

**INTERLOCAL AGREEMENT
FOR AN EARLY HEAD START PROGRAM
BETWEEN THE CITY OF SAN ANTONIO &
THE EDGEWOOD INDEPENDENT SCHOOL DISTRICT (EISD)**

This Interlocal Agreement between the City of San Antonio (“City”), a Texas Municipal Corporation, acting by and through its Director of the Department of Human Services pursuant to Ordinance No. _____ dated _____, and the Edgewood Independent School District (“EISD”), a political subdivision of the State of Texas, acting by and through its Superintendent (individually "the Party" and collectively "the Parties"). This Agreement is made and entered into by the Parties pursuant to the authority granted under the Interlocal Cooperation Act, Texas Gov’t Code 791 *et seq.*

WITNESSETH:

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

WHEREAS, City is authorized and desires through its Department of Human Services (“DHS”) to execute an agreement with EISD to provide Early Head Start (“EHS”) services to children (0-3 years old) in EISD’s school district (the “Project” or “Program”); and

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

NOW THEREFORE, City and EISD agree as follows:

I. SCOPE OF WORK

- 1.1 EISD will provide all activities and services in a manner satisfactory to City and in compliance with EISD’s attached Scope of Work (“**Attachment I**”) and this Agreement. If the terms of this Agreement are inconsistent or in conflict with applicable Terms of the Grant, the terms imposing the most stringent requirements upon EISD will control.
- 1.2 In the event that EISD is not able to provide the services for a reason grossly outside of EISD’s control, such as a City declaration of Emergency or Disaster, EISD must alert DHS immediately, and City will determine if and what alternative services are required. EISD may propose alterations, but the final service delivery plan must receive City’s approval in writing.
- 1.3 For purposes of this Agreement, the terms listed below will have the following meanings:
 - (A) “Allowable Costs” are those costs, which are necessary, reasonable and allowable under applicable federal, state, and local law, including but not limited to those laws referenced in Article XII hereof, for the proper administration and performance of the services to be provided under an agreement.
 - (B) “Business day” means every day of the week except all Saturdays, Sundays and those scheduled holidays officially adopted by either the City of San Antonio or EISD for their employees.
 - (C) “Cost Allocation Plan” is a plan that identifies and distributes the cost of services provided under this Agreement in order to substantiate and support how the costs of a program are charged to a particular cost category or to the Program so as to assure the provided Grant funds do not subsidize other

program(s), and ensure that City is paying only its fair share of the costs solely devoted to the Project or funded pursuant to this Agreement.

- (D) “Equipment” and “property” means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit, and includes not only furniture and other durable property but also vehicles, although will not include supplies and consumables.
- (E) “Program Budget Year”, “PBY” or “Budget Period” means the budget term for the individual grant(s) that comprise the funding source(s) for this Agreement.
- (F) “Program Income” means earnings of EISD realized from activities resulting from this Agreement or from EISD’s management of funding provided or received hereunder. Such earnings include, but are not limited to, interest income; usage or rental/lease fees; income produced from Agreement-supported services of individuals or employees or from the use of equipment or facilities of EISD provided as a result of this Agreement; and if applicable, payments from clients or third parties for services rendered by EISD pursuant to this Agreement.
- (G) “Relevant HHS directives” means written directives of HHS or its subdivision, including the ACF, Head Start Bureau, Program Operations Division and ACF Region VI, including any updates.
- (H) “Terms of the Grant” means all requirements of the Grant, whether contained in the Head Start Act, as amended by the Improving Head Start for School Readiness Act of 2007 (“Head Start Act” or 42 U.S.C. §9831, *et seq.*), or other applicable statutes, implementing regulations (e.g., 45 C.F.R. §1301 *et seq.* (the “Performance Standards”) and 45 C.F.R. Part 75, as amended); rules, Executive Orders, the award document from HHS to City; Relevant HHS Directives, including, but not limited to circulars, Program Instructions, Information Memorandums and Policy Clarifications; and City’s policies and procedures and the program design manual applicable to the Early Head Start Program, as such requirements exist as of the date of this Agreement and as they may be established or modified during this Agreement.

1.4 EISD will establish and implement policies and procedures governing personnel, financial management, and programmatic management, as specified more fully in 45 C.F.R Parts 1301 *et seq.*, and/or 45 C.F.R. Part 75. Such policies and procedures must be consistent with this Agreement and those approved by City’s Head Start Policy Council (“HSPC”) and Governing Body.

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

II. TERM

2.1 Except as otherwise provided, this Agreement will begin on July 1, 2020 and terminate on January 31, 2026.

2.2 EISD understands this Agreement is contingent on the continued award of the Grant, and that should the award be reduced or discontinued, this Agreement may be amended or terminated accordingly. City would promptly notify EISD of any such HHS action.

III. CONSIDERATION

3.1 EISD agrees and understands that funds are awarded only for each remaining budget period (“budget period” or “program budget year”) of the Early Head Start project period (i.e. the first and current period is July 1, 2020 – January 31, 2020, period two is February 1, 2021 – January 31, 2022, period three is February 1, 2022

– January 31, 2023, period four is February 1, 2023 – January 31, 2024, and period five is February 1, 2024 – January 30, 2025, and period six is February 1, 2025 – January 31, 2026 (period one will receive a prorated amount of the following consideration). In consideration of EISD’s services for each period two through six (i.e. February 1 – January 31), City will reimburse EISD a total amount not to exceed **\$1,500,000.00** ("the Federal Share") for costs incurred in accordance with the Program Budget (“**Attachment II**”). The prorated Federal Share **for budget period one will not exceed \$875,000.00**. EISD’s Program Budget is comprised of the Federal Share and the Non-Federal Share. The Federal Share will be no more than 80% of the total Program Budget. Should EISD fail to raise all of the Non-Federal Share funds (20% of the total Program Budget, or **\$218,750.00 for period one and \$375,000.00 for periods two through six**) it is required to raise for each budget period of this Agreement, City reserves the right to limit its reimbursements to EISD proportionately. For instance, if EISD succeeds in raising only fifty percent (50%) of its required Non-Federal Share funds, City may accordingly limit its reimbursements to EISD to fifty percent (50%) of City's total obligation to EISD. EISD may provide additional Non-Federal Share funds if EISD, in its discretion, determines such funds are available. To meet the requirements of this Agreement, all claimed Non-Federal Share must meet the requirements of 45 C.F.R. § 75.306, as applicable.

- 3.2 Prior to commencement of this Agreement, and to each budget period thereafter, EISD must submit for City approval, EISD’s proposed monthly budget by line item for the entire term of the Agreement, and, along with its program budget, including detail by category alone. Until City receives and approves the initial proposed monthly budget for that budget period, City reserves the right to redirect EISD’s proposed funding under this Agreement. City will notify EISD of the amount redirected and revised Agreement funding. Additionally, at the start of each budget period and throughout the Term of this Agreement when requested by City, EISD will submit for City review quarterly forecasts of the projected expenses for each month remaining in that budget period. EISD's budgeted development and administrative costs (as defined by 45 C.F.R. Part 1305) may not exceed twelve percent (12%) of the Program Budget, unless the total Program Budget is modified in accordance with this Agreement in which case the amount will be reduced proportionately unless the Parties otherwise agree.
- 3.3 Approval required. EISD must seek and obtain City's prior written approval 30 calendar days before making budget modifications. City may make exceptions to the 30-day notice requirement on a case by case basis, but EISD must make a request in writing or via email and be accompanied by a justification for the change and indicate which lines items are affected by such change.
- 3.4 Funding Reduction. EISD understands and agrees that City may reduce EISD's funding by an amount equal to the difference between funded and served children should:
- (A) EISD fail to serve a child within seven (7) days of City’s enrollment, or
 - (B) services not be provided for enrolled children for a period exceeding 5 business days due to reasons under EISD’s control, such as insufficient staffing, license or health/safety issues, or other facility concerns (e.g. HVAC, Plumbing). In such an event, the funding reduction will be for each additional day.
- 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; and
 - Consequently, EISD agrees to comply with the Terms of the Grant and Relevant HHS Directives, and with the Special Provisions (“**Attachment III**”).

IV. REIMBURSEMENT

- 4.1 EISD agrees that this is a cost reimbursement contract and that City’s liability under this Agreement is limited to making reimbursements for Allowable Costs incurred as a direct result of services provided in accordance with the terms of this Agreement. All payment must be consistent with the terms and provisions of the approved budget line items described in **Attachment II** of this Agreement, unless, (a) in cases where the

budget for that budget period remains the same, EISD revises a line item (“revision”) which City will not unreasonably deny if submitted prior to 30 days before the end of each budget period, however, City may direct EISD to further revise and EISD will follow City’s direction; or (b) in cases where there is an increase or decrease to the budget for that budget period, an amendment has been approved and signed by the Director of DHS pursuant to the amendment provisions of this Agreement (“amendment”). Revisions and amendments modify the Budget in Attachment II, and in all cases EISD’s costs must be consistent with the last modified budget for that budget period. Approved revisions and amendments supersede prior conflicting or inconsistent agreements with regard to the referenced Project Budget for that period, and all references to the budget will mean the budget as revised through approved budget revisions or amendments.

- (A) Disallowed Costs. City will not be liable for any cost of EISD not eligible for payment as defined within this Agreement. The amount of any disallowed costs must be remitted to City within ten (10) business days of City’s request, or City may offset against future funding obligations by City.
- (B) Periodic Review. City will conduct periodic reviews of EISD’s program expenditures to determine whether EISD is on pace to utilize Program funds received. If City determines EISD is not on pace, City may request EISD to submit plans, within 10 days, to reinvest any unspent funds on improvements to program quality.

4.2 Advance Payments. If specific circumstances require an advance payment on this Agreement, EISD must submit to the Director of DHS a written request for approval of such advance payment, including the specific reason for such request in the form prescribed by City. EISD understands that City will not be obligated to approve any advances request. It is understood and agreed by the Parties that (a) each request requires submission to the Director of DHS no less than ten (10) EISD business days prior to the actual ostensible cash need, (b) each request will be considered by the Director of DHS on a case-by-case basis, and (c) the decision by the Director of DHS whether or not to approve an advance payment is final. When advance payments are authorized:

- (A) EISD’s payment to a vendor using funds advanced by City must be remitted to the vendors in a prompt and timely manner after services have been performed by the vendor, but not later than ten (10) business days after EISD is notified that an advance payment check is available from City.
- (B) EISD must deposit Agreement funds in an account in a bank insured with the Federal Deposit Insurance Corporation (FDIC) and maintain recordkeeping in a manner that allows City to track expenditures made. In those situations where EISD’s total deposits in said bank exceed the FDIC insurance limit, EISD must arrange to automatically have the excess collaterally secured. A written copy of the collateral agreement must be obtained by EISD from EISD’s banking institution, maintained on file and be available for City monitoring reviews and audits. Advanced funds that cause EISD’s account balance to exceed the FDIC limit must be deposited in a manner consistent with the Public Funds Investment Act (Chapter 2256 of the Texas Government Code) as amended.
- (C) City may deduct from monthly reimbursements amounts necessary to offset the amount advanced, considering factors such as projected Allowable Costs and other indicators such as EISD’s financial stability. EISD will maintain a financial management system to account for periodic, or a lump sum, deduction from reimbursements.

4.3 Requests for Payment. EISD will submit to City no later than the forty-fifth (45th) day after the end of every month a monthly Request for Payment in the form prescribed by City, which details the specific costs (by category and by program account number) EISD expensed in the previous month for the services delivered as described in Article I, including supporting documentation of the costs as may be required by City. The Request for Payment must also specify the Program Income received or projected during the same time period. The Director of DHS may require EISD’s submission of original or certified copies of invoices, cancelled checks, EISD’s general ledger and/or receipts to verify invoiced expenses.

4.4 Closeout. At the end of each PBY, EISD will submit to City a full accounting of total Program costs incurred from all sources, no later than the forty-fifth (45th) day after the end of that PBY or early termination. These deadlines may be adjusted only if EISD receives written authorization from the City.

- (A) Overpayment. EISD agrees to reimburse the City for any EISD overpayment based upon reconciled adjustments resulting from EISD's balance and/or Statement of Revenue and Expenditure sheet as of the end of that PBY, which is due to City no later than 15 days after the end of that PBY (e.g. February 15).
 - (B) In addition, all purchase orders that have been encumbered by the end of that PBY must be received and paid within the same timeframe (e.g. March 15). These deadlines may be adjusted only if EISD receives written authorization from City allowing EISD to submit a Request for Payment at a later specified date.
 - (C) Written Notification by City. Reimbursement will be made within twenty (20) calendar days of receipt of written notification to EISD of the need for reimbursement.
- 4.5 All unused funds, rebates, advances exceeding Allowable Costs, or credits on-hand or collected thereafter relating to the Project, will be returned to City within twenty (20) days of receipt of written notice.
- 4.6 EISD agrees that City will not be obligated to any subcontractors or third-party beneficiaries of EISD.
- 4.7 Financial Management System. EISD must maintain, and City may review at any time during this Agreement, EISDs financial management system, systems of internal accounting, administrative controls, and acceptable accounting records in accordance with this Agreement and applicable Head Start regulations and federal directives such as 2 C.F.R. 200 *et seq.* 45 C.F.R. § 75.302 *et seq.*, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," which must provide:
- (A) accurate, current, and complete disclosure of financial support from each federal, state and locally sponsored project and program in accordance with the reporting requirements set forth in Article VIII of this Agreement. If accrual basis reports are required, EISD will develop accrual data based on an analysis of the documentation available;
 - (B) records that adequately identify the source and application of funds for City-sponsored activities. Such records will contain information pertaining to City awards, authorizations, obligations, un-obligated balances, assets, equity, outlays, and income;
 - (C) effective control over and accountability for all funds, property, and other assets. EISD must adequately safeguard all such assets and ensure that they are used solely for authorized purposes. EISD will maintain a separate numbered account for all funds received and disbursed through this Agreement;
 - (D) comparison of actual outlays with budget amounts for each award. Whenever appropriate or required by 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 City and the disbursement of said funds by EISD;
 - (F) procedures for determining reasonable, allowable, and allocable costs in accordance with the provisions of any and all applicable cost principles, including but not limited to the cost principles referenced in Article XII, and the terms of the award, Grant, and Agreement, with 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). EISD will maintain records and meet necessary requirements under Generally Accepted Accounting Principles [GAAP]; and
 - (H) an accounting system based on City's accounting or administrative procedures that are in conformity with 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 EISD agrees that EISD 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 unless approved by City.
- 4.9 Cost Allocation Plan. EISD must establish and abide by a cost allocation methodology and plan, to ensure that costs allocated and charged to the Grant are not charged to other federal, state or local awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the federal awards, or for other reasons. EISD will provide to City prior to the beginning of each budget period (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 EISD's Project. City will have the right to approve the Cost Allocation Plan.

V. PROGRAM INCOME

- 5.1 At the sole option of the Director of the DHS, if EISD obtains program income ("PI") under the Agreement, EISD must either (a) be required to return the funds to DHS within the timeframe specified by the Director, or (b) receive written approval by the Director to retain such funds, to be:
- (A) used to further eligible project objectives after proposed expenditures are approved by DHS; or
(B) deducted from the total project cost for the purpose of determining the net cost reimbursed by the City.
- If the Director approves EISD to retain PI, EISD must submit all reports as and when required by DHS.
- 5.2 Notice & Statement of Expenditures. EISD must (i) provide DHS with thirty (30) calendar days written notice detailing the type, time, and place of the activity prior to the activity that generates PI and (ii) submit, within thirty (30) calendar days of the activity that generates PI, a statement of expenditures and revenues, understanding the statement is subject to audit by DHS. Failure by EISD to report PI as required is grounds for suspension, cancellation, or termination of this Agreement.
- 5.3 Fees & Donations. EISD and any vendors, if applicable, are prohibited from charging fees or soliciting donations, from program participants or parents without the prior written approval of DHS. However, EISD may engage in general school activity not specifically targeted at EHS-CCP families. Also, if EISD incurs expenses to compensate employees for the caring of a child after the end of the EHS-CCP program day, the EISD (not the employee) may collect a reasonable late fee from parents.
- 5.4 EISD must include this entire Article in any subcontract involving income-producing services or activities.

VI. ADMINISTRATION OF THIS AGREEMENT

- 6.1 EISD agrees to comply with all the terms and conditions that City must comply with in its award document from HHS ("**Attachment IV**"). The award document will be supplemented for each PBY, and these changes will be included automatically in Attachment IV.
- 6.2 City has Final Authority. Should any disagreement or dispute arise between the Parties pertaining to the interpretation or meaning of any part of this Agreement or its governing rules, regulations, laws, codes or ordinances, the City Manager or the Director of DHS, as representatives of City and the party ultimately responsible for all matters of compliance with HHS and City rules and regulations, will have the final authority to render or secure an interpretation.
- 6.3 City will have the authority during normal business hours to make physical inspections of all operating facilities occupied by EISD for the administration of this Agreement and to require physical safeguarding devices such as locks, alarms, security / surveillance systems, safes, fire extinguishers, sprinkler systems, as reasonably necessary, to safeguard children, property and/or equipment.
- 6.4 EISD's Board. EISD will provide to DHS all information reasonably requested by DHS relating to EISD's governing body ("Board") for this and any other City-related projects, including but not be limited to:

- (A) Roster of current Board Members and updates (name, title, role, term, and business address, telephone number, fax number and board e-mail address);
- (B) Annual schedule of anticipated board meetings;
- (C) Board agendas to be submitted prior to each meeting, EISD's administration will attempt to notify City when a Program item is anticipated to be placed on the agenda; and
- (D) Approved minutes of every Board meeting relating to the Program.

6.5 Employee Integrity. EISD's Board and EISD's management staff must adopt and approve an Employee Integrity Policy, if EISD has none, and internal program management procedures, and require all staff to abide by it and the EHS standards as established in the HHS regulations, to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to prevent fraud and Program abuse. These policies and procedures require repayment of such erroneously-received Grant funds or property to EISD, or to the applicable service provider from whom such Grant funds or property was received, if other than EISD, and specify any other consequences to EISD's employees and vendors involved in such illegal activities, and may include termination and prosecution where necessary. Said policies and procedures will be provided to DHS upon request by DHS. If DHS finds the policies and procedures to be lacking, EISD will comply with DHS's **required** revision(s).

6.6 Check writing and Handling Procedures. EISD agrees to comply with the following check writing and handling procedures:

- (A) No blank checks are to be signed in advance.
- (B) Petty Cash. 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. EISD agrees that the aggregate amount of petty cash reimbursement will not exceed \$200.00 for any given calendar month during the term of this Agreement unless EISD receives prior written approval from DHS to exceed such limit. Such requests for petty cash must be supported by the submission to DHS of an original receipt.
- (C) Immediate Deposit. Checks issued by City to EISD must be deposited into the appropriate bank account immediately or by the next EISD business day after EISD's receipt, or City may investigate and issue a stop payment order and must never be cashed for purposes of receiving the face amount back.
- (D) Two Signatures. For checks other than petty cash reimbursement, EISD will adopt and comply with a policy requiring no less than two (2) signatures of authorized representatives of EISD on each check. EISD agrees that City's reimbursement is subject to compliance with this provision, and that alterations to it may only occur upon the written approval of City.

6.7 Publicity. This Section is applicable to all EHS publicity, public presentations, signs, public notices, and other informational material, to include electronic media, (collectively, "Materials") prepared and/or disseminated during the Term of the Agreement by EISD. EISD will obtain City's prior approval of the language and logo to be used, and the Parties agree that all publicity regarding the affiliation between City and EISD will be mutually agreed to by the Parties in advance. EISD agrees that all Material(s) regarding the Program shall provide a written statement acknowledging the role of the federal funds provided by HHS through City, which must read as follows: "The City of San Antonio Early Head Start services provided by this EISD are funded by the City of San Antonio Department of Human Services through a federal grant received from the U.S. Department of Health and Human Services." These Materials include, but are not limited to, signs identifying facilities. In addition, all publicity related to EISD's services must note that the Program is operated on a non-discriminatory basis.

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

6.8 Confidential Information.

- (A) Unless disclosure is authorized by the City or is required by the Attorney General for the State of Texas, EISD agrees to maintain in confidence all information pertaining to the Project or City including, without limitation, reports, information, data, other related information (collectively, “Confidential Information”) and to use the Confidential Information for the sole purpose of performing its obligations pursuant to this Agreement. EISD must protect the Confidential Information and take all reasonable steps to prevent the unauthorized disclosure, dissemination, or publication of the Confidential Information.
- (B) If disclosure is permitted by law or required by order of a governmental agency or court of competent jurisdiction, EISD will give the Director of DHS prior written notice that disclosure is required with a full and complete description regarding such requirement.
- (C) EISD must establish specific procedures designed to meet the obligations of this Section, including, but not limited to execution of confidential disclosure agreements, regarding the Confidential Information with EISD’s employees and subcontractors prior to any disclosure of the Confidential Information to third parties. This Section may not be construed to limit the right of HHS or the City to obtain copies, review and audit records or other information, confidential or otherwise, under this Agreement. Upon termination or expiration of this Agreement, EISD will return to City upon request all copies of materials related to the Project, including the Confidential Information and subject to EISD’s right to use Educational Records. All confidential obligations contained herein (including those pertaining to information transmitted orally) will survive the termination of this Agreement. The Parties agree to ensure that their respective employees, agents, contractors and subcontractors are notified of the requirement to comply with these obligations.

6.9 Travel. EISD will comply with the following regarding City-funded travel:

- (A) Travel costs are allowable if:
 - 1. they are approved in the budget;
 - 2. supported by detailed documentation, for example, conference costs to include itineraries and documentation certifying conference attendance;
 - 3. travel costs (including per diem rates) are do not exceed those allowed under the City’s travel policies and conform to the reimbursement rates under the United States General Services Administration; and
 - 4. transportation fares are at economy class rates.
- (B) Mileage reimbursement rates must not exceed the City’s policy for mileage reimbursement and must comply with IRS rules. To be eligible for mileage reimbursement, the employees must:
 - 1. possess a valid Texas Driver’s License and liability insurance as required by law; and
 - 2. record, on a daily basis, odometer readings before and after business use, showing total business miles driven each day and must keep the record on file for City inspection, if requested. Mileage records are subject to spot-checks by the City.

EISD 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 EISD.

- 6.10 In this Agreement, wherever EISD is required to perform an action within a specified timeframe, EISD may request additional time to perform. City will give EISD’s request due consideration and grant EISD’s request whenever practicable, unless immediate compliance is required.

VII. AUDIT

- 7.1 \$750,000 or more. If EISD expends \$750,000 or more of City dollars, whether provided under this Agreement or under multiple City contracts, then the EISD must complete an annual independent audit and submit to DHS the audit report within the earlier of:

- (A) 30 calendar days after receipt of the auditor's report(s) unless City agrees in writing to a longer period;
- (B) 9 months after the end of EISD's fiscal year; or
- (C) 9 months after the expiration or early termination of this Agreement.

7.2 Corrective Action Plan. EISD must also furnish DHS a copy of the corrective action plan on all audit findings, a summary schedule of prior audit findings, management letter and/or conduct of audit letter within 30 calendar days of receipt of the audit report or upon submission of the corrective action plan to the auditor.

7.3 Less than \$750,000. If EISD expends less than \$750,000 of City dollars, whether provided under this Agreement or under multiple City contracts, then the Contactor must annually complete and submit an audited financial statement(s) within the earlier of:

- (A) 9 months following the end of EISD's fiscal year; or
- (B) 9 months following expiration or early termination of this Agreement.

The financial statement must include the following 1) a balance sheet and income statement prepared by a bookkeeper, 2) a cover letter signed by EISD attesting to the correctness of the financial statement, and 3) a schedule of receipts and disbursements by budgeted cost category for each project funded by the City.

7.4 Federal funds. EISD agrees that if EISD expends more than \$750,000.00 in federal funds from City, an audit shall be made in accordance with the Single Audit Act Amendments of 1996, the State of Texas Single Audit Circular, and the U.S. Office of Management and Budget Circular ("Uniform Guidance"). EISD will also be required to submit copies of its annual independent audit report and all related reports issued by the independent certified public accountant within the earlier of:

- (A) 30 days after receipt of the auditor's report(s), or
- (B) nine months after the end of the audit period, unless the federal cognizant or oversight agency for audit to the Federal Audit Clearinghouse agrees, in advance, to a longer period.

A copy of this report must also be provided to City within this same time period. EISD may submit reports through the following website:

<https://harvester.census.gov/facides/Account/Login.aspx> and may also contact the Clearinghouse by telephone at (301) 763-1551 (local), 1-888-222-9907 or 1-800-253-0696 (toll free).

Upon completion of Form SF-SAC, EISD may submit the completed report by mail to:

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

EISD agrees to reimburse City or supplement any disallowed costs with eligible and allowable expenses based upon reconciled adjustments resulting from EISD's Single Audit. Reimbursement must be made within thirty (30) calendar days of written notification regarding the need for reimbursement.

7.5 Other entities. If EISD is notified any entity has conducted program reviews or audits of EISD or its programs with any findings about accounting deficiencies, or violations of EISD's financial operations, a copy of the notification, review, investigation, and audit violation report must be forwarded to DHS within 10 calendar days of receipt of the report.

7.6 City reserves the right to conduct, or cause to be conducted, an audit or review of all funds received under this Agreement at any time and in accordance with this Agreement. City is entitled to determine the scope of any audit. The City Internal Audit Staff, a Certified Public Accounting (CPA) firm, or other entity as designated by City, may perform the audit(s) or reviews. must make available to City or City's chosen entity all accounting and Project records, including the authority to audit, examine and make excerpts, transcripts,

and copies from all said records, including those used by EISD in accounting for expenses incurred under this Agreement, or relating to matters covered by this Agreement.

- 7.7 When an audit or examination determines that EISD has expended funds or incurred costs which are questioned by City and/or the applicable local, state or federal governing agency, EISD will be notified and provided an opportunity to address the questioned expenditure or costs.
- 7.8 Any expenses for the collection of delinquent debts owed by EISD will be the sole responsibility of EISD and will not be paid from any Project funds unless City approves such in writing.

VIII. RECORDS REPORTING AND MONITORING

- 8.1 EISD will submit to DHS any and all reports as may be required of EISD by HHS or City. EISD must incorporate and use a City-approved tracking or information system, such as ChildPlus, for the delivery of comprehensive EHS services and collect, input and update all data required for the Program Information Report in accordance with City's reasonable timeline to ensure the reporting of accurate and consistent information to HHS.
- 8.2 Additionally, EISD will maintain and furnish to City the appropriate financial and programmatic information and reports as listed in the Scope of Work, in such forms as City may require pursuant to the Head Start Act, as amended, or as may be required under federal regulations, such as 2 C.F.R. 200 *et seq.* EISD will maintain all applicable supporting documentation of costs, including but not limited to payroll records, invoices, contracts or vouchers, and make these available to City upon request.
- 8.3 City reserves the right to reasonably request EISD to provide additional records for travel expenses, long distance and cell phone calls, faxes, internet service, or other electronic communication devices charged to the budget associated with this Agreement.
- 8.4 Licensing. EISD must maintain all licenses, permits, certifications and approvals necessary to perform the work hereunder and will notify the City of compliance prior to commencement of this Agreement. EISD must report to City all notices served, violations found or complaints filed with regard to licensing, or lack thereof within one (1) EISD business day of receipt of notice from the State licensing, certifying or permit-issuing authority of a violation or complaint, and shall take all necessary steps to cure such violation. EISD 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 EISD with the City.
- 8.5 Child Safety. EISD must comply with federal regulations (Head Start Performance Standards), the Head Start Act and all applicable federal, state and local laws relating to child safety. EISD must establish and implement administrative procedures to respond to health emergencies, and with which all EHS staff should be familiar and trained. These procedures must be in compliance with applicable federal, state and local laws, and must include, but not be limited to, methods of notifying parents in the event of a health emergency involving their child and established methods for handling cases of suspected or known child endangerment, abuse or neglect. If EISD has knowledge of, a report of, or is aware of a Program crisis related to a claim, or suspects that media coverage would be negative due to an incident of child endangerment, neglect, abuse or physical discipline of a EHS child while in the Program, EISD will contact City's EHS Program Administrator immediately, but no later than 24 hours, for the purpose of notification of the incident. EISD must contact City's designated representative immediately whether or not the incident is fully investigated by EISD. If EISD is unable to reach City's EHS Program Administrator, EISD will leave a verbal message or written message via e-mail notifying City that EISD is attempting to notify City of an incident. EISD further agrees to immediately notify the parent of an EHS child in any of the instances cited above, whether or not the instance may be characterized as suspected child abuse. In all cases, the suspected offender must be removed from the EHS-CCP classroom until an investigation, internal or external, has absolved him or her from the claim.
- 8.6 Final Report Requirements. Within a period not to exceed forty-five (45) calendar days after the end of each PBY, expiration or early termination date of this Agreement, EISD will submit all final client reports and all

required deliverables to City. EISD agrees that in conjunction with the submission of the final report, EISD will execute and deliver to City a receipt for all sums received and a release of all claims for said sums against the Project.

- 8.7 Retention. EISD must maintain financial records, supporting documents, statistical records, and all other books, documents, papers or other records pertinent to this Agreement or the Grant including records for real property and equipment acquired with EHS funds (collectively, “Records”), in accordance with the official records retention schedules established within the Local Government Records Act of 1989 and any amendments thereto, or for such period as may be specifically required by the Head Start regulations, as applicable, whichever is longer. Regardless, EISD agrees to maintain all Agreement and Grant-related records or documents for at least five (5) years from the date of EISD's submission of the annual financial report covering the awarded funds. If an audit, litigation, or other action involving the Records has been initiated before the end of the five (5) year period, EISD agrees to maintain the Records until completion of said action.
- 8.8 Access. EISD will make available to City or HHS, upon appropriate notice and unless otherwise prohibited by law, its information, books, statements, data, records, reports, documents, papers, personnel files (including evidence of criminal background check(s)), client files, policies and procedures (collectively “Documents”), and those of its subcontractor(s), for as long as the Documents are retained. This right also includes timely and reasonable access to facility(ies) and personnel for the purpose of interview and discussion related to the Documents. EISD and its subcontractors will, upon request, transfer certain Documents to the custody of City or HHS when City or HHS determines that they possess long-term retention value unless otherwise prohibited by law.
- 8.9 Monitoring.
- (A) At such times and in such form as may be required by DHS, EISD agrees City and/or HHS may evaluate, through monitoring, reviews, inspection or other means, the quality, appropriateness, and timeliness of services delivered under this Agreement and to assess EISD's compliance with applicable legal and programmatic requirements, and that the failure of City to monitor, evaluate, or provide guidance and direction will not relieve the Contactor of any liability to City for failure to comply with the Terms of the Grant or the terms of this Agreement.
- (i) Interviews. EISD agrees to permit City and HHS to have interviews with its personnel, board members and program participants pertaining to the matters covered by this Agreement.
- (ii) Background Checks. Criminal background, sex offender, and child abuse/neglect check(s) must comply with 45 C.F.R. §1302.90(b), and as evidence, , the parties agree that City will accept a written statement, from an authorizing agency, that the checks have been conducted and that all persons who are employed have passed, so long as the statement includes the name(s) of the staff member(s) checked, and the date(s) performed. If, at any time, HHS informs City or EISD that such written statement is unsatisfactory, EISD agrees to provide additional information in order to resolve any conflict associated with provision of information related to criminal background checks.
- (B) Monitoring Visits. City may, at its discretion, conduct periodic, announced and unannounced monitoring visits to ensure Program and administrative compliance with Head Start Performance Standards, the Head Start Act, Texas State Child Care Licensing, and with Program goals and objectives for the Agreement term. City reserves the right to make unannounced visits to EISD Program sites when it is determined that such unannounced visits are in the interest of effective program management and service delivery, and will not interfere with EISD's program. EISD Program staff will be informed by City representative(s) upon arrival of the expected purpose and length of visit so that accommodations may be made. City's representative(s) will provide proper identification to ensure the safety and security of all parties. City's representative(s) visiting or entering a campus site where students are present will comply with EISD's rules and procedures under EISD's Board or administrative policies or procedures.
- (C) Findings. EISD understands that City will timely inform EISD of the findings of any review or monitoring, specifically any default under the Agreement or deficiencies in performance. City will

inform EISD in writing of Program strengths and weaknesses, assist EISD in finding solutions if needed, and specify a reasonable deadline for corrective action. If the findings are not corrected by the deadline, or occur on a repeated or ongoing basis, City reserves the right to reduce EISD's funding by the cumulative amount of time after the deadline that findings were not corrected, or move children out of EISD's program.

8.10 5-Day Timeline. Unless otherwise stated, all information requested by DHS will be submitted by EISD within five (5) EISD business days of the request via electronic communication or other form of written correspondence. Should EISD fail to deliver the required information or delivers incomplete requested information, City may suspend reimbursements to EISD until the information is delivered to City. Furthermore, EISD ensures that all information contained in all required reports or information submitted to City is accurate.

8.11 Local Government Records. In accordance with Texas law, EISD 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, EISD agrees that no such local government record produced by or on the behalf of EISD pursuant to this Agreement will be the subject of any copyright or proprietary claim by EISD.

EISD acknowledges and agrees that all local government records produced in the course of the work required by this Agreement, are public information and will be made available to City at any time unless otherwise prohibited by law. EISD further agrees to turn over to City all such records upon termination of this Agreement, unless otherwise prohibited by law. EISD agrees that it will not, under any circumstances, release any records created during the performance of the Agreement to any entity without the written permission of the Director of DHS, unless required to do so by a court of competent jurisdiction or the Texas Attorney General. DHS will be notified of such request in accordance with this Article.

8.12 If EISD desires to copyright material or to permit any third-party to do so, EISD must obtain City's prior written approval and must appropriately acknowledge City's support in any such materials.

IX. INSURANCE

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

X. LIMITED LIABILITY

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

XI. RESERVED

XII. APPLICABLE LAWS

12.1 EISD, and all of the work performed under this Agreement, must comply with all applicable laws, rules, regulations and codes of the United States and the State of Texas and with the charter, ordinances, bond ordinances, and rules and regulations of City and Bexar County, including any future amendments or additions as they may be promulgated. Failure to comply could subject EISD to suspension of payments, debarment or suspension actions. In the event that any disagreement or dispute should arise between the Parties pertaining to the interpretation or meaning of any part of this Agreement or its governing rules,

regulations, laws, codes or ordinances, CITY, as the party ultimately responsible for all matters of compliance with the Grant and the City of San Antonio, shall have the final authority to render an interpretation.

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

- (A) The Head Start Act (42 U.S.C. §9831 *et seq.*, as amended);
- (B) 45 C.F.R. Part 1301 *et seq.*;
- (C) The Terms of the Grant;
- (D) As applicable, 45 C.F.R. Part 75 ("Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards");
- (E) Texas Child Care Licensing laws;
- (F) The Office of Management and Budget (OMB) Circular at 2 C.F.R. 200 *et. al.* titled "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," ("Uniform Guidance"), as applicable to the funds received by EISD hereunder;
- (G) Official record retention schedules as established by the Local Government Records Act of 1989; and
- (H) The Texas Public Information Act ("TPIA"), Texas Government Code Section 552.021. The TPIA requires City to make public information available to the public. Under Government Code Section 552.002(a), public information includes information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information, has a right of access to it, or has spent or contributed public money for the purpose of its writing, production, collection, assembly or maintenance. Therefore, if City receives a request under the Public Information Act (i.e., an open records request) for information within EISD's possession pursuant to this Agreement, EISD will forward the requested documents to City within two (2) EISD business days of EISD's receipt of the written request. If the requested information is confidential or may be kept confidential pursuant to state or federal law, EISD will submit to City the list of specific statutory authority mandating and/or authorizing confidentiality no later than three (3) EISD business days of EISD's receipt of the request. The Parties will cooperate with each other to preserve confidential information coordinate efforts to seek any required Attorney General decision for the protection of such information from release.

12.3 Additionally, EISD shall comply with the following:

- (A) If using funds under this Agreement, expenditures shall be made in accordance with:
 - (i) Texas Local Government Code Chapter 252 pertaining to purchasing and contracting authority of municipalities; and
 - (ii) Texas Government Code Chapter 2254 pertaining to Professional and Consulting Services.
- (B) Drug-Free Workplace. EISD 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).
- (C) All applicable local, state, and federal employment laws including, but not limited to:
 - (i) worker's compensation;
 - (ii) unemployment insurance;
 - (iii) timely deposits of payroll deductions;
 - (iv) 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.;
 - (v) Occupational Safety and Health Act regulations; and
 - (vi) Employee Retirement Income Security Act of 1974, P.L. 93-406.

12.4 EISD further agree 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. EISD agrees to report each violation to City and understands that City will, in turn, report each violation as required to HHS and the appropriate EPA Regional Office. Additionally, EISD agrees to include these requirements in each subcontract to this Agreement exceeding \$150,000.00 financed in whole or in part with federal funds.
- (B) 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 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) comply with the Davis-Bacon Act, as amended (40 U.S.C. 3141–3144 and 3146–3148) and as applicable under Appendix II of the OMB Uniform Guidance , and as supplemented by Department of Labor regulations at 29 C.F.R. Part 5, implementing regulations, and the relevant provisions as applicable under Appendix II of the OMB Uniform Guidance , and to include a provision requiring compliance with any construction contracts of more than \$2,000.00, and report all suspected or reported violations to HHS.
- (F) comply with the certification and disclosure requirements of the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352), and any applicable implementing regulations. EISD verifies it has tendered said Certificate to 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.
- (I) comply with the prohibitions contained in the Pro-Children Act of 1994 (20 U.S.C §6081-84), relating to no smoking within any indoor facility (or portion thereof) owned or leased or contracted for by EISD for the provision of regular or routine health care or day care or early childhood development services to children or for the use of the employees of City or EISD who provide such services.
- (J) comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247, and to ensure compliance of any and all subcontractors when applicable.
- (K) if EISD 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, comply with all Equal Employment Opportunity provisions and all of the Executive Order and Code of Federal Regulations provisions cited in this Agreement, and must include the provisions in any of its subcontracts.

12.5 HIPAA. Subject to obligations to maintain confidentiality under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the HIPAA Business Associate Agreement ("**Attachment V**"), and subject to the requirements of FERPA and the limitations imposed under law regarding transfer of information, any and all writings, documents or information in whatsoever form and character produced by EISD pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information will be the subject of any copyright or proprietary claim by EISD. EISD

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 EISD's continuing rights regarding Educational Records. City agrees that it will not release to the public Educational Records that come into its possession unless otherwise authorized by law.

- 12.6 Non-discrimination. EISD will comply with all federal, state, or local laws, rules, and orders prohibiting discrimination, and not engage in employment practices which have the effect of discriminating against any employee or applicant for employment. EISD agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code, and 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, EISD 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, EISD certifies that it will comply fully with the following nondiscrimination, minimum wage and equal opportunity provisions, including but not limited to:
- (A) The Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.*, and all regulations thereunder;
 - (B) Title VII of the Civil Rights Act of 1964, as amended;
 - (C) Section 504 of the Rehabilitation Act of 1973, as amended;
 - (D) The Age Discrimination Act of 1975, as amended
 - (E) Title IX of the Education Amendments of 1972, as amended; (Title 20 USC sections 1681-1688)
 - (F) Fair Labor Standards Act of 1938, as amended
 - (G) Equal Pay Act of 1963, P.L. 88-38;
 - (H) Equal Employment Opportunity Provisions as applicable under Appendix II of the OMB Uniform Guidance, All applicable regulations implementing the above laws.
- 12.7 Taxes and fees. EISD warrants that any and all taxes that EISD 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.

XIII. NO SOLICITATION/CONFLICT OF INTEREST

- 13.1 Solicitation. EISD warrants that no person, selling agency or other organization has been retained to solicit or secure this Agreement for a commission, percentage, brokerage, or contingent fee, and further that no such arrangement exists or has existed with any employee of EISD or City. For breach or violation of this warrant, City will have the right to terminate this Agreement without liability or, at its discretion, to deduct from the Agreement, or otherwise recover, the full amount of such arrangement, or to seek such other remedies as legally may be available.
- 13.2 Conflicts of Interest. EISD covenants that neither it nor any member of its governing body or of its staff (1) 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, or (2) possesses any interest in, or uses their position for, a purpose that is or gives the appearance of being motivated by private gain for themselves or others, particularly those with which they have family, business, or other ties.. EISD further covenants that no persons having such interest may be employed or appointed as a member of its governing body or of its staff.
- 13.3 Prohibited Financial Interest.
- (A) In accordance with the Charter of the City of San Antonio and the City of San Antonio Code of Ethics, no member of City's governing body or staff, who exercises any function or responsibility in the review or approval or carrying out of this Agreement will:
 - (i) participate in any decision which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest; or (B)

- have any direct or indirect interest in this Agreement.
- (ii) Have any direct or indirect interest in this Contract or the proceeds thereof.
- (B) An officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:
- (i) a City officer or employee; his or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
 - (ii) an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
 - (iii) an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.
- (C) Certification. Pursuant to this section, EISD warrants and certifies, and this Contract is made in reliance thereon, that by contracting with the City, EISD does not cause a City employee or officer to have a prohibited financial interest in the Contract. EISD further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City’s Ethics Code.

XIV. TERMINATION

- 14.1 (A) Termination for Cause. Upon written notice in accordance with the official communication provisions in this Agreement, City may terminate this Agreement as of the date provided in the notice in whole or in part, upon the occurrence of either:
- (i) Failure to fulfill, in a timely and proper manner, obligations under this Agreement to include performance standards established by City or HHS, or violation of any of the covenants, conditions, or stipulations of this Agreement; or
 - (ii) Notification by a local, state, or federal agency of a formal charge, probation, deferred adjudication, or conviction involving fraud, theft, or the commission of a felony by EISD or EISD’s employee working in the EHS Program. In the case of an EISD’s employee being the subject of the notification, EISD will have the opportunity to cure via the immediate termination and/or removal of the employee from the EHS Program.
- (B) Termination for Convenience. This Agreement may be terminated in whole or in part upon providing notice in accordance with the official communication provisions of this Agreement, notice which must specify a date:
- (i) not sooner than 120 days following the day on which notice is sent but not later than the end of EISD’s fiscal year, unless earlier terminated under any other provision herein, or
 - (ii) of termination to be the end of the PBY.
- 14.2 EISD will be entitled to receive just and equitable compensation for any properly documented, allowable and budgeted work satisfactorily completed prior to any termination date. Satisfactory completion will be reasonably determined by City, and its decision will be final.
- 14.3 Notwithstanding any other remedy in this Agreement or by law, City may delay, suspend, limit, or cancel, upon reasonable written notice, the funds, rights or privileges herein given EISD for failure to comply with the terms and provisions of this Agreement. EISD will not be relieved of liability for damages sustained by City by virtue of any breach of this Agreement and City may withhold funds due as damages, in addition to retaining and utilizing any other remedies available to City.
- 14.4 If an employee of EISD is discharged or leaves employment with EISD, then EISD will pay in full to the employee all of his or her earned salaries and wages, within the timeframe specified by law.

- 14.5 Should EISD be debarred by any entity or City pursuant to a debarment policy currently existing or hereafter adopted, the debarment may be grounds for termination.
- 14.6 EISD must not incur new obligations after the effective date of termination and will cancel as many outstanding obligations as possible. EISD will submit to City all required reports including a final financial statement. The final financial statement's payment constitutes full and complete reimbursement for all of EISD's performance under this Agreement.

XV. PERSONNEL

- 15.1 EISD must maintain an organizational structure that supports the accomplishment of Program objectives, addresses the major functions and responsibilities assigned to each staff position and provides evidence of adequate mechanisms for staff supervision to ensure effective oversight of responsibilities. and must demonstrate upon request, that all staff funded under this Agreement have the knowledge, skills, and experience they need to perform their assigned functions responsibly. EISD must assign adequate staff to fully implement the responsibilities, including those needing specific abilities or expertise, and address the major functions and responsibilities assigned to each position.
- 15.2 Management Team. EISD shall ensure that, at a minimum, the following program management functions are assigned:
- (A) EISD's EHS Program Coordinator must oversee education and early childhood development. This individual must have training and experience in areas that include (i) theories and principles of child growth and development, (ii) early childhood education, and (iii) family support; and must have a current and in good standing Child-Care Center Directors Certificate per TDFPS. This position has the ultimate responsibility for ensuring that enrolled children are provided the full array of services to which the children and families are entitled under the Terms of the Grant.
 - (B) EHS Liaison. An appropriately-assigned staff member with decision-making abilities, whether the CEO, agency director, center director, or designee of any of those previous listed, must attend scheduled monthly EHS's meetings and advise staff of meeting matters, and provide staff a formal platform for collaboration.
 - (C) EISD's Monitoring Coordinator must manage monitoring responsibilities. This individual and any supporting staff must have knowledge, training and experience with the Head Start Act, the Performance Standards, and monitoring of a Head Start Program. EISD will ensure these individuals further develop their knowledge of the various EHS content areas.
 - (D) EISD's EHS Specialist must manage early childhood education and development. This individual and any supporting staff or consultants must have training and experience in areas including (i) theories and principles of child growth and development, (ii) early childhood education with an infant and toddler focus, and (iii) family support. This individual and supporting staff must meet the qualifications for classroom teachers, as specified in the Head Start Act, Section 648A.
 - (E) An Instructional Coach must (i) provide ongoing coaching and support to classroom staff to strengthen their skills and improve the quality of care and child outcomes, (ii) support classroom staff with the implementation of the EHS designated curriculum, (iii) utilize the required tools to ensure the curriculum is being implemented accurately, and (iv) attend all EHS coaching activities. At a minimum, the Instructional Coach must have a CDA, training and experience in the areas of child growth and development with a focus on infant and toddlers.
 - (F) EISD's Nutrition Manager must oversee child nutrition services and ensure EISD maintains compliance with Child Adult Care Food Program ("CACFP"). This individual must be supported by staff or consultants who are registered dietitians or nutritionists. This person must also coordinate with City and City's nutrition service provider(s).

EISD's EHS management team and any other necessary staff must provide sufficient management services so as to ensure continued coordination with City regarding critical program activities. Critical program activities include but are not limited to: early childhood education services, ongoing health and safety monitoring, and maintaining compliance with child care licensing.

- 15.3 Orientation. Each program year, and within one (1) week of hiring new employees, EISD must provide employees an orientation focusing on, at a minimum, the goals and underlying philosophy of the Program, and including the importance of parent engagement and a review of the required benchmarks; (ii) all staff with child contact must receive safety training (within three months of hire); (iii) Access Forms for the City's Head Start data system (Child Plus) must be completed and provided to the City; and (iv) EISD must maintain orientation sign-in sheets and agendas for City review.
- 15.4 Compliance Report. At the beginning of the Agreement term and each PBY thereafter, EISD will submit to City a report which specifically (a) lists the number and percentage of classroom personnel having child development associate ("CDA") credentials or associate, baccalaureate or advanced degrees; (b) states the names and license registration of the employee; and (c) describes EISD's compliance with the goals described in this Article.
- 15.5 Classroom Staff and Home Visitors (collectively, "Staff"). EISD must demonstrate upon request that:
- (A) Classroom Staff: each EHS classroom is staffed by two paid teachers, and no more than eight children at any one time. When possible, EISD will staff each classroom with a volunteer in addition to the paid Staff positions.
- (B) Home Visitors: are competent to plan and implement home-based learning experiences that ensure:
- (i) effective implementation of the home-visiting curriculum;
 - (ii) child progress across standards described in the Early Learning Outcomes Framework (ELOP), including for children with disabilities and children who are Dual Language Learners (DLLs);
 - (iii) respectful, culturally responsive, and trusting relationships with families, including:
 - (1) strategies for helping families coping with crisis;
 - (2) promotion of the relationship between health during pregnancy and prenatal and early childhood development;
 - (3) strengths-based parent education, including methods to:
 - (a) encourage parents as a child's first teacher and promotes the parent's ability to support the child's development.
 - (b) help parents promote emergent literacy in their children, including use of research-based strategies to support the development of literacy and language skills for children with limited proficiency in English.
- 15.6 Qualifications & Disciplinary Action.
- (A) Qualifications. At a minimum, EISD agrees that its EHS Program Coordinator, management personnel, and all Staff hired or funded under this Agreement must have a CDA or comparable credential education or training (or equivalent coursework with a focus on infants and toddlers) in the area of early childhood education and development.
- (B) EISD agrees that for Staff not meeting the necessary qualifications, EISD will:
- (i) notify City of the particulars of the training (or equivalent coursework) for City approval, and
 - (ii) have a documented professional development plan on file for said Staff.
- (C) Disciplinary Action. EISD will promptly notify City of any transfers and/or disciplinary actions affecting personnel referred to in subsection (A) of this Section.
- 15.7 Vacancies. If, for any reason, a vacancy exists for:
- (A) a Program Coordinator, management or supervisory position: EISD must hire a replacement meeting the necessary qualifications 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 City agrees to a new mutually acceptable deadline;
- (B) a Staff position: EISD must hire a replacement meeting the necessary qualifications within 45 calendar days, or employ a substitute meeting the necessary qualifications.

- 15.8 Professional Development. EISD agrees that:
- (A) each member of the teaching Staff funded by this Agreement will attend (i) not less than 15 clock hours of infant and toddler professional development per program budget year and (ii) participate in City's professional development trainings;
 - (B) it will create and implement a Professional Development Plan for all employees who provide direct services to children; and
 - (C) it will regularly evaluate plans to determine their impact on teacher and staff effectiveness.
- 15.9 Wages & Salaries.
- (A) EISD understands the City will periodically perform its own wage and salary comparison and issue results to EISD. EISD understands that City may consider factors such as training and experience, but City has no obligation to pay EISD employees' wages that exceed the average rate paid to persons providing substantially comparable services in the area, and the City has the sole and absolute authority to determine the rate of City's payment under this Agreement. This does not preclude EISD from compensating its employees above the rate City will reimburse, so long as the additional compensation is not charged to this Agreement.
 - (B) EISD expressly understands and agrees that no portion of Agreement funds may be used to pay an employee whose compensation exceeds \$179,700.00. EISD further agrees that all employees must devote time proportionate to the percentage of their compensation funded under this Agreement (e.g., employees who are funded at one hundred percent (100%) through this Agreement must devote one hundred percent (100%) of their time to it). EISD agrees to submit employee certifications if requested by the City.
- 15.10 Complaints & Grievances. EISD agrees to establish internal procedures that assure employees of an established complaint and grievance process. This process will include procedures to receive, investigate, and resolve complaints and grievances in an expeditious manner.
- 15.11 Job Descriptions. EISD agrees to place written job descriptions for personnel funded under this Agreement in individual personnel folders, or online, for each position, and provide the specific job description(s) to the City upon request. All descriptions must be filed or online no later than the expiration date of this Agreement.
- 15.12 Relatives. Chief Executive Officer (CEO), Program Coordinator and other Management Team or supervisory personnel may not supervise a spouse, parent, child, sibling, or in-laws of the same relationship ("Relatives") who are in any capacity supported through Agreement funds.

XVI. PROPERTY, EQUIPMENT, AND SUPPLIES

- 16.1 Ownership. City retains ownership of all equipment/property purchased with funds received through City and such equipment/property will, at City's sole option, revert to City at Agreement termination, for whatever reason. EISD agrees to relinquish and transfer possession of and, if applicable, title to such equipment/property without the requirement of a court order. Equipment that has reverted to EISD through a City-paid lease agreement with option to buy will be considered the same as though purchased outright with Agreement funds. Therefore, EISD will provide, upon request, an annual inventory of assets purchased with funds received through the City.
- 16.2 Disposal, Loss, and Transfer. EISD shall safeguard, maintain and fully insure all City-funded property equipment and supplies against fire, loss and theft.
- (A) EISD agrees that no equipment purchased with Agreement funds may be disposed of without receiving prior written approval from DHS. In cases of theft or loss, it is the responsibility of EISD to replace it with like equipment and value at the time of the theft or loss, with funds other than Agreement funds and in compliance with the appropriate property standards. All replacement equipment will be treated in the same manner as equipment purchased with Agreement funds.

- (B) City reserves the right to require transfer of property acquired with funds awarded under this Agreement as provided in 45 C.F.R. Part 75, including but not limited to §75.316 *et seq.*
 - (C) All lost, stolen, missing, damaged and/or destroyed property shall be reported to law enforcement agencies as appropriate. EISD shall make such report immediately and shall notify and deliver a copy of the official report to City within seventy-two (72) hours from the date of EISD's discovery. The report must include:
 - (i) A reasonably complete description of the missing, damaged or destroyed articles of property, including the cost and serial number and other pertinent information; and
 - (ii) A reasonably complete description of the circumstances surrounding the loss, theft, damage or destruction.
- 16.3 Annual Inventory. EISD will maintain records for and provide an annual inventory of tangible property purchased with City 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.
- 16.4 Inventory Tracking. EISD will maintain a system for tracking, on an ongoing basis, inventory of equipment and supplies purchased with EHS funds that either (i) has a purchase price of \$5,000.00 or greater; or (ii) meets other criteria as City may prescribe (and notify EISD as appropriate). Upon request, EISD will provide City a status report of the current inventory of equipment and supplies meeting these requirements. City will have the right to review and approve EISD's inventory tracking system.
- 16.5 Insuring & Reporting.
- (A) EISD is fully and solely responsible for the insuring against fire, loss and theft; and safeguarding, maintaining, and reporting of lost, stolen, missing, damaged, or destroyed equipment/property purchased or leased with Agreement funds.
 - (B) EISD will inform City of incidents of loss, theft, damage or destruction of equipment or property, excluding supplies and consumables, purchased or leased with Agreement funds.
 - (C) EISD, at a minimum, will provide the equivalent insurance for real property and equipment acquired with Agreement funds as provided to other property acquired or owned by EISD.
- 16.6 EISD must fully comply with the property and equipment requirements of 45 C.F.R Part 75, including but not limited to Sections 75.316 through 75.323, related to the following:
- (A) Insurance Coverage
 - (B) Real Property
 - (C) Federally-owned and exempt property
 - (D) Equipment
 - (E) Supplies
 - (F) Intangible property
 - (G) Property trust relationship
- 16.7 Purchase thresholds. EISD shall obtain City's review, endorsement, written approval, and processing in the following instances: (i) for equipment, property or supplies purchases in the amount of \$5,000.00 or greater

(ii) for cumulative purchases in the amount of \$100,000.00 or greater. EISD may not split the purchase of a line item with a value greater than the preceding thresholds in order to avoid obtaining approval.

- 16.8 Third Party Beneficiary. EISD agrees that City is the intended third-party beneficiary of any and all facility leases to which EISD is or becomes a party in connection with any facility leased as a consequence of this Agreement. As such, EISD will use its best efforts to execute an acknowledgment prepared by City that City is an intended third-party beneficiary of such lease. EISD will honor all of its material obligations and stay in good standing under any and all such leases. EISD will immediately notify City in writing in the event of any breach or alleged breach of any lease that could result in its termination. If an event gives rise to a right of first refusal in favor of EISD under any such lease, EISD will promptly notify City of the event and allow City to step into EISD's shoes as tenant under the lease in order to exercise the right.
- 16.9 Ownership of Intellectual Property. 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. EISD 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. EISD agrees to execute all documents reasonably requested by City to perfect and establish City's right to the Intellectual Property Rights. If the City is unable, after reasonable effort, to secure EISD'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, EISD hereby irrevocably designates and appoints City and its duly authorized officers and agents as EISD's agent and attorney-in-fact, to act for and in EISD'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 EISD. Provided, however, nothing contained in this Contract is intended nor shall it be construed to require EISD to transfer any ownership interest in EISD's best practice and benchmarking information to the City.

XVII. DEBARMENT

- 17.1 EISD certifies that neither it nor its principals nor subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any state or federal program.
- 17.2 EISD will provide immediate written notice to City, in accordance with the notice requirements of this Agreement, if, at any time during the Term of this Agreement, including any renewals, EISD learns that its certification was erroneous when made or has since become erroneous.

XVIII. AMENDMENT

- 18.1 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to the terms of this Agreement must be by amendment in writing, executed by both Parties, and dated subsequent to the date hereof. Such amendment may occur without the necessity of seeking City Council approval, so long as the total cumulative total of all service provider agreements, including amendments, do not exceed City's EHS budget for the applicable grant year.
- 18.2 It is understood and agreed by the Parties, that changes in local, state and federal rules, regulations or laws applicable hereto, may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

XIX. ASSIGNMENT AND SUBCONTRACTING

19.1 Subcontracting.

- (A) None of the work or services covered by this Agreement may be sub-contracted without the prior written consent of the City. If allowed, subcontracting methods must meet City requirements; subcontractor compliance must be the responsibility of the EISD to monitor.
- (B) EISD must comply with all applicable local, state and federal procurement standards, rules, regulations and laws in all its sub-contracts related to the work or funds herein. It is further agreed by the Parties that City has the authority to monitor, audit, examine, and make copies and transcripts of all sub-contracts, as often as deemed appropriate by City. If, in the sole determination of City, it is found that EISD is not in compliance with said rules or standards with respect to any of its sub-contracts, then EISD will be deemed to be in default of this Agreement, and will be subject to termination in accordance with the Termination article of this Agreement.
- (C) If City grants a request to subcontract, EISD understands and agrees that all subcontracts in excess of \$10,000.00 must address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement.

19.2 Assignment. EISD will not assign or transfer EISD’s interest in this Agreement or any portion thereof without the written consent of City. Any attempt to transfer, pledge or otherwise assign will be void ab initio and confer no rights upon any third person or party.

XX. OFFICIAL COMMUNICATIONS

20.1 Except where the terms of this Agreement expressly provide otherwise, all official communications and notices among the Parties shall be deemed sufficient if in writing and delivered in person, mailed by overnight or express service or mailed, registered or certified mail, postage prepaid, to the addresses set forth below.

<u>City:</u> Director Department of Human Services 106 S. St. Mary’s Street, Suite 700 San Antonio, TX 78205	<u>EISD:</u> Superintendent Edgewood Independent School District (EISD) 5358 W. Commerce Street San Antonio, TX 78237
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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.

XXI. PROHIBITED ACTIONS

21.1 Political Activity.

- (A) EISD agrees that no funds provided from or through the City shall be contributed or used to conduct political activities for the benefit of any candidate for elective public office, political party, organization or cause, whether partisan or non-partisan, nor shall the personnel involved in the administration of the Project provided for in this Contract be assigned to work for or on behalf of any partisan or non-partisan political activity.
- (B) EISD agrees that no funds provided under this Contract may be used in any way to attempt to influence, in any manner, a member of Congress or any other state or local elected or appointed official.
- (C) The prohibitions set forth in Sections 18.1(A) and 18.1(B) of this Contract include, but are not limited to, the following:
 - (i) 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;
 - (ii) 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;

- (iii) 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
 - (iv) 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.
- (D) To ensure that the above policies are complied with, EISD shall provide every member of its personnel paid out of City funds with a statement of the above prohibitions, which 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 contact person listed on the statement within the Managing City Department. EISD shall have each said individual sign a statement acknowledging receipt of the policy.
- (E) EISD agrees that in any instance where an investigation of the above is ongoing or has been confirmed, reimbursements paid to the EISD under this Contract may, at the City's discretion, be withheld until the situation is resolved.
- (F) This Section 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, EISD and staff members are not prohibited from participating in political activities on their own volition, if done during time not paid for with City funds.

- 21.2 Adversarial Proceedings. EISD agrees that under no circumstances will the funds received under this Contract be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City or any other public entity and City may conduct an audit under Section 6.4 to make such determination. EISD understands that the City may deem EISD ineligible for consideration to receive any future funding under this Contract or under another existing or future agreement while any adversarial proceedings against the City remains unresolved. This Contract may be terminated by City under Article XIII should EISD have a pending lawsuit against City or file a lawsuit against the City during the term of this Contract.
- 21.3 No Use of Funds for Religious Activities. EISD 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 benefit, directly or indirectly, any such sectarian or religious facility or activity, or for the construction, operations, maintenance or administration of any sectarian or religious facility or activity.
- 21.4 Contribution Prohibitions. EISD acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for an entity that applies for a "high-profile" discretionary contract, as defined by the City of San Antonio Procurement Policy and Procedures Manual, may not make a campaign contribution to any councilmember or candidate at any time from the tenth business day after the Consolidated Human Development Funding Services Pool Request for Proposal (RFP) is released, and ending on the 30th calendar day following the contract award. Any legal signatory for a proposed high-profile contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response. EISD acknowledges that the City has identified this Contract as high profile. EISD warrants and certifies, and this Contract is made in reliance thereon, that the individual signing this Contract has not made any contributions in violation of City Code Section 2-309, and will not do so for 30 calendar days following the award of this Contract. Should the signer of this Contract violate this provision, the City Council may, in its discretion, declare the Contract void.

XXII. MISCELLANEOUS

22.1 Independent Contractor.

- (A) It is expressly understood and agreed that EISD is and will be deemed to be an independent contractor, responsible for its own acts or omissions, for which City is not responsible, and that neither Party has authority to bind the other nor to hold out to third parties that it has the authority to bind the other.
- (B) Nothing contained herein may be deemed or construed as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar relationship, between the Parties.
- (C) Any and all employees of EISD, wherever located, while engaged in the performance of any work required by City under this Agreement will be considered employees of EISD only, and not of City, and any and all Workers' Compensation claims that may arise on behalf of the employees while so engaged are the sole obligation and responsibility of EISD.

22.2 Non-Waiver. No waiver, change, modification or discharge by either Party of any provision of this Contract shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged. Unless otherwise specifically provided for in this Contract, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Contract 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. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party under this Contract or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved.

22.3 Venue. EISD and City agree that this Contract shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the Parties created under this Contract are performable in Bexar County, Texas. Any action or proceeding to adjudicate any dispute arising out of this Contract shall be brought in a court of competent jurisdiction in San Antonio, Bexar County, Texas. Venue and jurisdiction arising under or in connection with this Contract shall lie exclusively in Bexar County, Texas.

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

22.5 Representations.

- (A) EISD's signatory below represents, warrants and guarantees that (s)he has full legal authority to execute this Agreement on behalf of EISD and to bind EISD to all of the terms, conditions, provisions and obligations herein contained. EISD must be authorized to do business in the State of Texas and operating in accordance with all applicable laws of the State of Texas. Upon request by the City, EISD will provide DHS verification of the foregoing requirements.
- (B) This Agreement is based on the representation of EISD that it is financially accountable for its expenditures; that it has the continuing capability to furnish the Non-Federal Share in Section 4.1 of this Agreement; and that funds disbursed to EISD will be expended only for Allowable Costs under this Agreement. EISD represents that there are no financial limitations or impediments that would make it not viable, solvent and accountable.
- (C) If circumstances arise which might result in interference with EISD's ability to provide services under this Agreement, EISD agrees to inform City of those circumstances immediately. EISD agrees that payment to EISD, upon reasonable notice, may be suspended by City until such financial circumstances giving rise to the possible interference have been eliminated; provided however, that authorized expenditures made and approved by City prior to the suspension, will not be affected.

22.6 Severability. If any clause or provision of this Contract is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of City, it is the intention of the Parties that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Contract shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained. It is also the intention of the Parties that in

lieu of each clause or provision of this Contract that is invalid, illegal or unenforceable, there be added as a part of this Contract a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXIII. ENTIRE AGREEMENT


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

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

CITY OF SAN ANTONIO:
Department of Human Services

EISD:
Edgewood Independent School District (EISD)

Melody Woosley, Director

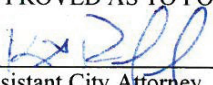


Dr. Eduardo Hernandez, Superintendent

Date

09.30.20

Date

APPROVED AS TO FORM:


Assistant City Attorney

Board President (if required)

ATTACHMENTS

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

ATTACHMENT I

SCOPE OF WORK

1. Summary

EISD will perform the provisions of this Scope of Work, and serve the number of income, age and categorically eligible children as indicated below in accordance with this Agreement, the Head Start Performance Standards as provided in Head Start Regulations, 45 CFR Part 1301 *et seq* with the Head Start Act, as amended, 42 U.S.C. 9831 *et seq*, City policies (except as they may differ from this Agreement), the updated Data Entry & Benchmark Due Date Guide, and with the terms of this Agreement. EISD will operate full-day classroom(s) for minimum of seven (7) hours a day at City-approved sites for a minimum of 198 days of planned class operations for the EHS budget period. Operating hours set by EISD must be approved by the City.

Number of children in full-day center based services on the first day of the program year	80
Number of children in home-based services on the first day of the program year	48
Minimum number of children with disabilities	13
Service Area	Any eligible child who (i) is returning from the incumbent grantee and any eligible child who (ii) is served in the Edgewood Independent School District

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

- A. City will determine eligibility and recruit, select and enroll children in City’s Program; EISD agrees to assist in City’s recruitment efforts. EISD also agrees to assist City to consistently maintain and replenish EISD’s assigned number of children in the table above; to assist in this effort, EISD must alert City once a vacancy exists and ensure, once City approves the selected child(ren), to start providing services within no more than seven (7) business days unless City approves a longer timeframe. Should EISD not assist City in this process, its funding may be reduced according to this Agreement.
- B. EISD’s Program Design. By June 1st each year, EISD will submit to City for its approval the Program Design which will include, at a minimum: the total number of children enrolled, number of sites, number of classrooms, classroom age group designation, language designation, and hours of operation. If at any time EISD proposes a change to the program design, EISD must formally request and receive City’s approval prior to making the change, which approval will not be unreasonably delayed or denied. Further, EISD will notify City within forty-eight (48) hours of any EISD policy, regulation, administrative decision, and/or any programmatic change that will impact the Program Design or effect enrollment.
- C. Children with Disabilities. EISD understands that a minimum of 10% of the children enrolled in EISD’s program are children with disabilities who are determined to be eligible for services, and who have an Individual Family Service Plan through an Early Intervention Program. EISD will provide services to eligible children who age out of the ECI program who qualify for services through the district. ..
- D. Attendance. EISD agrees that when the monthly average daily attendance rate in a center-based program falls below eighty-five percent (85%), EISD must immediately notify City. Late arrival does not constitute an absence and EISD will not alter services for those children. EISD must work with City’s Family Support Worker to analyze the cause of absenteeism or tardiness and provide 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. Removal of children from the program due to the lack of attendance may only occur in accordance with City’s policies and with City approval.

3. Program Services

- A. Program Services. EISD shall provide direct (i) Early Childhood Development & Disability Services; (ii) Child Nutrition Services; (iii) Safe and Healthy Environments; (iv) Health Services; and (v) Home-Based Services, and coordinate with the City's efforts to provide (vi) Family and Community Support Services, (vii) Child Mental Health, (viii) Medical Health Services, and (ix) Dental (Oral) Health Services (collectively, "Early Head Start Services") to meet the needs of the children and families served by EISD.
- B. Early Childhood Development and Disability Services. EISD must provide the following education and early childhood development services in compliance with the requirements of 45 C.F.R Part 1302, Subpart C, and follow City's guidance. In addition, EISD must offer ECI referrals to parents of children with developmental concerns:
- i. Parental Involvement. In order for EISD to 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, EISD will:
 - a. provide opportunities to increase parents' child observation skills and to share assessments with staff that will help plan the learning experience;
 - b. elect, in coordination with City staff, one or more parent members from center locations to serve on the City's HSPC;
 - c. encourage parents to participate in staff-parent conferences and home visits to discuss their child's development and education; and
 - d. encourage and make available resources to support parent engagement and attendance in center parent meetings, Parent Connection Committee meetings, HSPC, volunteering, parents' activities and contributions.
 - ii. Development & Inclusion. EISD must help children gain the skills and confidence necessary to be prepared to succeed in their present environment and in future responsibilities in school and life, and:
 - a. ensure its approach is developmentally and linguistically appropriate and recognizes the child's rate of development, language, cultural background and learning style(s);
 - b. 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
 - c. allow and enable children to independently use toilet facilities when it is developmentally appropriate, and the efforts are supported by the parents.
 - iii. Social & Emotional Development. EISD must support social and emotional development by encouraging development which enhances child's strengths by building trust, fostering independence, and encouraging self-control and respect for feelings and rights of others in ways that support the child's health and wellbeing; and planning for routines and transitions.
 - iv. Cognitive & Language Skills. EISD must:
 - a. support each child's learning, using various strategies including experimentation, inquiry, observation, play and exploration;
 - b. ensure opportunities for creative self-expression through activities such as art, music, movement, and dialogue;
 - c. promote interaction and language use among children and between children and adults; and
 - d. support emerging literacy and numeracy developments through materials and activities according to the child's developmental level; and
 - e. screen, in collaboration with child's parent, the child's developmental and behavioral skills

utilizing the Ages and Stages Questionnaire (“ASQ”), specifically the ASQ-Social-Emotional (ASQs-S/E) and ASQ-Developmental (ASQ:3rd) Questionnaires), and upload it in the Child Plus data system for all newly enrolled children within the first thirty (30) days of the child’s entrance into the program.

- v. Physical Development. EISD must provide 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 also provide an appropriate environment and adult guidance for the participation of children with special needs.
- vi. Curriculum. EISD, in collaboration with the parents and City, must implement *Creative Curriculum*© which supports each child’s individual pattern of development.
- vii. Action Plan. The City will establish school readiness goals that are age-appropriate and create an Action Plan that best meets the needs of children. EISD agrees to assist City in this effort, and implement the Plan to achieve (a) the Plan’s school readiness goals, and (b) integration with City’s Parent, Family, and Community Engagement (PFCE) Framework. EISD must focus on the quality of teacher-child interactions, evidence-based teaching practices, evidence-based curriculum, and the inclusion of parents. EISD must consistently work to improve its practices to achieve Plan goals and objectives. The City will analyze achievement and identify areas for improvement; EISD agrees to implement City’s guidance.
- viii. Analysis of Progress. EISD, in coordination with the City, will assess child progress on an ongoing basis utilizing the Early Learning Accomplishment Profile (E-LAP) and the Learning Accomplishment Profile; 3rd edition (LAP-3) and all associated and components (together, the “Assessment”) in order to conform with the Assessment and assessment process. EISD will ensure Peer Coach participation of at least ninety percent (90%) in monthly Peer Coaching meetings to build knowledge and skills in order to directly support teacher’s understanding, planning, and administration of the Assessment. EISD will conduct Assessments at least three times per program year (at the beginning, midpoint and end) utilizing the Data Entry & Benchmark Due Date Guide and achieve a ninety percent (90%) completion rate . If needed, EISD will also coordinate with City to make mid-year adjustments in instruction and/or professional development support should patterns or trends be identified in the analysis, and use such information to inform teachers and parents how best to individualize each child’s learning and progress across domains. EISD will ensure these requirements are met and City will provide support, training and technical assistance as needed.
- ix. Quality Improvement. EISD must:
 - a. select one (1) teacher to participate in City’s Teachers Learning and Collaborating (TLC) intensive coaching system per program year, at an attendance rate of ninety percent (90%);
 - b. ensure Peer Coach participation of at least ninety percent (90%) in monthly Peer Coaching meetings; and
 - c. implement Coaching to Fidelity twice (2x) a program year with a ninety percent (90%) completion, rate utilizing the EHS-CCP Data Entry & Benchmarks Due Date Guide.

C. Safe and Healthy Environments

EISD will perform the following services as it relates to the specific service listed below in compliance with the requirements of 45 C.F.R Chapter XIII Parts 1302.40 – 1302.47 and 1302.33. In addition, health and safety standards must be maintained at all times and in accordance with Texas Health and Human Services Child Care Licensing Minimum standards. At a minimum, EISD must:

- i. Safety
 - a. Posted Policies & Procedures. EISD must establish and implement policies and procedures to respond to medical and dental health emergencies. Procedures must include how and where the following items must be posted: policies and plans of action; telephone numbers of

emergency response systems; emergency evacuation routes and other safety procedures for emergencies; methods of notifying parents in the event of an emergency; up-to-date family contact information and authorization for emergency care; and established methods for handling cases of suspected or known child abuse and neglect. City must be notified within 24 hours of any incident or emergency. All staff must be familiar and trained in the policies and procedures, and the City will provide support, training and technical assistance to ensure these requirements are met.

- b. Caring for Our Children Basics. EISD must train staff, and establish, implement and enforce a system of practices to ensure children are kept safe at all times. Children must never be left unsupervised. EISD should consult *Caring for our Children Basics* for additional information to develop and implement adequate safety practices.
- c. Safety Management. EISD must develop and implement a system of management, including ongoing training, oversight, correction and continuous improvement in accordance with §1302.102 of Head Start regulations. This includes adequate policies and practices to ensure (i) all facilities, (ii) equipment, (iii) materials, (iv) background checks, (v) safety training, (vi) safety and hygiene practices, and (vii) administrative safety procedures, to ensure child safety. Further, EISD must establish, follow, and practice, at a minimum procedures for: (i) emergencies, (ii) fire prevention and response, (iii) protection from contagious diseases including appropriate inclusion and exclusion policies for when a child is ill, and to prevent an infectious disease outbreak, and must include appropriate notifications of any reportable illness, (iv) the handling, storage, administration, and record of administration of medication, (v) ensuring children are only released to an authorized adult, and (vi) child-specific health care needs and food allergies that include an accessible plan of action for emergencies. For food allergies, this includes posting where staff can view as needed, any individual child food allergies wherever food is served.
- d. Disaster Preparedness. EISD must establish, follow and practice, as appropriate, a disaster preparedness plan for events including natural and human-made disasters and emergencies, and violence in or near the program.

ii. **Health**

- a. Exclusion for Sickness.
 - 1) Temporary. EISD must temporarily exclude a child with a short-term injury or an acute or short-term contagious illness from participation in 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.
 - 2) Long-term. EISD must not deny admission to any child, nor exclude any enrolled child from participation for a long-term period, solely based on 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 EISD's policies or by providing appropriate auxiliary aids.
- b. Medication. EISD must establish and maintain written procedures regarding the administration, handling, and storage of medication for every child. Certificates of completion will be maintained by EISD. The City will provide support, training and technical assistance to ensure these requirements are met.
- c. Demonstration. EISD must ensure staff and volunteers can demonstrate safety practices; foster safety awareness by incorporating it into child and parent activities; and ensure staff, volunteers and children follow the appropriate hygiene requirements.

- d. First Aid. Well-supplied first aid kits, appropriate for all ages served must be available at each facility and on outings away from the facility.
- e. Immunizations. Up-to-date immunization records must be maintained on all children enrolled.
- f. Clinics. EISD will coordinate with City's EHS Health Manager to provide space for four (4) dental clinics. three (3) lab clinics.
- g. Collaboration. EISD will collaborate with health service providers in the community to provide any needed referrals and additional resources to families with any new or reoccurring medical, dental or developmental concerns.
- h. Screenings. EISD must ensure the following occurs within 45 calendar days of each child's entry into the program and again every school year: evidence-based vision and hearing screenings, current developmental screening to identify concerns regarding behavioral, motor, language, cognitive, and social and emotional skills. EISD must use the information from the screening to address developmental, sensory, and behavioral concerns. Ongoing observations, medical and dental evaluations and treatments, and insights from the child's parents/guardians must be utilized to determine how the program can best respond to each child's individual characteristics, strengths and needs.
- i. Oral Health Hygiene. All children with teeth must be assisted by appropriate staff, or volunteers, in brushing their teeth with toothpaste containing fluoride once daily.
- j. Documentation & Follow-up. EISD must document in ChildPlus all referrals and services and monitor the implementation of a follow-up plan to meet any treatment needs associated with a health, oral health, social and emotional, or developmental concerns.
- k. Diapers, Formula & Other Unfunded Needs. Program funds may be used for diapers and formula , as well as other medical and oral health services when no other funding is available.

D. Child Nutrition

- i. Nutrition Plan. In coordination with City, EISD must:
 - a. Work 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. Design and implement a nutrition plan that meets the nutritional needs and feeding requirements of each child, and takes into account the length of the program day.
- ii. Special Diets. EISD must post up-to-date individualized special diet information in each applicable classroom and ensure all teachers are aware of each child's dietary needs at all times.
- iii. Dietician. EISD must work with City and City's contracted nutritionist/dietician to support engagement opportunities for parents, children and staff as applicable.
- iv. Family-Style Meals. EISD must ensure that snack and meal times are structured and used as learning opportunities that support teaching staff-child interactions and foster communication and conversations that contribute to a child's learning, development, and socialization.
- v. Programs are encouraged to meet the family style meals when developmentally appropriate.

- vi. CACFP. EISD must use funds from the USDA CACFP as the primary source of payment for meal services.
- vii. Reporting. Pursuant to City policies, EISD must report to City, 100% of time, the number of meals and snacks served to EHS-CCP children on a monthly basis by the 5th of every month.

E. Child Mental Health

EISD must:

- i. Work collaboratively with parents to:
 - a. solicit information, observation, and concerns about their child's mental health;
 - b. share staff observations and the child's behavior and development; and
 - c. share observations with mental health professionals as it pertains to the child receiving services.
- ii. Secure or refer, when appropriate, the services of mental health professionals with sufficient frequency to enable the timely and effective identification of and intervention for family and staff concerns about a child's mental health.
- iii. Allow access to children and teachers to assist with services in City's Wellness Support Services Policy.

F. Family and Community Support

- i. In collaboration with City-led staff, EISD must:
 - a. provide at least two (2) parent engagement and education activities per program year that are responsive to the expressed needs of the parents.
 - b. provide opportunities to include parents in the development of the program's curriculum and approach to child development and education.
 - c. collaborate with other service providers to provide opportunities to enhance parenting skills, knowledge and understanding of the educational and developmental needs and activities of their children.
 - d. promote purpose and support parents' understanding of the School Readiness Home Learning activities and submit monthly School Readiness Home Learning activities to City as specified.
 - 1. On time submission of School Readiness Home Learning Activities with a 90% annual completion rate.
- ii. Education staff must conduct at least:
 - a. two (2) home visits per year at a minimum of a 95% completion rate, unless parents expressly prohibit such visits, and
 - b. two (2) staff-parent conferences per child per year at a minimum of a 95% completion rate, to enhance the knowledge and understanding of the educational and developmental progress and activities of children.

EISD understands that if a parent denies home visits and conferences, they are not required as a condition of a child's receiving services; however, EISD must properly document the denial according to City's guidance. The City will provide support, training and technical assistance to ensure these requirements are met.

G. Home-Based Services

EISD must comply with §1302.35 Education in home-based programs, and provide the full range of comprehensive Head Start services through visits with the child's parents, primarily in the child's home,

and through group socialization opportunities in a classroom, community facility or field trips.

- i. Each Home Visitor will have no more than 12 families on case load at any one time.
- ii. Frequency of Visits. Home Visitors must:
 - a. Complete one visit per week for each family on their case load at no less than 90 minutes per visit. Each family must have 46 visits annually
 - b. Make up planned home visits or scheduled group socialization activities that were canceled by the program, and to the extent possible attempt to make up planned home visits canceled by the family, when this is necessary to meet the required number of visits
 - c. Not replace home visits or scheduled group socialization activities for medical or social service appointments for the purposes of meeting the required number of visits.
- iii. Socializations. Group socializations should be planned jointly with families and structured to:
 - a. Provide children with age-appropriate activities that are aligned with school readiness goals, the Head Start Early Learning Outcomes Framework (ELOF), and the home-based curriculum
 - b. Include opportunities for parents to participate in activities that support their parenting skills development or family partnership goals
 - c. Encourage parents to observe and actively participate in activities, as appropriate
 - d. Encourage parents to share experiences related to their children's development with other parents in order to strengthen parent-child relationships and to help promote parents understanding of child development
 - e. A written schedule of socializations will be created

4. Program Services Reporting

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

- i. Classroom Attendance Report
- ii. Classroom/Site Set up Program Design Report
- iii. United States Department of Agriculture (USDA) food count for reimbursement received for EHS-CCP children to be submitted on a monthly basis
- iv. Student Assessment Data Analysis Report, as periodically required by City;
- v. School Readiness Plan of Action update, due bi-annually, submitted as directed or when requested by City;
- vi. Child Development Outcomes Progress Report based on EISD's assessment tool, submitted as directed or when requested by City; and
- vii. Reports showing employee credentials and a list of personnel serving to satisfy EISD's in-kind non-Federal Share requirement
- viii. Staffing plans
- ix. Reports showing the wages of each employee
 - x. Weekly Director's Report
 - xi. Any other reports deemed necessary and requested by City

ATTACHMENT II

[INSERT PROGRAM BUDGET HERE]

**ATTACHMENT III
SPECIAL PROVISIONS — Program Years 2020-2025**

I. RESTRICTIONS ON USE OF FUNDS OR PROPERTY

- 1.01 EISD is prohibited from:
- a) using or transferring funds provided under this Contract for purposes other than City-authorized 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; and
 - 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 by the City.

II. REQUIREMENTS FOR PARTICIPATION IN CITY-DESIGNATED DATA SYSTEM

- 2.01 EISD 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 EISD 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 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 program and comply with all reasonable requests with respect to information in 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, City, Zip Code
 Telephone
 Social Security Number (Optional)
 Birth Date
 Gender
 Race
 Handicap (Optional)
 Yearly Income
 Number of members in the Family
 County of Residence
 Employment and training status

Each child’s Information:

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

ATTACHMENT IV

[INSERT HHS AWARD DOCUMENT HERE]

ATTACHMENT V

HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement (“BAA”) is entered into by and between the City of San Antonio (“Covered Entity”), and the named Party in the underlying agreement, a Business Associate (“BA”).

WHEREAS, Covered Entity and BA may need to use, disclose and/or make available certain information pursuant to the terms of the Agreement, 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 Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”), Health Information Technology for Economic and Clinical Health Act (“HITECH Act”), and other applicable laws; and

WHEREAS, the purpose of this BAA 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 BAA, 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. 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).

(3) Individually Identifiable Health Information is defined in 45 C.F.R. 160.103 as information that is a subset of health information, including demographic information collected from an individual, and: (i) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (ii) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (a) identifies the individual; or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

(4) “Parties” shall mean Covered Entity and BA. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 C.F.R. 160.103. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 C.F.R. 160.103.

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

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

(7) Health Information is defined in 45 C.F.R. 160.103 as any information, including genetic information, whether oral or recorded in any form or medium that: (1) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

(8) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. 160.103, limited to the information created or received by BA from or on behalf of Covered Entity. PHI includes "Electronic Protected Health Information" or "EPHI" and shall have the meaning given to such term under the HIPAA Rule, including but not limited to 45 C.F.R. Parts 160, 162, 164, and under HITECH.

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

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

(11) "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.

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

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

(1) Not use or disclose the PHI other than as permitted or required by this BAA 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 BAA, 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 BAA;

(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 BAA as well as any Security Incident as defined by 45 C.F.R. 164.304 that BA becomes of aware of;

(5) Ensure that a business associate agreement is in place with any of its agents or subcontractors with which BA does business and to whom it provides PHI received from, created or received by BA on behalf of Covered Entity are aware of and agree to the same restrictions and conditions that apply through this BAA to BA with respect to such information, and further agree to implement reasonable and appropriate administrative, physical and technical safeguards that render such PHI

unusable, unreadable, and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI;

(6) Provide access, at the request of Covered Entity, and in a reasonable time and manner as agreed by the Parties, to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements 45 C.F.R. §164.524;

(7) Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of the Covered Entity or an Individual, and in a reasonable time and manner agreed to by the Parties;

(8) Make available to the Covered Entity or to the Secretary all internal practices, books and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by the BA on behalf of the Covered Entity, for purposes of the Secretary in determining Covered Entity's compliance with the Privacy Rule;

(9) Document such disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request from an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;

(10) Provide Covered Entity or an Individual, in a reasonable time and manner as agreed to by the Parties, information collected in accordance with Section B(9) of this BAA, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;

(11) Will immediately, and in no event later than three days from discovery, notify Covered Entity of any breach of PHI, including ePHI, and will coordinate with Covered Entity to identify, record, investigate, and report to an affected individual and the U.S. Department of Health and Human Services, as required, any covered PHI breach. Breach notification to Covered Entity must include: names of individuals with contact information for those who were or may have been impacted by the HIPAA Breach; a brief description of the circumstances of the HIPAA Breach, including the date of the breach and date of discovery; a description of the types of unsecured PHI involved in the breach; a brief description of what the BA has done or is doing to investigate the breach and mitigate harm. BA will appoint a breach liaison and provide contact information to provide information and answer questions Covered Entity may have concerning the breach;

(12) Comply with all HIPAA Security Rule requirements;

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

(14) Under no circumstances may BA sell PHI in such a way as to violate Texas Health and Safety Code, Chapter 181.153, effective September 1, 2012, nor shall BA use PHI for marketing purposes in such a manner as to violate Texas Health and Safety Code Section 181.152, or attempt to re-identify any information in violation of Texas Health and Safety Code Section 181.151, regardless of whether such action is on behalf of or permitted by the Covered Entity.

C. Permitted Uses and Disclosures by BA

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

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

(4) BA may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. 164.502(j)(1).

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

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

(2) notify BA of any changes in, or revocation of, permission by any Individual to use or disclose PHI, to the extent that such changes may affect BA's use or disclosure of PHI;

(3) notify BA of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522 to the extent that such changes may affect BA's use or disclosure of PHI;

(4) coordinate with BA regarding any PHI breach and make timely notification to affected individuals within 60 days of discovery.

E. Permissible Requests by Covered Entity.

Covered Entity shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that the BA may use or disclose PHI for data aggregation or management and administrative activities of the BA.

F. Term and Termination.

(1) The term of this BAA shall commence upon execution of the underlying Agreement. This BAA shall terminate when all PHI encompassed by this BAA 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 Agreement or, if the BA does not cure the breach or end the violation within the time for cure specified in the Agreement, end the violation and terminate this BAA and the Agreement; or (b) immediately terminate this BAA and the Agreement if BA has breached a

material term of this BAA 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 BAA for any reason, BA shall return or destroy all PHI received from the Covered Entity, or created or received by BA on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of BA or its subcontractors or agents. BA shall not retain any copies of PHI.
- (b) In the event that BA determines that returning or destroying PHI is infeasible, BA shall provide to Covered Entity written notification of the condition that makes the return or destruction of PHI infeasible. Upon BA's conveyance of such written notification, BA shall extend the protections of this BAA to such PHI and limit further uses and disclosures of such PHI to those purposes that make its return or destruction infeasible, for so long as BA maintains such PHI.

- G. Amendment to Comply with Law. The Parties agree to take written action as is necessary to amend this BAA to comply with any Privacy Rules and HIPAA legal requirements for Covered Entity without the need for additional council action.
- H. Survival. The respective rights and obligations of the BA under Sections B, C (2) and (4), and F(3) shall survive the termination of this BAA.
- I. Interpretation. Any ambiguity in this BAA shall be interpreted to permit Covered Entity to comply with the Privacy Rule.
- J. Regulatory References. A reference in this BAA 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 BAA 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 BAA BY BA IN ACCORDANCE WITH THE INDEMNITY PROVISIONS IN THE SERVICE CONTRACT, 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 BAA 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 BAA without the prior written consent of the other party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of BA.

- P. **Entire Agreement.** This BAA constitutes the complete agreement between BA and Covered Entity relating to the matters specified in this BAA, 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 BAA and the terms of the Agreement or any such later agreement(s), the terms of this BAA shall control unless the terms of such Agreement comply with the federal law and regulations commonly referred to as the Privacy Standards and the Security Standards. No oral modification or waiver of any of the provisions of this BAA shall be binding on either party. This BAA 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 BAA, nor shall any third party have any rights as a result of this BAA.

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

EFFECTIVE upon execution by both parties.

COVERED ENTITY
City of San Antonio

BUSINESS ASSOCIATE:

Melody Woosley, Director
Department of Human Services



Signature

Print Name & Title, if different from
the underlying agreement

APPROVED AS TO FORM:



Assistant City Attorney