

**PROFESSIONAL SERVICES AGREEMENT FOR
TRAINING SERVICES FOR SAN ANTONIO EARLY CHILDHOOD EDUCATION
MUNICIPAL DEVELOPMENT CORPORATION (PRE-K 4 SA)**

This Agreement is entered into by and between the San Antonio Early Childhood Education Municipal Development Corporation, a Texas Municipal Development Corporation (“Corporation” or “Pre-K 4 SA”) acting by and through its Chief Executive Officer, or her designee, and Teachstone Training, LLC (“Consultant”), both of which may be referred to herein collectively as the “Parties”.

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

I. DEFINITIONS

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

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

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

“CEO” shall mean the Chief Executive Officer of the San Antonio Early Childhood Education Municipal Development Corporation

II. TERM

2.1 The term of the contract shall commence upon **November 14, 2018** and terminate upon acceptable completion of all tasks as described below, and in no event, any later than **November 30, 2018**.

2.2 The Corporation shall have the option to renew this Agreement upon mutual consent of the parties, for two additional one year terms that, if expressed, would extend the agreement to five years.

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

III. SCOPE OF SERVICES

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

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

3.3 Teachstone Training, LLC will manage and serve as the primary consultant for the services to be performed under this Agreement. Corporation is an Equal Opportunity Employer and does not discriminate. Consultant shall conduct all activities in accordance with this and all applicable federal, state and local requirements.

3.4 The Consultant shall provide services for specialists, classroom teachers, training opportunities, and program assessment for PK4SA Professional Learning and the Grants department. The Consultant shall provide services as requested by the Grants Manager and/or the Assistant Director of Professional Learning, including, but not limited to the following:

3.4.1 PreK CLASS Observer Training

Option 1: On-site trainer to conduct 2-day training

- a) Training materials (CLASS manual, CLASS score sheet, CLASS Master Code Justifications, and CLASS Observation Training Participant Guide
- b) 2-month Video Library Subscription
- c) Online reliability testing access and automated feedback

Option 2: Regional Training; off-site

- a) Training materials (CLASS manual, CLASS score sheet, CLASS Master Code Justifications, and CLASS Observation Training Participant Guide
- b) 2-month Video Library Subscription
- c) Online reliability testing access and automated feedback

Option 3: Popup Training; off-site

- a) Training materials (CLASS manual, CLASS score sheet, CLASS Master Code Justifications, and CLASS Observation Training Participant Guide
- b) 2-month Video Library Subscription
- c) Online reliability testing access and automated feedback

3.4.2 Infant/Toddler CLASS Observation Training

Option 1: On-site trainer to conduct 3-day training

- a) Training materials (CLASS manual, CLASS score sheet, CLASS Master Code Justifications, and CLASS Observation Training Participant Guide
- b) 2-month Video Library Subscription
- c) Online reliability testing access and automated feedback

Option 2: Regional Training; off-site

- a) Training materials (CLASS manual, CLASS score sheet, CLASS Master Code Justifications, and CLASS Observation Training Participant Guide)
- b) 2-month Video Library Subscription
- c) Online reliability testing access and automated feedback

Option 3: Popup Training; off-site

- a) Training materials (CLASS manual, CLASS score sheet, CLASS Master Code Justifications, and CLASS Observation Training Participant Guide)
- b) 2-month Video Library Subscription
- c) Online reliability testing access and automated feedback

3.4.3 Infant/Toddler/PreK Observer Recertification to include:

- a) 8-week Video Library subscription to prepare for the reliability test.
- b) Access to a prerecorded CLASS coding webinar, full of reminders and tips for observing and coding reliably.
- c) Access to the online CLASS reliability test.
- d) Feedback on your CLASS codes.
- e) CLASS observer certificate and certification card.
- f) 3-month Video Library subscription after recertification (for reference to continue aligning coding skills).

3.4.4 Infant/Toddler/PreK CLASS Calibration – Standard Online Scoring Session & Prerecorded Webinar for Pre-K to include:

- a) 14-day window to view and code a single master coded video, an automated score report and access to a prerecorded webinar with information about the master codes and justifications for the video, and a certificate of completion.

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

3.6 Service Guarantee

3.6.1 Consultant shall continue fulfilling terms of Agreement as provided for in Scope of Services until Corporation accepts the findings and recommendations as final.

3.7 All work performed by Consultant hereunder shall be performed to the satisfaction of the CEO or Designee. The determination made by the CEO or Designee shall be final, binding and conclusive on all Parties hereto. Corporation shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory. Corporation shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant's work not be satisfactory to the CEO or Designee; however, Corporation shall have

no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should Corporation elect not to terminate.

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by the CEO or Designee, of all services and activities set forth in this Agreement, Corporation agrees to pay Consultant a total amount not to exceed **TWO HUNDRED AND FIFTY THOUSAND DOLLARS AND NO/100THS (\$250,000.00)** as total compensation to be paid to Consultant as follows:

a) PreK CLASS Observation Training

- 1) **Option 1** On-site trainer to conduct 2-day training; \$9,400/session for up to 15 participants plus \$450/additional up to 17 participants
- 2) **Option 2** Regional Training; \$950/ participant
- 3) **Option 3** Popup Training; \$800/ participant

b) Infant/Toddler CLASS Observation Training

- 1) **Option 1** On-site trainer to conduct 2-day training; \$16,800/session for up to 15 participants plus \$750/additional up to 17 participants
- 2) **Option 2** Regional Training; \$1,800 - infant/toddler combo
- 3) **Option 3** Popup Training; \$1,600/ participant

c) Calibration

- 1) Infant Age Level; \$ 80.00 per participant
- 2) Toddler Age Level; \$ 80.00 per participant
- 3) PreK Age Level; \$ 80.00 per participant

d) Recertification

- 1) Infant Age Level; \$ 125.00 per participant
- 2) Toddler Age Level; \$ 125.00 per participant
- 3) PreK Age Level; \$ 125.00 per participant

4.1.1 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by Corporation. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and, if applicable, approved by the Board for the Corporation, unless scope of work is expanded and mutually agreed upon.

4.1.2 Consultant shall submit an invoice upon completion of all services. Corporation agrees to pay Consultant upon receipt of an invoice submitted in accordance with this Section within 30 days of approval of said invoice. Compensation may also include expenses for materials and travel as approved by the Corporation. The total payments

hereunder shall not exceed the amount set forth in Section 4.1 above, without prior approval and agreement of all parties, evidenced in writing.

- 4.1.3 Final acceptance of work products and services require written approval by Corporation. The approval official shall be the CEO. Payment will be made to Consultant following written approval of the work products and services by the CEO. Corporation shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.
- 4.1.4 Payment for services, as determined by the Corporation, will be made according to stand procedures followed by the Corporation and City of San Antonio. Consultant shall deliver invoice for payment to:

City of San Antonio
Finance Department/Accounts Payable
P.O. Box 839976
San Antonio, TX 78283-3976

OR Electronically at
Accounts.payable@sanantonio.gov
WITH CC TO: alfredo.martinez@sanantonio.gov

V. OWNERSHIP OF DOCUMENTS

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

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

VI. RECORDS RETENTION

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

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

6.3 Consultant shall notify Corporation and City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that Corporation and City will process and handle all such requests.

VII. TERMINATION

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

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

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

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

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

and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.

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

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

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

VIII. NOTICE

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

CORPORATION

Dr. Sarah Baray
CEO
Pre-K 4 SA
7031 S. New Braunfels
San Antonio, TX 78223

CONSULTANT

Teachstone Training, LLC
675 Peter Jefferson Parkway,
Suite 400
Charlottesville, VA 22911

IX. CONFIDENTIAL WORK

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

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

9.3 If the Consultant receives inquiries regarding documents within their possession pursuant to this Contract, the Consultant shall immediately forward such request to the Corporation and City for disposition.

X. INSURANCE REQUIREMENTS

A) Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Pre-K 4 SA Department, which shall be clearly labeled "*Training Services - Teachstone*" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Pre-K 4 SA Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

B) The City reserves the right to review the insurance requirements of this Article during the effective period of this 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.

C) A Consultant's financial integrity is of interest to the City; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant'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:

<i>INSURANCE TYPE</i>	<i>LIMITS</i>
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. Contractual Liability	For Bodily Injury and Property Damage \$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 Coverage)	\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service. Coverage to be maintained and in effect for no less than two years subsequent to the completion of the professional service.

D) Consultant agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Consultant herein, and provide a certificate of insurance and endorsement that names the Consultant and the CITY as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Consultant. Respondent shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this 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.

E) As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Consultant shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Consultant shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
Attn: Pre-K 4 SA – Administrative Offices
7031 S. New Braunfels
San Antonio, TX 78223

F) Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

G) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

H) In addition to any other remedies the City may have upon Consultant'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 Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

I) Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.

J) It is agreed that Consultant'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.

K) 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..

L) Consultant and any Subcontractors are responsible for all damage to their own equipment and/or property.

XI. INDEMNIFICATION

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

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

11.2 Defense Counsel - CONSULTANT shall retain defense counsel within seven (7) business days of CORPORATION's and/or CITY's written notice that CORPORATION or CITY is invoking its right to indemnification under this Contract. If CONSULTANT fails to retain Counsel within such time period, CORPORATION and/or CITY shall have the right to retain defense counsel on its own behalf, and CONSULTANT shall reimburse CORPORATION and/or CITY for all costs related to retaining defense counsel until such time as CONSULTANT retains Counsel as required by this section. CORPORATION and CITY shall also have the right, at their option, to be represented by advisory counsel of their own selection and at their own expense, without waiving the foregoing.

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

of damages, compensation or benefits payable by or for CONSULTANT or any subcontractor under worker's compensation or other employee benefit acts.

XII. ASSIGNMENT AND SUBCONTRACTING

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

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

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

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

12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, Corporation may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII - Termination, notwithstanding any other remedy available to Corporation under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to Corporation, which Corporation sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

13.1 Consultant covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of the Corporation; that Consultant shall have exclusive control

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

XIV. CONFLICT OF INTEREST

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

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

XV. NONDISCRIMINATION POLICY

15.1 Non-discrimination. As a condition of entering into this Agreement, Consultant represents and warrants that it will comply with City's Commercial Nondiscrimination Policy, as described under Section IILC.1 of the SBEDA Ordinance, as adopted by the Corporation. As part of such compliance, Consultant shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Consultant retaliate against any person for reporting instances of such discrimination. Consultant shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in City's Relevant Marketplace. Consultant

understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Consultant from participating in Corporation or City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Consultant shall include this nondiscrimination clause in all subcontracts for the performance of this Agreement.

XVI. AMENDMENTS

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

XVII. SEVERABILITY

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

XVIII. LICENSES/CERTIFICATIONS

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

XIX. COMPLIANCE

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

19.2 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

1. does not boycott Israel; and
2. will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By submitting an offer to, or executing contract documents with, the City of San Antonio, Consultant, if it meets the definition of "Company," hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the Agreement. Corporation hereby relies on Consultant's verification. If found to be false, Corporation may terminate this Agreement for material breach.

19.3 Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Consultant hereby certifies that it is not identified on such a list and that it will notify Corporation should it be placed on such a list while under contract with Corporation. Corporation hereby relies on Consultant's certification. If found to be false, or if Consultant is identified on such list during the course of its contract with Corporation, Corporation may terminate this Agreement for material breach.

XX. NONWAIVER OF PERFORMANCE

20.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXI. LAW APPLICABLE

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

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

XXII. LEGAL AUTHORITY

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

XXIII. PARTIES BOUND

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

XXIV. CAPTIONS

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

XXV. DEBARMENT

25.1 Consultant certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any State or Federal Program.

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

XXVI. ENTIRE AGREEMENT

26.1 This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing,

dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XV - Amendments.

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

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

**TEACHSTONE
TRAINING, LLC**

(Signature)

(Signature)

Printed
Name: _____
Title: _____
Date: _____

Printed
Name: _____
Title: _____
Date: _____