of the children enrolled in Contractor's Program are children with disabilities who are determined to be eligible for services through the Early Childhood Intervention (ECI) program through the Individuals with Disabilities Education Act (IDEA) part C. This 10% requirement must be met by mid-point of the program year, as determined by the City.

D. Contractor agrees that when the monthly average daily attendance rate in a center-based program falls below 85 percent, Contractor shall collaborate with the City in the provision of absentee services in accordance with §1305.8 of the Head Start Performance standards. The City will lead absentee services to include analyzing the cause of absenteeism and the provision of additional support, which may include, but is not limited to, face-to-face meeting(s) with the family and other direct contact with the child's parents. Contractor shall establish procedures for the removal of children from the program due to the lack of attendance in accordance with the City's policies.

**3. Program Services**

A. Contractor shall provide Early Head Start Program Services (hereinafter defined) to eligible children in the Service Area. Such services shall be provided to eligible children within Contractor's Service

Area(s) without regard to age, race, color, religion, national origin, sex, sexual orientation, gender identity, or disability. Any proposal to extend or modify the Service Area(s) or the sites at which services are to be delivered shall be formally submitted in writing to City for approval.

B. Contractor shall provide direct (i) Education and Early Childhood Development Services; (ii) Child Nutrition Services; (iii) Safe and Healthy Environments; (iv) Transportation Services; and (v) Disability Services in coordination with the City. The Contractor also agrees that it shall collaborate with the City's efforts to ensure the provision of Family and Community Support Services, Child Mental Health, Medical Health Services and Dental (Oral) Health Services, to meet the needs of the children and families served by Contractor's Program ("Early Head Start Program Services"). Contractor agrees that, notwithstanding the fact that another Early Head Start service provider under the City of San Antonio Head Start program may be contracted to provide a category of service. Contractor will be responsible for coordinating with other Early Head Start service providers and working with the City to ensure provision of full array of services to which the children are entitled under the Terms of the Grant. Contractor shall also coordinate with Independent School Districts, health service providers and agencies in the community in order to provide comprehensive services to the children and families served by the Program and to leverage community resources

C. 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 Early Head Start program operations. Contractor shall ensure that, at a minimum, the following program management functions are assigned to and adopted by staff within the Program:

- i. Executive Director(s), Center Director(s) or the appropriate assigned staff member(s) with decision-making abilities must attend scheduled monthly EHS-CCP meetings.
- ii. Contractor is ultimately responsible for ensuring the children enrolled in Contractor's Early Head Start program are provided (by Contractor or a collaborating Early Head Start service provider) the full array of services to which the children are entitled under the Terms of the Grant.
- iii. Management of education and early childhood development must be assigned to an individual serving in the role of a Center Director. This individual must have training and experience in areas that include theories and principles of child growth and development, early childhood education, and family support and have a current and good standing Child-Care Center Directors Certificate.
- iv. Management of child nutrition services must be assigned to a qualified individual who will manage the Nutrition Program for the Center. Center must maintain positive compliance with CACFP.
- v. Contractor shall ensure that members of program's management team and any other necessary staff provide uninterrupted Head Start Program management services throughout the Agreement term, including during the summer months so as to ensure adequate planning, coordination and performance of critical program activities. Critical program activities include, but are not limited to, ongoing recruitment activities and services, determination of eligibility, development of a waitlist for the upcoming school year, and completion of enrollment.

D. Contractor shall provide the following education and early childhood development services in compliance with the requirements of 45 C.F.R Part 1304.21, *et. seq.*:

- i. Contractor must help children gain the skills and confidence necessary to be prepared to succeed in their present environment and with later responsibilities in school and life; the Contractor's approach to child development and education must be developmentally and linguistically appropriate, recognize the child's rate of development, language, cultural background and learning style; be inclusive of children with disabilities; provide an environment of acceptance that supports and respects gender, culture, language, ethnicity and family composition; provide a balanced daily program of child-initiated

- and adult-directed activities; and allow and enable children to independently use toilet facilities when it is developmentally appropriate and the efforts are supported by the parents.
- ii. Contractor shall encourage and support parents in their efforts to become involved in the development of the program's curriculum and approach to child development and education; provide opportunities to increase parents' child observation skills and to share assessments with staff that will help plan the learning experience; and encourage parents to participate in staff-parent conferences and home visits to discuss their child's development and education.
  - iii. Contractor must support social and emotional development by encouraging development which enhances child's strengths by building trust; fostering independence; encouraging self-control and respect for feelings and rights of others; supporting and respecting the home language, culture, and family composition in ways that support the child's health and wellbeing; and planning for routines and transitions.
  - iv. Contractor must provide for the development of each child's cognitive and language skills by supporting each child's learning, using various strategies including experimentation, inquiry, observation, play and exploration; ensuring opportunities for creative self-expression through activities such as art, music, movement, and dialogue; promoting interaction and language use among children and between children and adults; and supporting emerging literacy and numeracy developments through materials and activities according to the child's developmental level.
  - v. Contractor must promote each child's physical development by providing sufficient time, indoor and outdoor space, equipment, materials and adult guidance for active play and movement that support the development of gross motor skills and of fine motor skills according to the child's developmental level; and providing an appropriate environment and adult guidance for the participation of children with special needs.
  - vi. Contractor, in collaboration with the parents and with support from the City, must implement *Creative Curriculum*® which aligns with the Head Start Early Learning Outcomes Framework (HSELOF, 2015), that supports each child's individual pattern of development and learning; provides for the development of cognitive skills; integrates all educational aspects of the health, nutrition, and mental health services into program activities; helps children develop emotional security, facilitate social relationships, feelings of competence, self-esteem, and positive attitudes toward learning; enhances each child's understanding of self as an individual and as a member of a group; and provides individual and small group experiences both indoors and outdoors.
  - vii. Contractor must work with the City to create and implement a plan of action to achieve and establish school readiness goals that are age appropriate and will address, at a minimum, the domains of approaches to learning, social and emotional development, language and literacy, cognition and perceptual, motor, and physical development; and achieve the integration with the Parent, Family, and Community Engagement (PFCE) Framework. With the approval of DHS, Contractor will update school readiness goals on an annual basis, analyze achievement, and identify areas for improvement. As part of this plan of action, the Contractor must align the program's curriculum with school readiness goals to include improving the quality of teacher-child interactions, evidence based teaching practices, evidence-based curriculum, and inclusion of parents to support school readiness.
  - viii. Contractor, in conjunction with the City, will assess child progress on an ongoing basis utilizing Early Learning Accomplishment Profile (E-LAP) and conduct data aggregation and submit analysis of child progress assessments to the City at least three times per year (at the beginning, midpoint and end of school year) to demonstrate program-level progress. Contractor will also provide the City direct access to the assessment data management system for the purposes of aggregating, analyzing, and producing program-wide reports. Contractor will make mid-year adjustments in instruction and/or professional development support should patterns or trends be identified in the analysis and coordinate with City as needed. Contractor must maintain and use the information from ongoing child assessment data to inform teachers and survey parents how best to

individualize each child's learning and progress across domains. The City will provide support, training and technical assistance to ensure these requirements are met.

F. Contractor shall perform the following services as it relates to the specific service listed below in compliance with the requirements of 45 C.F.R Parts 1304.20, 1304.22, 1304.23, 1304.24 and 1304.40:

i. Child Health and Safety

- a. Contractor must establish and implement policies and procedures to respond to medical and dental health emergencies with which all staff are familiar and trained, to include posted policies and plans of action; posted locations and telephone numbers of emergency response systems and up-to-date family contact information and authorization for emergency care; posted emergency evacuation routes and other safety procedures for emergencies; methods of notifying parents in the event of an emergency; and established methods for handling cases of suspected or known child abuse and neglect and notifying the City within 24 hours of an incident. The City will provide support, training and technical assistance to ensure these requirements are met.
- b. Contractor, in collaboration with the parent, will screen the child's developmental and behavioral skills utilizing the Ages and Stages Questionnaire.
- c. Contractor must temporarily exclude a child with a short-term injury or an acute or short-term contagious illness that cannot be readily accommodated, from program participation in center-based activities or group experiences, but only for that generally short-term period when keeping the child in care poses a significant risk to the health and safety of the child or anyone in contact with the child.
- d. Contractor must not deny admission to any child, nor exclude any enrolled child from program participation for a long-term period, solely on the basis of his or her health care needs or medication requirements, unless the child poses a significant risk to the health and safety of the child or anyone in contact with the child and the risk cannot be eliminated or reduced to an acceptable level through reasonable modifications in the Contractor's policies or by providing appropriate auxiliary aids.
- e. Contractor must establish and maintain written procedures regarding the administration, handling, and storage of medication for every child. Certificates of completion will be maintained by the Contractor. The City will provide support, training and technical assistance to ensure these requirements are met.
- f. Contractor must ensure staff and volunteers can demonstrate safety practices; foster safety awareness among children and parents by incorporating it into child and parent activities; and ensure staff, volunteers and children follow the appropriate hygiene requirements.
- g. Contractor must have and maintain well-supplied first aid kits, appropriate for all ages served and the program size, at each facility and available on outings away from the site.
- h. Contractor must obtain and maintain current immunization records on all children enrolled in EHS per Texas State Child Care Licensing requirements and Head Start Performance Standards.
- i. Contractor must work, in collaboration with the City and City's Service Providers, to provide dental clinics, labs, and hearing and vision screenings.

ii. Child Nutrition

- a. Contractor must work, in collaboration with the City, with families to identify each child's nutritional needs, taking into account staff and family discussions regarding any relevant nutrition-related assessment data; information about family eating patterns, including cultural preference, special dietary requirements, and feeding requirements of each child with disabilities; and information about major community nutritional issues.

- b. Contractor must design and implement a nutrition program that meets the nutritional needs and feeding requirements of each child, and takes into account the length of the program day.
- c. Contractor must work with City and City's contracted nutritionist/dietician to assist the program with coming into compliance with Head Start Performance Standards.
- d. Contractor must ensure that nutritional services in center-based settings contribute to the development and socialization of enrolled children and ensure that all meals are served family style.
- e. Contractor must use funds from USDA Child and Adult Care Food Program (CACFP) as the primary source of payment for meal services.
- f. Pursuant to City policies, Contractor must report the number of meals and snacks served to Early Head Start children on a monthly basis by the 3<sup>rd</sup> of every month to City.

iii. Child Mental Health

- a. Contractor must work collaboratively with parents to solicit parental information, observation, and concerns about their child's mental health; share staff observations of their child and discuss with parents their child's behavior and development; share observations with mental health professionals as it pertains to the child receiving services.
- b. City, with the assistance and collaboration of the Contractor will secure or refer, when appropriate, the services of mental health professionals on a schedule of sufficient frequency to enable the timely and effective identification of and intervention in family and staff concerns about a child's mental health.
- c. Contractor must work with the City and Mental Health Professionals to assist in Tier 1 Promotional services; and to implement identified strategies in Tier 2 Preventative and Tier 3 Intervention services.

iv. Family and Community Support

- a. Contractor, in collaboration with City led family and community support staff, must provide parent engagement and education activities that are responsive to the ongoing and expressed needs of the parents.
- b. Contractor, in collaboration with City-led family and community support staff, must provide opportunities to include parents in the development of the program's curriculum and approach to child development and education.
- c. Contractor shall collaborate with the City, Head Start service providers and other community agencies to provide opportunities to enhance parenting skills, knowledge and understanding of the educational and developmental needs and activities of their children.
- d. Contractor Education staff must conduct two (2) home visits, unless parents expressly forbid such visits, and at least two (2) staff-parent conferences per child per program year to enhance the knowledge and understanding of the educational and developmental progress and activities of children in the program. Contractor must not require that parents permit home visits as a condition of the child's participation in the program. The City will provide support, training and technical assistance to ensure these requirements are met.

G. Contractor shall encourage parent participation and attendance in center parent meetings, Parent Connection Committee meetings, Head Start Policy Council, volunteering, parents' activities and contributions.

H. 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.*

I. The Contractor shall submit to City all attendance, performance and staffing plans, which must be in accordance with the City's policies.

J. The Contractor shall submit program information reports as requested by the City, which may include but not be limited to:

- a) End of the Month Enrollment (EOM) Reports
- b) Classroom Attendance Report
- c) Classroom/Site Set up Information Report
- d) United States Department of Agriculture (USDA) food count for reimbursement received for EHS-CCP children to be submitted on a monthly basis
- 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) Transition Activity Report
- h) Recruitment Activity Report
- i) Parent Engagement Activity Report
- j) Health Activities Report
- k) School Readiness Plan of Action update

K. Contractor shall provide a substantial portion of the substantive programmatic work provided for under this Scope of Work, Attachment I, directly. However, should Contractor desire to perform this work through one or more subawards to third parties, it shall seek and obtain City's written approval prior to doing so. In all such subawards, Contractor shall ensure that it passes through all of the requirements that apply to Contractor hereunder to the subrecipient of such subawarded funds.

L. Contractor must notify the City when the Contractor identifies possible or actual lack of compliance with the Head Start Performance Standards, Head Start Act, Texas Child Care Licensing Minimum Standards, City's program policies and terms of this Agreement.

#### **4. 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 C.F.R. §1301 *et. seq.* Contractor's Governing Board members or representative 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 or representative of the Board the opportunity to engage in a cooperative strategic planning process with respect to the Program and shall submit any final strategic plans developed through such process to City for approval. Contractor must also submit a current listing of all board members with roles and terms in accordance with this Agreement.

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 Head Start Program.

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

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

**5. Licensure/Staffing**

A. Contractor shall obtain and maintain all necessary and appropriate State licenses, permits, certifications, and approvals required for the operation of Contractor's facilities and programs including those supported by this Agreement, unless exempt from such requirement. Upon commencement of the Agreement, 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 perform the Head Start Program 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.

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

**6. Facilities.**

All Contractor facilities at the approved sites shall meet applicable federal, state and local safety standards. Contractor shall at all times during the term of this Agreement, keep the facility in good, clean, safe, and reasonable operating condition and repair. City shall be allowed to inspect the facilities and the licensing and/or certification documents relating to the facility during Contractor's normal operating time. Upon commencement of this Agreement and upon request, Contractor shall provide City an up-to-date copy of any leases or other agreements (as well as any amendments or modifications thereto) for facilities used to provide services to children enrolled in the Head Start program and funded pursuant to this Agreement. The City will provide support, training and technical assistance to ensure these requirements are met.

**7. 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 via email, telephone or in person, 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; and (iii) an appropriate level of attendance of Contractor's program management team and parent committee members at national, regional and/or State Head Start conferences/trainings.

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

**8. Transportation Services/Vehicles.**

Should Contractor and City decide that the Contractor shall provide transportation services they must be in compliance with the requirements of 45 CFR part 1310, et. seq., subject to any waiver that may be obtained by City and/or Contractor.

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

B. Contractor shall ensure that all drivers be certified for the operation of said vehicles, and that all bus monitors assigned to vehicles used to provide such services receive the appropriate training. Contractor shall

otherwise be in compliance with all applicable federal, state, and local requirements governing the transportation of children.

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

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

Prior to execution of the Agreement, Contractor will submit to the City the Contractor's Program Design, which shall include, the total number of children enrolled, , number of classrooms, classroom age group designation, language designation, and hours of operation, among other things. If at any time Contractor proposes a change to the Program Design, Contractor shall request and receive the City's approval prior to making said change.



## PROGRAM BUDGET

AGENCY NAME:

YWCA - Olga Madrid Child Development Center

PROGRAM NAME:

City of San Antonio Early Head Start / CCS Partnership

TERM OF CONTRACT:

August 1, 2016 - July 31, 2017

Categories	Federal Share Funding	Non-Federal Share Match	Total Budget	Federal Admin Funding	Non-Federal Admin Match	Total Admin Budget	
Salaries	\$110,800	\$22,400	\$133,200	\$0	\$0	\$0	
Fringe Benefits	\$26,400	\$11,900	\$38,300	\$0	\$0	\$0	
TOTAL PERSONNEL	\$137,200	\$34,300	\$171,500	\$0	\$0	\$0	
Travel	\$0	\$0	\$0	\$0	\$0	\$0	
Equipment	\$0	\$0	\$0	\$0	\$0	\$0	
Supplies	\$0	\$0	\$0	\$0	\$0	\$0	
Contractual	\$0	\$0	\$0	\$0	\$0	\$0	
Other	\$0	\$0	\$0	\$0	\$0	\$0	
TOTALS	\$137,200	\$34,300	\$171,500	\$0	\$0	\$0	0%

Signature of Agency/Authorized Representative

5-12-16

Date

This section reserved for COSA use only

Reviewed by:

Program Monitor Signature and Date

5/16/16

Approved:

COSA Head Start Administrator Signature and Date

5/16/16

Fiscal Monitor Signature and Date

5/16/16

Fiscal Manager Signature and Date

5/16/16

**City of San Antonio Early Head Start Program  
YWCA - Olga Madrid Child Development Center  
August 1, 2016 - July 31, 2017**

**Attachment II**[illegible]

Provider:  
 Term:

B	C	D	E	F	G	H	I	J	K	L	M	N	O
Category	Contractor GL	Job Title or Description	# of Positions	Salary/Wage per Pay Period	# of Pay Periods	E x F x G Total Annual Salary	% Allocated to EHS	H x I TOTAL BUDGET	Federal J, enter under appropriate header	From Admin	Non Federal/Match J, enter under appropriate header	From Admin	K + L + M + N TOTAL BUDGET
Other		Education Classes											0
Other		Binding Printing and Reproduction											0
Other		Transportation fees											0
Other		Misc. Bldg & Repairs- Building & Impr.											0
Other		Mail and Parcel Post											0
Other		Rental of Office Equipment											0
Other		Rental of Facilities											0
Other		Alarm and Security Services											0
Other		Food for children (NOT reimbursed by USDA)											0
Other		Telephone and fax /communications											0
Other		Gas and Electricity											0
Other		Water and Sewer											0
Other		Liability, Hazard, Fidelity Insurance											0
Other		In-Kind Parent Participation (Limited to Non-Federal Share)											0
Other		In-Kind Volunteers (Limited to Non-Federal Share)											0
Other		In-Kind Other											0
Other		In-Kind Other											0
TOTAL BUDGET								171,500	137,200	0	34,300	0	171,500

Administrative %	TOTAL BUDGET	Total Federal	K	L	M	N	Total Non-Federal
0%			Federal	Non Federal/Match			
			Direct	Admin	Direct	Admin	
TOTALS BY CATEGORY/CLASS							
SALARIES	133,200	110,800	110,800	0	22,400	0	22,400
FRINGE	38,300	26,400	26,400	0	11,900	0	11,900
TRAVEL	0	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0	0
OTHER	0	0	0	0	0	0	0
TOTAL BUDGET	171,500	137,200	137,200	0	34,300	0	34,300

**ATTACHMENT III**  
**SPECIAL PROVISIONS — Program Year 2016-2017**

**I. RESTRICTIONS ON USE OF FUNDS OR PROPERTY**

- 1.01 In addition to the other applicable restrictions on the use of Early Head Start – Child Care Partnership (EHS-CCP) program funds provided under this Contract, the Contractor is prohibited from:
- a) using or transferring funds provided under this Contract for purposes other than authorized EHS-CCP activities;
  - b) 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;
  - c) 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 CITY-DESIGNATED DATA SYSTEM**

- 2.01 Contractor shall:
- a) utilize the City's designated data management system to input data that pertains to the on-going day-to-day work completed by Partner staff.
  - b) support all design, development, testing and implementation protocols as established by the City by carrying out and complying therewith;
  - c) participate in preliminary and final testing of the system using City protocols;
  - d) allow City and its vendor to install data encryption software on the Child Care System Database network; and
  - e) 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 EHS-CCP program .
- 2.02 Both Parties agree:
- a) to 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) that nothing herein shall be construed as to control or in any way limit the right of parents to choose an EHS-CCP 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

**Each child's Information:**

Client Number  
First Name  
Middle Initial  
Last Name  
Social Security Number (Optional)

**Parent's Information (cont'd):**

City  
Zip Code  
Telephone  
Social Security Number (Optional)  
Birth Date  
Gender  
Race  
Handicap (Optional)  
Yearly Income  
Number of members in the Family  
County of Residence  
Employment and training status

**Each child's Information (cont'd):**

Birth Date  
Gender  
Race  
Handicap (Optional)

- 3.02 Contractor understands that City intends to enter into additional agreements with other providers of child care services ("Additional Collaborators") in order to promote the success of theEHS-CCP program. 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 EHS-CCP provider's data is accessible only by those persons working on theEHS-CCP program, or directly providing other child care services, and only for the purpose of performing or assisting with services required by the EHS-CCP or other specific 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.

**WITNESSETH:**

**HIPAA BUSINESS ASSOCIATE AGREEMENT**

**This HIPAA Business Associate Agreement** is entered into by and between the City of San Antonio ("Covered Entity"), by and through its Director of the Department of Human Services, and the Young Women's Christian Association of San Antonio, Texas, a Business Associate ("BA").

WHEREAS, the City of San Antonio and BA have entered into an Agreement for Early Head Start – Child Care Partnership services to provide educational and child care services ("Service Contract"), effective August 1, 2016, whereby BA provides educational and child care services to the Covered Entity; 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") 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.
  - (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.

## **Attachment V**

(5) "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.

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

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

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

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

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

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

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

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

(5) Ensure that 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 to protect such information;

(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 of the U.S. Department of Health and Human Services all internal practices, books and records, including policies

## **Attachment V**

and procedures and PHI, 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 of the U.S. Department of Health and Human Services 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 14 days of discovery, notify Covered Entity of any breach of PHI and will coordinate with Covered Entity to identify, record, investigate, and report to an affected individual and US Department of Health and Human Services, as required, any covered PHI breach.

### **C. Permitted Uses and Disclosures by BA**

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

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

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

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

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

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



## **Attachment V**

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

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

(3) Effect of Termination.

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

(b) In the event that BA determines that returning or destroying PHI is infeasible, BA shall provide to Covered Entity written notification of the condition that makes the return or destruction of PHI infeasible. Upon BA's conveyance of such written notification, BA shall extend the

## **Attachment V**

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.

- (4) Notwithstanding any other provision under this Agreement, the Parties agree that the Service Contract may be terminated by either Party without penalty should the other Party violate a material obligation under this Agreement.
- G. Amendment to Comply with Law. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and HIPAA.
- 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. *BA WILL INDEMNIFY, DEFEND AND HOLD COVERED ENTITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS, FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES ARISING OUT OF OR RELATED TO ANY THIRD-PARTY CLAIM BASED UPON ANY BREACH OF THIS AGREEMENT BY BA IN ACCORDANCE WITH THE INDEMNITY PROVISIONS IN THE SERVICE AGREEMENTS, WHICH ARE HEREBY INCORPORATED BY REFERENCE FOR ALL PURPOSES.*
- M. Reimbursement. BA will reimburse Covered Entity for reasonable costs incurred responding to a PHI breach by BA or any of BA's subcontractors.
- N. Waiver. No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.
- O. Assignment. Neither party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of Business Associate.

**Attachment V**

- P. **Entire Agreement.** This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Service Contracts or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Service Contract comply with the 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 concurrent with the start of the Service Contract.

**COVERED ENTITY**  
By City of San Antonio

By: \_\_\_\_\_  
Print Name: Melody Woosley

Print Title: Director of the Department of  
Human Services

**BUSINESS ASSOCIATE:**  
By Young Women's Christian Association of  
San Antonio, Texas

By:   
Print Name: Alma Smith

Print Title: Chief Executive Officer

APPROVED AS TO FORM:

  
Kristine Duff  
Assistant City Attorney

## **Attachment VI**

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

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

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

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

## **Attachment VI**

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

During the performance of this contract, contractor agrees:

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

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

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

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

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

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

## **Attachment VI**

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

## Attachment VI

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

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

**(1) Minimum wages.**

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

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

**(ii)**

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

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

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

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

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

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

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

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

### (3) Payrolls and basic records.

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



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

(ii)

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

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

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

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

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

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

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

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

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

### (4) Apprentices and trainees—

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

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

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

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

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

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

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

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

- (10) Certification of eligibility.

- (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

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

**(1) Overtime requirements.**

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

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

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

**(3) Withholding for unpaid wages and liquidated damages.**

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

**(4) Subcontracts.**

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