

**STATE OF TEXAS           \***  
**COUNTY OF BEXAR       \***  
**CITY OF SAN ANTONIO \*       SAN ANTONIO INDEPENDENT SCHOOL DISTRICT (ISD)**

**HEAD START AGREEMENT  
FOR EDUCATION SERVICES  
BETWEEN THE CITY OF SAN ANTONIO  
&  
SAN ANTONIO INDEPENDENT SCHOOL DISTRICT (ISD)**

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 San Antonio Independent School District (“ISD”), a political subdivision of the State of Texas, acting by and through its Superintendent (individually "the Party" and collectively "the Parties") sets forth the objectives, understandings, and agreements between the Parties in connection with the use of federal grant funds for the City’s Head Start Program (“the program”). 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 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 Head Start (HSpK) services to children and families in the San Antonio and Edgewood Independent School Districts; and

WHEREAS, the Department of Human Services (“DHS”) is authorized by the City to execute this agreement with ISD to provide Head Start PreKindergarten (HSpK) services to pre-school-aged children ages three to five years old and their families in ISD’s school district (the HSpK “project” or “program”); and

WHEREAS, ISD 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 ISD agree as follows:

**I. SCOPE OF WORK**

- 1.1 ISD will provide all activities and services in a manner satisfactory to City and in compliance with ISD’s Scope of Work (***Attachment I***), this Agreement, and the Terms of the Grant (as defined in this Article). 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 ISD will control.
- 1.2 In the event that ISD is not able to provide the services for a reason grossly outside of ISD’s control, such as a public declaration of emergency or disaster, ISD must alert DHS immediately, and City will determine if and what alternative services are required. ISD 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 and approved by either party for employees.
  - (C) “Cost Allocation Plan” is a plan that identifies and distributes the cost of services provided by staff and/or departments or functions. It is the means to substantiate and support how the costs of a program

are charged to a particular cost category or to the program so as to assure the provided Grant funds do not subsidize other program(s), and ensures 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”, “PBW” or “Budget Period” means the budget term for the grant(s) that comprise the funding source(s) for this Agreement.
  - (F) “Program Income” means earnings of ISD realized from activities resulting from this Agreement or from ISD’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 ISD provided as a result of this Agreement; and if applicable, payments from clients or third parties for services rendered by ISD 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 (42 U.S.C. §9831, *et seq.*), or other applicable statutes, implementing regulations (e.g., 45 C.F.R. §1301 *et seq.* (the “Head Start Program Performance Standards,” “HSPPS” or “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, City’s policies and procedures and the program design manual applicable to the Head Start Program, as such requirements exist and as such requirements may be established or modified (by amendment, deletion, addition or otherwise) during the period of the Agreement.
- 1.4 ISD 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 the Terms of the Grant, the policies and procedures approved by City’s Head Start Policy Council (HSPC) and Governing Body, and content area service plans.
  - 1.5 City retains the authority to contract with third parties for the delivery of other Head Start services in the San Antonio and Bexar County area. ISD agrees to allow City’s other such contractors access to the facilities leased and/or owned by ISD, so long as access would not cause disruption of ISD’s educational activities or purpose as an educational entity. ISD agrees to cooperate with City and third-party Head Start contractors to establish, modify, and comply with a set of policies and procedures governing City’s Head Start Program and the protocol for collaboration between Head Start service providers. ISD agrees that, notwithstanding the fact that another Head Start service provider under City’s Head Start Program may be contracted to provide a category of service, ISD, under the leadership of its Early Childhood Education Director , will be responsible to coordinate with Head Start service providers and work with City to ensure provision of full array of services to which the children are entitled under the Terms of the Grant.

## **II. TERM**

- 2.1 Except as otherwise provided, this Agreement will begin on February 1, 2024, and will terminate on January 31, 2029, for the 2024-29 Grant’s project period.
- 2.2 ISD 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 ISD of any such action.

### III. CONSIDERATION

- 3.1 ISD agrees and understands that funds are awarded only for each budget year (“budget period”) of the Head Start project period. In consideration of ISD’s services, City will reimburse ISD total amounts not to exceed:

**\$ 14,794,563.00** ("the Federal Share")

for each budget period of this Agreement (i.e. February 1 – January 31) for costs incurred in accordance with this Agreement, including all attachments, and any amendments thereto.

Non-Federal Share. ISD’s Program Budget (**Attachment II**) is comprised of the Federal Share and the Non-Federal Share. The Federal Share will be no more than 75% of the total Program Budget. Should ISD fail to raise all of the Non-Federal Share funds 25% of the total Program Budget, or

**\$ 4,931,521.00** (“the Non-Federal Share)

it is required to raise for each budget period of this Agreement, City reserves the right to reduce its reimbursements to ISD proportionately. For instance, if ISD succeeds in raising only fifty percent (50%) of its required Non-Federal Share funds, City may accordingly reduce its reimbursements to ISD to fifty percent (50%) of City's total obligation to ISD. ISD may provide additional Non-Federal Share funds if ISD, in its discretion, determines such funds are available. To meet the requirements of this Agreement, all claimed Non-Federal Share must meet the requirements of 2 C.F.R. 200 et seq. and 45 C.F.R. § 75.306, as applicable.

- 3.2 Prior to commencement of this Agreement, and to each budget period thereafter, ISD must submit for City approval, ISD’s proposed monthly budget by line item for that entire budget period and, along with its Program Budget, include detail by category. Until City receives and approves the initial proposed monthly budget for that budget period, City reserves the right to redirect ISD’s proposed funding under this Agreement. City will notify ISD 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, ISD will submit for City review quarterly forecasts of the projected expenses for each month remaining in that budget period. ISD’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. ISD 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 ISD must make a request in writing and be accompanied by a justification for the change and indicate which lines items are affected by such change.

- 3.4 Funding reduction. ISD understands and agrees that should ISD fail to meet or maintain (for a 120-day period) its funded enrollment level as set forth in the Scope of Work, DHS may (i) reduce ISD’s funding by an amount equal to the difference between funded and actual enrollment or(ii) permanently reassign any unfilled slots to an alternate education service provider.

- 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 Assistance Listing # 93.600.

Consequently, ISD agrees to comply with the Terms of the Grant and Relevant HHS Directives, and with the Special Provisions, attached to and included in this Agreement as **Attachment III**.

### IV. PAYMENT

- 4.1 ISD 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 requested reimbursed costs must be consistent with the terms and provisions of the approved budget line items described in **Attachments II** in this Agreement, except in cases

where (a) the budget for that budget period remains the same, a subsequent budget revision has been approved in accordance with the procedure set forth in Section 3.3 (“budget revision”), or (b) there is an increase or decrease to the budget for that budget period, an amendment has been approved pursuant to Section 24.1 of this Agreement (“budget amendment”). Approved budget revisions and amendments must be signed by the Director of DHS and modify the Budgets attached hereto, and in such cases ISD’s requested reimbursed costs must be consistent with the last revised, approved budget for that budget period. Approved budget revisions and amendments supersede prior conflicting or inconsistent agreements with regard to the referenced Project Budget, and all references in the Agreement to the budget will mean the budget as revised through approved budget revisions or amendments.

- (A) Revision Requests. Budget revision requests must be submitted in advance of anticipated expense(s). City will not accept budget revision requests submitted later than 30 days prior to the end of the budget period (e.g., December 31), unless ISD requests a reasonable extension before that date, which request will not be unreasonably denied by City.
- (B) Disallowed Costs. City will not be liable for any cost of ISD not eligible for reimbursement as defined within the Agreement. ISD will remit to City within ten (10) ISD business days after City makes the request for remittance or City may offset against future funding obligations by City.
- (C) Periodic Review. City will conduct periodic reviews of ISD’s program expenditures to determine whether ISD is on pace to utilize program funds received. If City determines ISD is not on pace, City may request ISD 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, ISD 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. ISD 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) ISD 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) ISD’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 ISD is notified that an advance payment check is available from City.
- (B) ISD 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 ISD’s total deposits in said bank exceed the FDIC insurance limit, ISD must arrange to automatically have the excess collaterally secured. A written copy of the collateral agreement must be obtained by ISD from ISD’s banking institution, maintained on file and be available for City monitoring reviews and audits. Advanced funds that cause ISD’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 ISD’s financial stability. ISD will maintain a financial management system to account for periodic, or a lump sum, deduction from reimbursements.

4.3 Requests for Payment. ISD will submit to City no later than the forty-fifth (45<sup>th</sup>) day after the end of every month a monthly Request for Payment which City will pay within 30 calendar days of receipt, so long as the Request is in the form prescribed by City, which details the specific costs (by category and by program account number) 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, as well as the number of children enrolled for the same time period. The Director of DHS may require ISD’s submission of original or certified copies of invoices, cancelled checks, ISD’s general ledger and/or receipts to verify invoiced expenses.

- 4.4 Closeout. No later than the forty-fifth (45<sup>th</sup>) day after the end of each PBY, Agreement expiration, or date of early termination, if applicable, ISD will submit to City a full accounting of the Program Income, Non-Federal Share funds received, and total program costs incurred, along with all Requests for Payment.
- (A) Overpayment. ISD agrees to reimburse the City for any ISD overpayment based upon reconciled adjustments resulting from ISD'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 45 days after the end of that PBY (e.g., March 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. These deadlines may be adjusted only if ISD receives written authorization from City allowing ISD 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 ISD of the need for reimbursement.
- 4.5 ISD agrees that City will not be obligated to any subcontractors or third-party beneficiaries of ISD.
- 4.6 Financial Management System. ISD must maintain, and City may review at any time during this Agreement, a 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" and 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, ISD 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. ISD must adequately safeguard all such assets and ensure that they are used solely for authorized purposes. ISD 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 ISD;
  - (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). ISD

will maintain records and meet necessary requirements under Generally Accepted Accounting Principles [GAAP]; and

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

Additionally, City may require ISD to use any and all of City's accounting or administrative procedures that are in conformity with Generally Accepted Accounting Principles for state account standards in Texas in the planning, controlling, monitoring and reporting of all fiscal matters relating to this Agreement. Should a conflict exist between the Parties' accounting procedures, ISD must use the stricter of the procedures.

- 4.7 ISD agrees that ISD costs or earnings claimed under this Agreement may not be claimed under another contract or grant from another agency, organization, business entity or governmental entity.
- 4.8 Cost Allocation Plan. ISD 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. ISD will provide to City prior to the beginning of each budget period and on a quarterly basis (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 ISD'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 DHS, if ISD obtains Program Income under this Agreement, ISD will either (a) be required to return Program Income funds to City through DHS, or (b) upon prior written approval by the Director of DHS, ISD may be permitted to retain such funds to be:
  - (A) used to further eligible Project objectives, in which case proposed expenditures must first be approved by City; or
  - (B) deducted from the total Project cost for the purpose of determining the net cost reimbursed by City.

If the Director approves ISD to retain Program Income, ISD must submit all reports as and when required by DHS.

- 5.2 Notice & Statement of Expenditures. ISD 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 Program Income and (ii) submit, within thirty (30) calendar days of the activity that generates Program Income, a statement of expenditures and revenues, understanding the statement is subject to audit by DHS. Failure by ISD to report Program Income as required is grounds for suspension, cancellation, or termination of this Agreement.
- 5.3 Fees or Donations. ISD is prohibited from charging fees or soliciting donations and is prohibited from inviting or contracting with vendors who would charge fees or solicit donations from Head Start participants and their parents in any Agreement-funded project without the prior written approval of the Director of DHS. However, ISD may engage in general school activity that is not specifically targeted at Head Start families.
- 5.4 ISD will include this entire Article in all of its subcontracts involving income-producing services or activities.

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

- 6.1 ISD 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 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 ISD will not use funds awarded from this Agreement as matching funds for any federal, state or local grant without the prior written approval of the Director of DHS.
- 6.4 City will have the authority during normal business hours to make physical inspections of all operating facilities occupied by ISD for the administration of this Agreement and to require physical safeguarding devices such as locks, alarms, security / surveillance systems, safes, fire extinguishers, sprinkler systems, etc. as reasonably necessary, to safeguard children, property and/or equipment.
- 6.5 ISD's Board. ISD will provide to DHS, and provide updates when changes occur, the following related to ISD's governing body ("Board"), including but not be limited to:
- (A) Roster of current Board Members and updates (name, role, term, telephone number, and board e-mail address);
  - (B) Annual schedule of anticipated board meetings;
  - (C) Board agendas to be submitted prior to each meeting, ISD'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.
- ISD's Board will further:
- (A) ensure it is in full compliance with Head Start requirements regarding governance, management, and programmatic operations; and
  - (B) seek and obtain City's written approval before making any material revisions in ISD's Head Start program that violates or conflicts with (1) City's refunding application to HHS, (2) the Terms of the Grant, (3) the terms of this Agreement or (4) the approved locations of ISD's Head Start Centers.
- 6.6 Employee Integrity. If ISD's Board and management staff has no Employee Integrity Policy, it must adopt and approve one, to include internal program management procedures, and require all staff to abide by it and 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 by ISD, or ISD's contractor, and specify any other consequences to ISD'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, ISD will comply with DHS's **required** revision(s).
- 6.7 Confidential Information.
- (A) Unless disclosure is authorized by the City or is required by the Attorney General for the State of Texas, ISD 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. ISD 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, ISD will give the Director of DHS prior written notice that disclosure is required with a full and complete description regarding such requirement.

(C) ISD 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 ISD'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, ISD will return to City upon request all copies of materials related to the Project, including the Confidential Information and subject to ISD'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.

6.8 Check writing and Handling Procedures. ISD agrees to comply with the following:

- (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. ISD agrees that the aggregate amount of petty cash reimbursement will not exceed \$500.00 for any given calendar month during the term of this Agreement unless ISD 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 ISD must be deposited into the appropriate bank account immediately or by the next ISD business day after ISD'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, ISD will adopt and comply with a policy requiring no less than two (2) signatures of authorized representatives of ISD on each check to reduce the risk of fraud, theft, or embezzlement. ISD agrees that City's reimbursement is subject to compliance with this provision.

6.9 Publicity. This Section is applicable to all project 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 ISD. ISD 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 ISD will be mutually agreed to by the Parties in advance. ISD 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 services provided by ISD 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 ISD's services must note services are operated on a non-discriminatory basis.

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

6.10 Travel. ISD 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.

ISD 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 ISD.

6.11 Facilities. All ISD facilities at the approved sites will meet applicable federal, state, and local safety standards. ISD will keep the facility, including campus and classroom furniture and equipment, kitchens, restrooms, and other areas utilized for Head Start services in good, clean, safe, and reasonable operating condition and repair, and in compliance with the HSPPS and any other direction received from HHS.

Upon commencement of this Agreement and upon request, ISD will provide City an up-to-date copy of any leases or other agreements for facilities used to provide services to children enrolled in the Head Start program and funded pursuant to this Agreement. City will be allowed to inspect the facilities and the licensing and/or certification documents relating to the facility during ISD's normal operating times. If facilities are found to be out of compliance with Head Start Health and Safety standards, ISD notify City via a monitoring report with photographs when possible, and

- (A) if an internal repair is necessary at any Head Start Centers/Campus, submit a work order request and address each problem within 10 ISD business days from the time the need for repair is brought to the attention of ISD;
- (B) if 10 days is not practicable, notify City in writing of the timeline for projected completion; and
- (C) follow up with City on all Health and Safety non-compliances immediately following the 10 ISD business days for corrective actions to be completed and submit a follow-up report stating either completed or not completed.

6.12 Debarment.

- (A) ISD 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.
- (B) ISD will provide immediate written notice to City, in accordance with the notice requirements of Article XXVI, if, at any time during the Term of this Agreement, including any renewals hereof, ISD learns that its certification was erroneous when made or has since become erroneous.

6.13 Timeframe. In this Agreement, wherever ISD is required to perform an action within a specified timeframe, ISD may request additional time to perform. City will give ISD's request due consideration whenever reasonably practicable, unless immediate compliance is required or needed.

## **VII. AUDIT**

7.1 If ISD expends \$750,000 or more of City or federal dollars combined, whether provided under this Agreement or under multiple City contracts, then the ISD must complete an independent audit and submit the audit report to [DHSHeadStartInvoices@sanantonio.gov](mailto:DHSHeadStartInvoices@sanantonio.gov) within the earlier of:

- (A) 30 calendar days after receipt of the auditor's report(s);
- (B) 9 months after the end of ISD's fiscal year; or
- (C) 9 months after the expiration or early termination of this Agreement.

ISD must furnish to DHS at [DHSHeadStartInvoices@sanantonio.gov](mailto:DHSHeadStartInvoices@sanantonio.gov) 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.

If ISD is notified of federal, state, or local entities that have conducted program reviews and/or audits of the ISD or its programs of any findings about accounting deficiencies, or violations of ISD's financial operations, a copy of the notification, review, investigation, and audit violations report must be forwarded to DHS within 10 calendar days of receipt of the report.

- 7.2 If ISD expends less than \$750,000 of City or federal dollars combined, whether provided under this Agreement or under multiple City contracts, then the Contactor must complete and submit an audited financial statement(s) within the earlier of:

(A) 9 months following the end of ISD'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 ISD 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.

- 7.3 If ISD receives or expends more than \$750,000 in federal funds from the City, then an audit must be conducted in accordance with the Single Audit Act Amendments of 1996, the State of Texas Single Audit Circular, and U.S. Office of Management and Budget Circular (Uniform Guidance). ISD shall submit copies of its annual independent audit report, and all related reports issued by the independent certified public accountant within the earlier of 30 days after receipt of the auditor's report(s), or 9 months after the end of the audit period, unless a longer period is agreed to in advance by the Federal cognizant or oversight agency for audit to the Federal Audit Clearinghouse in Jeffersonville, Indiana.

ISD 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 (voice) or 1-888-222-9907 (toll free) or 1-800-253-0696.

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

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

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

- 7.4 The City may conduct or have an audit conducted or conduct a review of the use of funds and documentation associated 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 personnel as designated by the City, may perform such audit(s) or reviews. ISD must make available to City all accounting and Project records.

- 7.5 ISD, during normal business hours, and as often as deemed necessary by City and/or the applicable state or federal governing agency or any other auditing entity, must make available the books, records, documents, reports, and evidence with respect to all matters covered by this Agreement for a minimum period of three (3) years or whatever period is determined necessary based on the Records Retention guidelines established by applicable law for this Agreement. The records shall be maintained for the required retention period, except if there is pending litigation or if the audit report has not been accepted, then the ISD shall retain the records for as long the City requires retention. The auditing entity shall have the authority to audit, examine and make excerpts, transcripts, and copies from all such books, records, documents and evidence, contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Agreement.

- 7.6 If an audit or examination determines that the ISD has expended funds or incurred costs which may be inconsistent with this Agreement or if the applicable state or federal governing agency raises compliance issues, then ISD shall be notified and provided an opportunity to address the issues.
- 7.7 City shall provide ISD written notification if reimbursed expenses or charges are disallowed by the City because of review or audit findings. DHS may, in its sole discretion, elect to either 1) deduct the disallowed amounts from subsequent reimbursements, or 2) require ISD to fully refund the disallowed amounts by cashier's check or money order within ten days after receipt of written notification. ISD may not reduce a Project's expenditures if the City opts to deduct disallowed expenses or charges from future reimbursements.
- 7.8 Any expenses for the collection of delinquent debts owed by ISD are the sole responsibility of the ISD and shall not be paid from any Project funds.
- 7.9 If the City determines, in its sole discretion, that ISD is in violation of the above requirements, the City shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the ISD pay for such audit from non-City resources.

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

- 8.1 ISD will submit to DHS any and all reports as may be required of ISD by HHS or City. ISD must incorporate and use a City-approved tracking or information system, such as ChildPlus, for the delivery of comprehensive Head Start services, to include current, accurate and complete client data, and collect, input and update all data as required by DHS Head Start Program policies and procedures and as 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, ISD 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.* ISD 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 ISD 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. ISD must maintain all appropriate state and local licenses, permits, certifications and approvals necessary to perform the work hereunder and the operation of ISD's facilities and programs, and will notify the City of compliance prior to commencement of this Agreement. ISD must report to City all notices served, violations found, or complaints filed with regard to licensing, or lack thereof within one (1) ISD business day of receipt of notice from the authority indicating the violation or noncompliance, as the case may be, and shall take all necessary steps to cure it. ISD 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 ISD with the City.
- 8.5 Critical Incident Reporting. ISD must establish and implement administrative procedures to respond to health emergencies, and with which all Head Start staff should be familiar and trained. These procedures 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 ISD 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 Head Start child while in the Program, ISD will contact City's designated representative immediately, but no later than 24 hours, for the purpose of notification of the incident. ISD must contact City's designated representative immediately whether or not the incident is fully investigated by ISD. If ISD is unable to reach City's designated representative, ISD will leave a verbal message or written message via

e-mail notifying City that ISD is attempting to notify City of an incident. ISD further agrees to immediately notify the parent of a Head Start 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 program 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, ISD will submit all final client reports and all required deliverables to City. ISD agrees that in conjunction with the submission of the final report, ISD 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. ISD must maintain and make available to DHS upon request, all 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 Head Start 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, ISD agrees to maintain all Agreement and Grant-related records or documents for at least five(5) years from the date of City'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, ISD agrees to maintain the Records until completion of the latest requisite time period.
- 8.8 Access. ISD will make available to City or HHS, upon appropriate notice and unless otherwise prohibited by law, books, records, reports, documents, papers, policies and procedures (collectively "Documents") as may be necessary for audit, examination, excerpt, transcription, and copy purposes, for as long as the Documents are retained. This right also includes timely and reasonable access to ISD facility(ies) and personnel for the purpose of assessing safety and suitability. ISD will, upon request, transfer certain records or 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, and subject to ISD's right to use "Educational Records" as that term is understood under the Family Educational Rights and Privacy Act of 1974 ("FERPA") (20 U.S.C. § 1232g; 34 CFR Part 99).
- 8.9 Monitoring.
- (A) At such times and in such form as may be required by DHS, ISD agrees City and/or HHS may evaluate, through monitoring, reviews, inspection or other means, the quality, suitability, and timeliness of services delivered under this Agreement and to assess ISD'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.
- (1) Interviews. ISD 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.
- (2) 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, act as volunteers or contractors, have passed, so long as the statement includes the name(s) of the staff, volunteer, contractor member(s) checked, and the date(s) performed. If, at any time, HHS informs City or ISD that such written statement is unsatisfactory, ISD 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 and with DHS policies and procedures for the Agreement term. City reserves the right to make unannounced visits to ISD 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 ISD's

education program. ISD 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 ISD's rules and procedures under ISD's Board or administrative policies or procedures.

- 8.10 Findings. ISD understands that City will timely inform ISD of the findings of any review or monitoring, specifically any default under the Agreement or deficiencies in performance. City will inform ISD in writing of program strengths and weaknesses, assist ISD 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 ISD's funding by the cumulative amount of time after the deadline that findings were not corrected, or move children out of ISD's program.
- 8.11 5-Day Timeline. Unless otherwise stated, all information requested by DHS will be submitted by ISD within seven (7) ISD business days of the request via electronic communication or other form of written correspondence. Should ISD fail to deliver the required information or delivers incomplete requested information, City may suspend reimbursements to ISD until the information is delivered to City. Furthermore, ISD ensures that all information contained in all required reports or information submitted to City is accurate.
- 8.12 Local Government Records. In accordance with Texas law, ISD 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, ISD agrees that no such local government record produced by or on the behalf of ISD pursuant to this Agreement will be the subject of any copyright or proprietary claim by ISD; however, ISD will be entitled to maintain the confidentiality of Educational Records and to use such records for educational purposes.

With the exception of student records, ISD 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. The parties agree that Educational Records created pursuant to this Agreement will be maintained and utilized by ISD as required by law. ISD further agrees to turn over to City all such records upon termination of this Agreement, unless otherwise prohibited by law. ISD 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, or as may be required or permitted by ISD due to the record being an Educational record" under FERPA. DHS will be notified of such request in accordance with this Article.

- 8.13 If ISD desires to copyright any program material or to permit any third-party to do so, ISD must obtain City's prior written approval and must appropriately acknowledge City's support in any such materials.
- 8.14 Participation. ISD must make time and resources available to support:
- (A) participation by ISD in meetings with -City staff for community assessment, self-assessment, strategic planning, Policy Council, development of training and technical assistance plans, communication and program development activities;
  - (B) participation in technical assistance trainings and service enhancements developed by City and the Head Start training and technical assistance service providers, as well as other Head Start trainings that may be developed by relevant federal or state agencies;
  - (C) an appropriate level of attendance of ISD's program management team and parent committee meetings at national, regional and/or state Head Start conferences/trainings; and

(D) collaboration with City staff to elect one or more parent members from Center locations to serve on City's Head Start Policy Council.

ISD, in collaboration with Family and Community Support staff, will ensure that resources are made available for enrolled parents to participate in Parent Committee meetings.

8.15 Program Services Reporting

ISD shall submit program information reports as requested by the City, unless otherwise specified below, which may include but not be limited to:

- (A) Daily Classroom Attendance Report
- (B) Classroom/Site Set up Program Design Report
- (C) Number of meals and snacks served to children enrolled in the program by the 5<sup>th</sup> of every month.
- (D) United States Department of Agriculture (USDA) food count for reimbursement received for children to be submitted on a monthly basis
- (E) Student Assessment Data Analysis Report
- (F) School Readiness Plan of Action update, due bi-annually
- (G) Child Development Outcomes Progress Report based on ISD's assessment tool
- (H) Reports showing employee credentials
  - (I) List of personnel serving to satisfy ISD's in-kind non-Federal Share requirement
  - (J) Staffing plans
- (K) Annual Reports showing the wages of each employee
- (L) Any other reports when deemed necessary and requested by City

## IX. INSURANCE

- 9.1 The ISD and the City shall maintain a commercial insurance or a self-insurance fund for liability claims and causes of action to meet their statutory obligations for their employees' acts, negligence and/or malpractice.

## X. LIMITED LIABILITY

- 10.1 **ISD 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. THIS ARTICLE INTENTIONALLY LEFT BLANK

## XII. APPLICABLE LAWS

- 12.1 ISD, 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 to such laws, rules, regulations, policies and procedures as they may be promulgated. Failure to comply could subject ISD to suspension of payments, debarment or suspension actions. Should City need to abide by some other law, rule, regulation, policy or procedure, such requirement will be made known to ISD upon consideration of ISD's request for additional time.

- 12.2 ISD 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 federal, state, or other granting entities. ISD agrees to comply with all laws, ordinances, codes, rules, regulations, policies, and procedures, including licensing and accreditation standards applicable to the funds received by ISD 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 ISD 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 TPIA (i.e., an open records request) for information within ISD's possession pursuant to this Agreement, ISD will forward the requested documents to City within two (2) ISD business days of ISD's receipt of the written request. If the requested information is confidential or may be kept confidential pursuant to state or federal law, ISD will submit to City the list of specific statutory authority mandating and/or authorizing confidentiality no later than three (3) ISD business days of ISD's receipt of the request. The Parties will cooperate with each other to preserve confidential information or records that may be excluded from disclosure under FERPA) and/or the Texas Public Information Act; and the parties will coordinate efforts to seek any required Attorney General decision for the protection of such information from release.
- 12.3 Additionally, ISD shall comply with the following:
- (A) If using funds under this Agreement, expenditures shall be made in accordance with:
    - (1) Texas Local Government Code Chapter 252 pertaining to purchasing and contracting authority of municipalities; and
    - (2) Texas Government Code Chapter 2254 pertaining to Professional and Consulting Services.
  - (B) Drug-Free Workplace. ISD 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:
    - (1) worker's compensation;
    - (2) unemployment insurance;
    - (3) timely deposits of payroll deductions;
    - (4) 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.;

- (5) Occupational Safety and Health Act regulations; and
- (6) Employee Retirement Income Security Act of 1974, P.L. 93-406.

12.4 ISD further agrees to:

- (A) comply with all standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. §§1251-1387), as amended and as applicable. ISD 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, ISD 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 Additional OMB Provisions attached to and included in this Agreement as **Attachment VI**, 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. ISD 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, and the relevant provisions in **Attachment VI**, which provides, in part, that each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours, that work in excess of the standard work week be compensated at a rate at least one and a half times the basic rate of pay, and that no laborer or mechanic must be required to work under conditions which are unsanitary, hazardous or dangerous.
- (I) 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 ISD 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 ISD 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 ISD 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 in **Attachment VI** 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 **Non-Discrimination.** ISD 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, 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, ISD agrees to comply with Executive Order 11246, entitled "Opportunity", as amended by Executive Orders 13665 and 11375, and as supplemented by regulations at 41 C.F.R. Part 60. Additionally, ISD 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; and
  - (H) All applicable regulations implementing the above laws.
- 12.6 **HIPAA.** Subject to obligations to maintain confidentiality under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the HIPAA Business Associate Agreement, attached to and included in this Agreement as **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 ISD 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 ISD. ISD 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 ISD'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.
- 12.7 **Taxes and Fees.** ISD warrants that any and all taxes that ISD 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.** ISD 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 ISD 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.** ISD 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. ISD 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:
- (1) 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
  - (2) have any direct or indirect interest in this Agreement 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:
- (1) a City officer or employee; his or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
  - (2) an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) ten percent (10%) or more of the voting stock or shares of the entity, or (ii) ten percent (10%) or more of the fair market value of the entity; or
  - (3) 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, ISD warrants and certifies, and this Agreement is made in reliance thereon, that by contracting with the City, ISD does not cause a City employee or officer to have a prohibited financial interest in the Contract. ISD 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:
- (1) 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
  - (2) 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 ISD or ISD's employee working in the program. In the case of a ISD's employee being the subject of the notification, ISD will have the opportunity to cure via the immediate termination and/or removal of the employee from the 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:
- (1) not sooner than 120 days following the day on which notice is sent but not later than the end of ISD's fiscal year, unless earlier terminated under any other provision herein; or
  - (2) of termination to be the end of the PBY.
- 14.2 ISD will be entitled to receive just and equitable compensation for any work satisfactorily completed prior to any termination date. Satisfactory completion will be reasonably determined by City, and its decision will be final. If compliance falls under HHS authority to review, or if a dispute arises with regard to interpretation

of regulations or law as it applies to this Agreement, ISD may request that City secure an interpretation or opinion from HHS in order to assist in resolution of the dispute and City will request it.

- 14.3 In addition to 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 ISD for failure to comply with the terms and provisions of this Agreement. Specifically, at the option of City, ISD may be placed on probation during which time City may withhold reimbursements when it determines that ISD is not in compliance with this Agreement. ISD 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 ISD is discharged or leaves employment with ISD, then ISD 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 ISD be debarred by the federal government or City pursuant to a debarment policy currently existing or hereafter adopted, the debarment may be grounds for termination.
- 14.6 ISD must not incur new obligations after the effective date of termination and will cancel as many outstanding obligations as possible. ISD will submit to city all required reports including a final financial statement which is a statement of all expenditures incurred and liquidated under this agreement within the period of performance if such costs are properly documented, allowable, and within the approved budget, and. its payment constitutes full and complete reimbursement for all of ISD's performance under this Agreement.

## **XV. PERSONNEL**

- 15.1 ISD 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 program operations. ISD must ensure that, at a minimum, ISD's program staff is responsible for each program management function listed in Attachment I.
- 15.2 List of Employees. ISD agrees to provide City with the names and license registration of any employee(s) of ISD regulated by State law whose activities contribute towards, facilitate, or coordinate the performance of this Agreement.
- 15.3 Compliance Report. At the beginning of the Agreement Term and each PBY thereafter, ISD will submit to City a report which specifically (a) lists the number and percentage of classroom personnel in its Center-based program having child development associate ("CDA") credentials or associate, baccalaureate or advanced degrees including teaching certificates; (b) states the names and license registration of the employee; and (c) describes ISD's compliance with the goals described in this Article.
- 15.4 Wages & Salaries.
  - (A) ISD understands City will periodically perform its own wage and salary comparison and issue the results to ISD. ISD agrees that City has no obligation to reimburse ISD employees' wages that exceed the average rate paid to persons providing substantially comparable services in the area. For purposes of this Agreement, when applicable, City will accept the wage information set forth in the most recent study issued by, the Texas Association of School Boards. Although City may consider factors such as training and experience as affecting compensation levels, City has the sole and absolute authority to determine the rate of City's logical and reasonable reimbursement, and its decision shall be final. This does not preclude ISD from compensating its employees above the rate City will reimburse, so long as the additional compensation is not charged to the Agreement budget.
  - (B) ISD agrees that in accordance with 42 U.S.C. §9848, no portion of Agreement funds may be used to pay an employee if compensation (including Non-Federal funds) to that employee exceeds \$179,700.00, or the currently authorized maximum under the law. ISD further agrees that all employees must devote to

each program the time proportionate to the percentage of their compensation funded through the Head Start Grant (e.g., employees who are funded at one hundred percent (100%) through the Grant must devote one hundred percent (100%) of their time to support the program). ISD agrees to submit employee certifications if requested by City or HHS.

- 15.5 Orientation. Each program year, and at the point of a new hire, ISD 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 (ChildPlus) must be completed and provided to the City; and (iv) ISD must maintain orientation sign-in sheets and agendas for City review.
- 15.6 Professional Development. To assist staff in acquiring or increasing the knowledge and skills needed to provide high-quality, comprehensive services within the scope of their responsibilities, ISD will:
- (A) create and implement, in consultation with each of its employees, a Professional Development Plan for all program employees who provide direct services to children;
  - (B) each PBY, require teaching staff and designated staff to (i) attend no less than 15 clock hours of program-specific professional development each program budget year.
  - (C) Each PBY, require staff to attend ongoing training in all state, local, and federal health, safety and childcare requirements to ensure the safety of children in their care. and
  - (D) participate in City's professional development trainings, if applicable.
- 15.7 Qualifications.
- (A) At a minimum, ISD agrees that all staff hired or funded under this Agreement must meet qualifications.
  - (B) ISD agrees that for staff not meeting the necessary qualifications, ISD will notify City of the lacked education or training for City approval.
- 15.8 Disciplinary Action. ISD will promptly notify City of any disciplinary actions related to children affecting all personnel funded under this Agreement.
- 15.9 Vacancies. If, for any reason, a vacancy exists for:
- (A) a management or supervisory position: a replacement must meet 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: ISD must hire a replacement meeting the necessary qualifications within 45 calendar days, or employ a substitute meeting the necessary qualifications.
- 15.10 Transfers. ISD will promptly notify DHS of any transfer of personnel funded under this Agreement.
- 15.11 Complaints & Grievances. ISD 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.
- 15.12 Job Descriptions. ISD 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.
- 15.13 Relatives. Any management or other supervisory personnel may not supervise a spouse, parent, child, sibling, or in-laws of the same relationship who are in any capacity supported through Agreement funds.

15.14 Summer months – ISD must ensure members of its management team and other necessary staff provide uninterrupted services throughout the Agreement term, including the summer months, to include adequate planning, coordination and performance of critical program activities. “Critical program activities” include, but are not limited to, ISD’s ERSEA responsibilities for each program.

15.15 Staff – ISD understands the Head Start Act requires grant recipients and their contractors, if any, ensure and demonstrate upon request that all staff funded by the grant have the knowledge, skills, and experience they need to perform their assigned functions responsibly; therefore, ISD will establish and maintain an organizational structure that supports the accomplishment of program objectives, addresses the major functions assigned to each staff position, and provides evidence of adequate mechanisms for supporting staff and consultant supervision and support to ensure the effective oversight of Head Start program operations.

(1) Management Team, at a minimum, ISD must ensure that ISD’s Early Childhood Education Director and all positions filling the following management roles, are assigned and perform, at a minimum, the following, and to collaborate with City and City’s other service providers:

- i. Coaches – must have a minimum of a baccalaureate degree, regardless of hire date, in early childhood education or a related field as well as adequate training and experience in adult learning and in using assessment data to drive coaching strategies; create a research-based coaching plan for all education staff, to include teachers and classroom staff; assess staff strengths and needs, including a method to determine staff in need of intensive coaching; and document of coaching provided.

If hired after November 7, 2016, the following roles must have a baccalaureate degree, preferably related to the role in which they serve:

- ii. ISD’s Early Childhood Education Director – as the ISD’s main point of contact with the City, must have demonstrated skills and abilities in a management capacity relevant to human services program management and has ultimate responsibility to ensure the children enrolled in ISD’s Head Start program are provided (by ISD or a collaborating Head Start service provider) the full array of services to which the children and families are entitled under the Terms of the Grant; must monitor all fiscal matters relating to ISD program services and this Agreement;
- iii. Education and Early Childhood Development Coordinator – manages staff including those who serve as education / instructional specialists who must also have a baccalaureate degree, and the ability to offer assistance to other teachers in the implementation and adaptation of curricula to the group and individual needs of children in the classroom; ensure teachers and teaching staff meet required qualifications; and training and experience in theories and principles of child growth and development and early childhood education and family support.
- iv. Family and Community Support Services Coordinator – manages staff including those who serve as family and community support specialists and –support services staff; must have training and experience in field(s) related to social, human, or family services, and in working with children and families in poverty and/or with complex needs; supports the provision of parent engagement activities and events at Head Start sites; and will promote the Parent, Family, and Community Engagement Framework as defined in the HSPPS; and
- v. Disabilities Coordinator – manages disabilities services; must have training and experience in securing and individualizing the services needed for children with disabilities.

In addition to the baccalaureate degree above, these roles must be appropriately licensed or certified professional with knowledge and experience in serving young children:

- vi. Health Services Coordinator – manages health services (including medical and dental health) and staff who serve as Head Start health data clerks; must have training and experience in public health, nursing, health education, maternal and child health or health administration; follows established protocols to ensure the full array of all health services;

- vii. Mental Health Services Coordinator– manages staff including those who serve as Head Start Behavior Specialists who must also have a baccalaureate degree; must have training and experience in serving early childhood-aged children and families in poverty experiencing social-emotional or mental health issues; advocates for the mental wellbeing of students and families in the program; and supports the Early Childhood Mental Health Consultation Model as defined in the HSPPS; and
- viii. Nutrition Services Coordinator – manages child nutrition services and compliance with Child Adult Care Food Program (“CACFP”); must be registered dietitians or nutritionists.

The following positions must have relevant knowledge, training and experience as appropriate for the role in which they serve:

- ix. ERSEA Coordinator – manages ERSEA services and staff including those who serve as ERSEA data clerks for the program, and must have knowledge, training, and experience in the ERSEA responsibilities of the required guidelines;
  - x. Monitoring Coordinator – manages staff including those who serve as program monitoring specialists and as compliance monitors must have knowledge, training, and experience with the required guidelines and monitoring of a Head Start program with the ultimate goal to further develop knowledge of and compliance with Head Start content areas; must establish and maintain an ongoing monitoring system and conduct internal monitoring of program services and operations throughout the program year per the required guidelines; must notify City when possible or actual lack of compliance with said guidelines and/or this Agreement is identified; must ensure the monitoring system includes an ISD-developed monitoring instrument or checklist developed to enable monitoring of all service content areas; and
  - xi. Environmental Health and Safety Coordinator – manages safe environments and facilities must have adequate training and experience in safe environments and facilities as related to the required guidelines and other applicable federal, state, and local guidance.
- (2) Classroom Staff. ISD agrees that Head Start guidelines and City policy require that ISD staff each Head Start classroom with two teachers, or one teacher and a teacher’s aide, at all times; and to monitor the continued staffing and validity of the following qualifications throughout the course of this Agreement.
- i. Teachers. ISD must ensure, and demonstrate upon request, that all of the teachers staffing Center-based program classrooms have (a) a baccalaureate or advanced degree in early childhood education; or (b) a baccalaureate or advanced degree with coursework equivalent to a major relating to early childhood education, with experience teaching preschool-age children or (c) a license or certification that qualify a teacher to teach preschool aged children within the State of Texas.
  - ii. Teaching Assistants. ISD must ensure, and demonstrate upon request, that all teaching assistants in the HSpK staffing Center-based program classrooms have a (a.) CDA credential or are enrolled in a program to be completed within two years of hire; or (b) Technical Certificate in Early Childhood Studies or Early Childhood Development that meets or exceeds the requirements for a CDA credential; or (c) Associate or baccalaureate degree (in any area) or be enrolled in a program that will lead to degree within two years of hire.

## **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. ISD 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 ISD through a City-paid lease agreement with option to buy will be considered the same as though purchased outright with Agreement funds.

16.2 Disposal, Loss, and Transfer.

- (A) ISD 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 ISD 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.*

16.3 Records. ISD will maintain accurate and complete records on all equipment and property obtained with Agreement funds to include:

- (A) A description of the equipment, including the model and serial number or other identification number, if applicable;
- (B) The date of acquisition, cost and procurement source, purchase order number, and vendor number;
- (C) An indication of whether the equipment is new or used;
- (D) The vendor's name (or transferred from);
- (E) The location of the property;
- (F) The property number shown on the property tag ("City of San Antonio Head Start Program"); and
- (G) A list of disposed items and disposition.

16.4 Inventory Tracking System. ISD will maintain a system for tracking, on an ongoing basis, inventory of equipment and supplies purchased with Head Start funds that either (i) has a purchase price of \$5,000.00 or greater; or (ii) meets other criteria as City may prescribe (and notify ISD as appropriate). Upon request, ISD 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 ISD's inventory tracking system. ISD will provide DHS an annual inventory of assets purchased with funds received through City.

16.5 Insuring and Reporting. ISD:

- (A) is fully and solely responsible for the insuring (including against fire), safeguarding, maintaining, and reporting of lost, stolen, missing, damaged, or destroyed equipment/property purchased or leased with Agreement funds;
- (B) 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; and
- (C) 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 ISD.

16.6 ISD 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. For equipment, property or supplies purchases in the amount of \$5,000 or greater or cumulative purchases in the amount of \$100,000 or greater, ISD must obtain prior approval from DHS. ISD will not split the purchase of a line item with a value greater than the preceding thresholds in order to avoid obtaining approval from DHS.
- 16.8 Third Party Beneficiary. ISD agrees that City is the intended third-party beneficiary of any and all facility leases with third parties to which ISD is or becomes a party in connection with the approved program sites listed in Exhibit I-A to Attachment I, or as a consequence of this Agreement. As such, ISD will use its best efforts to execute an acknowledgment prepared by City that City is an intended third-party beneficiary of such lease. ISD will honor all of its material obligations under any and all such leases. ISD will stay in good standing under any and all leases and ISD will immediately notify City in writing in the event of any breach or alleged breach of any lease that could result in its termination. ISD will submit to City for review and approval all non-disturbance, subordination and similar agreements it is requested to execute in connection with any such lease. If an event gives rise to a right of first refusal in favor of ISD under any such lease, ISD will promptly notify City of the event and allow City to step into ISD's shoes as tenant under the lease in order to exercise the right.
- 16.9 Ownership of Intellectual Property. The Parties agree that the Project will be and remain the sole and exclusive proprietary property of City. The Project will be deemed a "work for hire" within the meaning of the copyright laws of the United States, and ownership of and rights in the Project will be solely vested in City. ISD conveys to City all rights in and to the Project; 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; and 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"). All Intellectual Property Rights in the Project will be solely vested in City. As owner of the tangible and intangible intellectual property, City may reproduce, publish, authorize others to reproduce or publish or otherwise use, such material subject to confidentiality obligations as may be required by federal and /or state law for Educational Records. ISD agrees to execute all documents reasonably requested by City to perfect and establish City's right to the Intellectual Property Rights. If City is unable, after reasonable effort, to secure ISD's signature on any documents relating to Intellectual Property Rights in the Project, ISD hereby irrevocably designates and appoints City and its duly authorized officers and agents as ISD's agent and attorney-in-fact, to act for and in ISD'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 with the same legal force and effect as if executed by ISD. Nothing is intended nor construed to require ISD to transfer any ownership interest in ISD's best practice and benchmarking information.

## **XXVII. THIS ARTICLE INTENTIONALLY LEFT BLANK**

## **XXVIII. 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, pursuant to City Ordinance No. 2020-10-29-0766, so long as (i) in accordance with all Head Start regulations and laws, (ii) approved by the City Attorney's Office, and (iii) the total cumulative of all service provider agreements, including amendments, do not exceed City's Program Budget(s) for the applicable budget year.
- 18.2 ISD's Superintendent will have the authority to execute an amendment of this Agreement to the same extent as the Director of DHS without the necessity of seeking any further approval by ISD's Board of Trustees, if not otherwise prohibited by federal or state law or regulation or prohibited by ISD's policies, rules or Board directives.



## XXIX. SUBCONTRACTING AND ASSIGNMENT

### 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, subcontract must be by written agreement; subcontractor may not be presently debarred, suspended or proposed for debarment, declared ineligible or voluntarily excluded from participation in any state or federal program; and subcontracting methods must meet City requirements; subcontractor compliance must be the responsibility of the ISD to monitor.
- (B) ISD 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 ISD is not in compliance with said rules or standards with respect to any of its sub-contracts, then ISD 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, ISD understands and agrees that all subcontracts in excess of \$10,000 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. ISD will not assign or transfer ISD'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, any communication under this Agreement must be in writing and deemed delivered when delivered personally (with receipt acknowledged), or three (3) days after deposit in the U.S. mail, first class with proper postage, or upon receipt if sending the same by certified mail or a commercial courier service (e.g., Federal Express) at the addresses set forth below.

<u>City:</u>	<u>San Antonio Independent School District:</u>
Director, Department of Human Services	Superintendent
100 W. Houston Street, 9 <sup>th</sup> floor	514 W. Quincy
San Antonio, TX 78205	San Antonio, TX 78212

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) ISD agrees that no funds provided from or through the City shall be contributed or used to conduct political activities for the benefit of any candidate for elective public office, political party, organization or cause, whether partisan or non-partisan, nor shall the personnel involved in the administration of the Project provided for in this Agreement be assigned to work for or on behalf of any partisan or non-partisan political activity.
- (B) ISD agrees that no funds provided under this Agreement may be used in any way to attempt to influence, in any manner, a member of Congress or any other state or local elected or appointed official.
- (C) The prohibitions set forth in this Section, Political Activity, include, but are not limited to the following:
  - (1) 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;

- (2) 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;
  - (3) 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
  - (4) 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, ISD 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 DHS. ISD shall have each said individual sign a statement acknowledging receipt of the policy.
- (E) ISD agrees that in any instance where an investigation of the above is ongoing or has been confirmed, reimbursements paid to the ISD under this Agreement 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, ISD 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. ISD agrees that under no circumstances will the funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City or any other public entity, and City may conduct an audit under the audit provisions of this Agreement to make such determination. City may deem ISD ineligible for consideration to receive any future funding under this Agreement or under another existing or future agreement while any adversarial proceedings against the City remains unresolved. This Agreement may be terminated by City under the termination provisions of this Agreement should ISD have a pending lawsuit against City or file a lawsuit against the City during the term of this Agreement.
- 21.3 No Use of Funds for Religious Activities. ISD 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. ISD 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 30<sup>th</sup> 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. ISD acknowledges that the City has identified this Agreement as high profile. ISD warrants and certifies, and this Agreement is made in reliance thereon, that the individual signing this Agreement 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 Agreement. Should the signer of this Agreement violate this provision, the City Council may, in its discretion, declare the Agreement void.

## XXII. MISCELLANEOUS

### 22.1 Independent Contractor.

- (A) It is expressly understood and agreed that ISD 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 ISD, wherever located, while engaged in the performance of any work required by City under this Agreement will be considered employees of ISD 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 ISD.

### 22.2 Non-Waiver. No waiver, change, modification or discharge by either Party of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged. Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee. 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 Agreement or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved.

### 22.3 Venue. ISD and City agree that this Agreement 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 Agreement are performable in Bexar County, Texas. Any action or proceeding to adjudicate any dispute arising out of this Agreement 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 Agreement shall lie exclusively in Bexar County, Texas.

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

### 22.5 Representations.

- (A) ISD's signatory below represents, warrants and guarantees that (s)he has full legal authority to execute this Agreement on behalf of ISD and to bind ISD to all of the terms, conditions, provisions and obligations herein contained. ISD 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, ISD will provide DHS verification of the foregoing requirements.
- (B) This Agreement is based on the representation of ISD 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 ISD will be expended only for Allowable Costs under this Agreement. ISD 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 ISD's ability to provide services under this Agreement, ISD agrees to inform City of those circumstances immediately. ISD agrees that payment to ISD, 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 Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of City, 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 Agreement 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 Agreement that is invalid, illegal or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

### **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.

**CITY OF SAN ANTONIO:**

Department of Human Services

**ISD:**

San Antonio Independent School District (ISD)

\_\_\_\_\_  
Melody Woosley, Director

\_\_\_\_\_  
Dr. Jaime Aquino, Superintendent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

\_\_\_\_\_  
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 VI – Additional OMB Provisions

# ATTACHMENT I

## HEAD START SCOPE OF WORK

### 1. Summary

Required Guidelines. ISD will ensure full enrollment as soon as reasonably possible in accordance with Head Start Performance Standards and will serve the number of income, age, and categorically eligible children as indicated below. ISD will provide Head Start services in accordance with the Head Start Act, Head Start Program Performance Standards (HSPPS), the most recently updated City policies and DHS Data Entry & Benchmark Due Date Guide, and with the terms of this Agreement (together, hereinafter the “required guidelines”). ISD will operate full-day classroom(s) at City-approved sites for a minimum of 160 days and 1,380 hours of planned class operations for the Head Start grant period per HSPPS Section 1302.21 (c)(2).

Number of children in full-day care on the first day of the program year	777
Minimum number of children with disabilities	78
Service Area	Children who reside in San Antonio and are served in the Independent School District

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

- (A) ISD will have joint responsibility for the following activities: eligibility, recruitment, selection, enrollment, and attendance of children, in accordance with policies established by City. ISD will lead and work jointly with City staff conducting recruitment activities, receiving applications, determining eligibility, and completing enrollment forms for ISD’s service area. ISD will comply with the eligibility, recruitment, selection, enrollment and attendance provisions of the required guidelines and other federal guidance related to the Head Start Program, regardless of whether a child is toilet-trained.
- (B) Full enrollment. ISD will establish and maintain full enrollment of 777 Head Start eligible children in ISD’s program from the first day of operations, or as soon as reasonably possible in accordance with HSPPS. Funded enrollment means the number of children which ISD is funded to serve. To maintain full enrollment, ISD must ensure that once it determines that a vacancy exists, no more than 30 calendar days may lapse before the vacancy is filled. ISD will document its efforts to fill all vacancies within 30 calendar days.
- (1) If full enrollment is not maintained for a period exceeding 120 days, City may, at its discretion, reduce ISD's funding based on the difference between funded enrollment and actual enrollment and/or reduce the number of children for which ISD is funded in Sections 1 and 2(B) of this Scope of Work.
- (2) Waiting list. To assist in maintaining full enrollment, ISD will develop at the beginning of each program year and maintain through the year a waiting list in ChildPlus that ranks children according to the program’s selection criteria and ERSEA policies. Children on the waiting list may include children who are currently enrolled in the state Prekindergarten (Pre-K) program. If ISD is under-enrolled and does not have a waiting list, ISD must fill Head Start vacancies from state Pre-K classes. City will also have the right, in coordination with ISD, to place additional children in the ISD's program, up to the point where ISD’s program is fully enrolled.
- (C) Children with disabilities. In accordance with the Head Start Act and subject to this Subsection, ISD will ensure that a minimum of 10% of the children enrolled in ISD’s program are children with disabilities who are determined to be eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA). ISD must meet this 10% requirement by a City-specified mid-point of each program year (“mid-year”).

- (1) If ISD recognizes it is having difficulty in meeting the 10% requirement, ISD must provide City with the following:
    - (i) a written description of specific steps ISD has taken in the current program year to meet the requirement, to include efforts made to collaborate with local Early Childhood Intervention (ECI) agencies providing services under the IDEA and an explanation of why, despite these efforts, ISD was unable to meet it;
    - (ii) a written confirmation from local ECI agencies of ISD's efforts to collaborate with them; and
    - (iii) ISD's written proposed approach to reach the 10% requirement, to include a description of how ISD will work with local ECI agencies to implement the approach.
  - (2) Additionally, if ISD is unable to meet the 10% requirement by the mid-year due date, City will have the right, at its discretion, to reduce the number of children for which ISD is funded, or to place additional children with disabilities in ISD's program, in which case City and ISD will coordinate such placement.
- (D) Attendance. ISD will maintain accurate records related to daily attendance data and agrees when the monthly average daily attendance rate in a Center-based program falls below 85%, ISD will initiate and collaborate with City on the provision of absentee services in accordance with §1302.16 of the HSPPS. ISD will provide City direct access to the attendance data management system for the purposes of aggregating, analyzing, and producing program-wide reports.
- “Absentee services” include an analysis of the causes of absenteeism and the provision of additional support, which may include, but is not limited to, face-to-face meeting(s) and other direct contact with the family and child's parents/legal guardians. If a child ceases to attend, ISD must make appropriate efforts to reengage the family to resume attendance. If the child's attendance does not resume, ISD must request permission from the City to remove the child from the program.
- (E) Expulsion. Per HSPPS 1302.17, a child may not be expelled from ISD's program.

### 3. **Program Design**

ISD's Program Design must include ISD's ERSEA responsibilities consistent with City's established policies, and must prioritize children receiving two (2) years or more of Head Start services.

- (A) By March 1<sup>st</sup> of every year, ISD will submit, for approval by City, a preliminary program design for the subsequent school year. Proposed changes to the City-approved preliminary program design must also be approved by the City as soon as possible.
- (B) Not later than the first day of school, ISD will submit to City ISD's final Program Design that establishes intact and separate 3 and 4-year old classrooms and which must include, at a minimum: the total number of children enrolled, number of sites, and number of classrooms, names of teaching staff, classroom age group designation, language designation, and hours of operation. If at any time ISD proposes a change to the City-approved final Program Design, ISD must formally request and receive City's approval prior to making said change, which proposal will receive due consideration.
- (C) ISD must notify City within forty-eight (48) hours of any ISD policy, regulation, administrative decision, and/or any programmatic change that will impact the Program Design after the program year begins.

#### **4. Program Services**

- (A) Without regard to race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, political belief or affiliation, ISD will provide to eligible children in its Service Area: (1) Education and Early Childhood Development Services; (2) Health Services (including Dental and Mental Health); (3) Nutrition; (4) Family and Community Support; and (5) Environmental Health and Safety; and will collaborate with City and City's other service providers to ensure the provision of all services to which children and families are entitled (together, "Head Start Program Services").
- (B) For the following services in accordance with the HSPPS, ISD must:

##### **(1) Education and Early Childhood Development Services**

- (i) in order to help children gain the skills and confidence necessary to succeed in their present environment and with later responsibilities, in school and in life:
  - a) be developmentally and linguistically appropriate;
  - b) recognize each child's rate of development, language, cultural background and learning style;
  - c) be inclusive of children with disabilities;
  - d) provide an environment of acceptance that supports and respects gender, culture, language, ethnicity and family composition;
  - e) provide a balanced daily program of child-initiated, adult-directed activities; and
  - f) allow and enable children to independently use toilet facilities when it is developmentally appropriate and the efforts are supported by the parents.
- (ii) 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; and
  - a) provide opportunities to increase parents' child observation skills;
  - b) share assessments with staff that will help plan the learning experience; and
  - c) encourage parents to participate in staff-parent conferences and home visits to discuss their child's development and education.
- (iii) support social and emotional development by
  - a) encouraging development which enhances child's strengths by building trust;
  - b) fostering independence; encouraging self-control and respect for the feelings and rights of others;
  - c) supporting and respecting the home language, culture, and family composition in ways that support the child's health and well-being; and
  - d) planning for routines and transitions.
- (iv) provide for the development of each child's cognitive and language skills by
  - a) supporting each child's learning, using various strategies including experimentation, inquiry, observation, play and exploration;
  - b) ensuring opportunities for creative self-expression through activities such as art, music, movement, and dialogue;
  - c) promoting interaction and language use among children and between children and adults; and
  - d) supporting emerging literacy and numeracy developments through materials and activities according to the child's developmental level.

- (v) promote each child's physical development by
  - a) providing sufficient time, indoor and outdoor space, equipment, materials and adult guidance for active play and movement that support the development of gross and fine motor skills according to the child's developmental level; and
  - b) providing an appropriate environment and adult guidance for the participation of children with special needs.
- (vi) in collaboration with parents, must implement a researched-based curriculum that
  - a) aligns with the Head Start Early Learning Outcomes Framework (HSELOF, 2015), and state Prekindergarten Guidelines that supports each child's individual pattern of development and learning;
  - b) provides for the development of cognitive skills; integrates all educational aspects of health, nutrition, and mental health services into program activities;
  - c) helps children develop emotional security, facility in social relationships, feelings of competence, self-esteem, and positive attitudes toward learning;
  - d) enhances each child's understanding of self as an individual and as a member of a group; and
  - e) provides individual and small group experiences both indoors and outdoors.
- (vii) participate in developing and implementing an annual plan of action to achieve school readiness goals ("School Readiness Action Plan" or "Action Plan") in compliance with HSPPS sections 1302.102(a)(3) and 1304.11(b)-(2)(i-ii) that
  - a) is age appropriate to address, at a minimum, the domains of language, literacy, cognition, motor and physical well-being, social and emotional development and approaches to learning; and
  - b) achieves integration with the Parent, Family, and Community Engagement Framework.

The Action Plan must also require school readiness teams to

  - a) analyze achievement and identify areas for improvement.
  - b) meet no less than twice per year to align the program's curriculum with Action Plan goals to include improving the quality of teacher-child interactions, evidence-based teaching practices, and curriculum and inclusion of parents to support school readiness.
- (viii) assess child progress on an ongoing basis, conduct data aggregation, and submit analyses of child progress assessments to City at least three times per year (at the beginning, mid-year and end of school year) and
  - a) provide City direct access to the assessment data management system for the purposes of aggregating, analyzing, and producing program-wide reports.
  - b) make mid-year adjustments in instruction and/or professional development support should patterns or trends be identified in the analysis and coordinate with City, as needed.
  - c) maintain and use the information from ongoing child assessment data to inform teachers and survey parents on how best to individualize each child's learning and progress across domains.
- (ix) provide to City data in its possession related to student performance of Head Start students from kindergarten through third grade.



## **(2) Health (including Dental and Mental Health) Services**

- (i) within 30 calendar days after each child first attends the program, consult with parents to determine whether each child has ongoing sources of continuous, accessible health care and health insurance coverage. If the child does not have such coverage, ISD must assist families in accessing such coverage as soon as reasonably possible.
- (ii) within 90 calendar days of each child's entry into the program and every school year thereafter:
  - a) obtain determinations from health care and oral health care professionals as to whether or not each child is up-to-date on a schedule of age appropriate preventive and primary medical and oral health care based on the well-child visits and dental periodicity schedules as prescribed by the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program of Medicaid, and the latest immunization recommendations issued by the Centers for Disease Control and Prevention, as well as any additional recommendations from the local Health Services Advisory Committee, and
  - b) if a child is not up to date, assist parents with making arrangements to bring each child up-to-date and, if necessary, directly facilitate provision of health services to bring the child up-to-date with parent consent.
- (iii) collaborate with the Head Start health service providers and Family and Community Support staff to develop and implement procedures for ongoing care to identify any new or recurring medical, dental, or developmental concerns and quickly make the appropriate referrals.
- (iv) document in ChildPlus all referrals and services provided and monitor the implementation of a follow-up plan to meet any treatment needs associated with a health, oral health, nutritional, social and emotional or developmental concerns.
- (v) complete or obtain the following screenings for each child:
  - a) evidence-based vision and hearing screenings within 45 days of the child's entry into program and every school year thereafter.
  - b) a current developmental screening to identify concerns regarding a child's developmental, behavioral, motor, language, social, cognitive, and emotional skills within 45 calendar days of when the child first attends the program or for any child that did not receive a screening the previous school year.
- (vi) use information from the above screenings to address concerns and ensure ongoing observations, evaluations and treatments; and from child's parents/guardians insights to help determine how the program can best respond to each child's individual characteristics, strengths and needs.
- (vii) prior to the beginning of the school year or child's entry into the program, collect and document the TB Questionnaire, Child Health History, and Nutrition Assessment, and
  - a) complete or obtain current Growth Assessment and Blood Pressure results for all children enrolled in the program; and
  - b) follow up for any concerns related to the above-mentioned tools.
- (viii) promote effective oral health hygiene; ensure all children are assisted by appropriate staff, or volunteers in brushing their teeth with toothpaste containing fluoride once daily.

- (ix) document in ChildPlus all referrals and services provided and monitor the implementation of a follow-up plan to meet any treatment needs associated with a health, oral health, nutritional, social and emotional or developmental concerns.
- (x) use program funds for professional medical and oral health services when no other source of funding is available, as well as for the provision of diapers and formula for enrolled children during the program day.
- (xi) Mental Health Services
  - a) work collaboratively with parents to solicit information, observations, and concerns about a child's mental health; share staff observations and discuss with parents the child's behavior and development.
  - b) when appropriate and subject to compliance with Section 38.010 of the Texas Education Code, collaborate with City to refer families to the services of a mental health agency or mental health professional. Such referrals will be provided on a schedule of sufficient frequency to enable the timely and effective identification of and intervention in family and staff concerns about a child's mental health.

### **(3) Nutrition Services**

- (i) identify each child's nutritional health needs and implement nutrition services that are culturally and developmentally appropriate, meet the nutritional needs of, and accommodate, the feeding requirements of each child, including children with special dietary needs and food allergies, and children with disabilities.
- (ii) encourage family style meals, but do not require. ISD must
- (iii) regardless of arrival time, serve all children a nourishing breakfast.
- (iv) if a program operates for six hours or more per day, ensure that each child receives meals and snacks that provide one-half to two-thirds of the child's daily nutritional needs, depending upon the length of the program day.
- (v) use funds from USDA Food, Nutrition, and Consumer Services child nutrition programs as the primary source of payment for meal services.
- (vi) serve three to five-year old children meals and snacks that meet USDA regulations (found at 7 CFR parts 210, 220, and 226), and that are high in nutrients and low in fat, sugar, and salt.
- (vii) make safe drinking water available to children during the program day.
- (viii) report to City the number of meals and snacks served to Head Start children on a monthly basis.

### **(4) Family and Community Support Services**

- (i) in collaboration with City's Family and Community Support staff, must provide parent engagement and education activities that are responsive to the ongoing and expressed needs of the parents.

- (ii) collaborate with City and community agencies to provide opportunities to enhance parenting knowledge, skills, and an understanding of the educational and developmental needs of their children.
- (iii) conduct
  - a) two (2) teacher home visits; visits may occur at a mutually agreed upon location at the request of the parent, and
  - b) at least two (2) teacher-parent conferences per child per program year, to enhance the knowledge and understanding of the educational and developmental progress and activities of children in the program; home visits must not be required as a condition of the child's participation in the program.
- (iv) in collaboration with City's Family and Community Support staff, establish and maintain procedures to support successful transitions for enrolled children and families from previous childcare programs into Head Start and from Head Start to elementary school; and assist parents in becoming their children's advocates as they transition.
- (v) provide adequate office space, internet access with adequate network permissions, and faxing and printing capability for the Family Community Support staff assigned to their Centers/campuses.
- (vi) collaborate with City's Family and Community Support staff to encourage parent participation and attendance in Center Parent Committee meetings, Head Start Policy Council, volunteer events, and other parent activities.

**(5) Environmental Health and Safety Services**

- (i) establish, train staff, substitutes, consultants, and volunteers to implement, and enforce a system of health and safety practices to ensure children are kept safe at all times and never left unsupervised. ISD should consult *Caring for our Children Basics* for additional information to develop and implement adequate safety practices described in this section.
- (ii) develop and implement a system of management, including ongoing training, oversight, correction, and continuous improvement in accordance with 1302.102 of Head Start regulations, that includes policies and practices to ensure all facilities, equipment and materials, background checks, safety training, safety and hygiene practices, and administrative safety procedures are adequate to ensure child safety. ISD must establish, follow, and practice, as appropriate, procedures for, at a minimum:
  - (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 from an infectious disease outbreak, including appropriate notifications of any reportable illness,
  - (iv) the handling, storage, administration, and record of administration of medication,
  - (v) maintain procedures and systems to ensure 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. ISD must also post and make available, where staff can view as needed, any individual child food allergies wherever food is served.

- (iii) maintain well-supplied and up-to-date first aid kits and supplies, appropriate for all ages served and the program size, at each facility and available on outings away from the sites.
- (iv) 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.

## 5. **Transportation Services/Vehicles**

ISD will provide transportation services in compliance with the requirements of 45 CFR part 1303.75, et. seq., subject to any waiver that may be obtained by City and/or ISD, and must:

- (A) successfully complete an annual inspection of all school buses and other vehicles used for the transportation of children under this Agreement.
- (B) when transporting enrolled Head Start children, ensure that each child is seated in a child restraint system appropriate to the child's age, height, and weight.
- (C) ensure special transportation requirements in a child's Individualized Education Program or Individualized Family Service Plan are followed, including special pick-up and drop-off requirements, seating requirements, equipment needs, any assistance that may be required, and any necessary training for bus drivers and monitors.
- (D) ensure that all drivers be certified for the operation of said vehicles.
- (E) ensure that there is at least one appropriately-trained bus monitor on board at all times, with additional bus monitors as necessary.
- (F) submit to City, upon request, a complete set of documents regarding vehicles and drivers transporting children, and will otherwise be in compliance with all applicable federal, state, and local requirements governing the transportation of children.
- (G) teach children who receive transportation services:
  - (1) safe riding practices;
  - (2) safety procedures for boarding and leaving the vehicle and for crossing the street to and from the vehicle at stops;
  - (3) recognition of the danger zones around the vehicle; and
  - (4) emergency evacuation procedures, including participating in at least one (1) emergency evacuation drill conducted on the vehicle the child will be riding.
- (H) each program year, ensure at least three (3) vehicle evacuation drills are practiced, in addition to the one required on the vehicle the child will be riding.

**ATTACHMENT II**  
**PROGRAM BUDGET**

## ATTACHMENT III

### SPECIAL PROVISIONS

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

1.01 DEPARTMENT is prohibited from:

- a) using or transferring funds provided under this AGREEMENT for purposes other than authorized Program activities;
- b) using, pledging, granting a security interest in, or otherwise encumbering any right or any property acquired with funds provided under this AGREEMENT as collateral or security for any loan, note debenture, bond or any other debt instrument; and
- c) using any funds provided hereunder for payment of principal or interest on any loan, note, debenture, bond or any other debt instrument, other than those approved by DHS.

#### II. REQUIREMENTS FOR PARTICIPATION IN CITY-DESIGNATED DATA SYSTEM

2.01 DEPARTMENT shall:

- a) utilize ChildPlus to input data that pertains to the on-going day-to-day work completed;
- b) support all design, development, testing and implementation protocols as established by DHS;
- c) participate in preliminary and final testing of the system using City protocols;
- d) allow installation of data encryption software on the Child Care network; and
- e) with parental permission, provide DHS with access to critical confidential data in Section 3.01 below.

2.02 Both Parties agree:

- a) to use best efforts to cooperate and exchange information regarding all aspects of the project 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 a Program provider.

#### III. CONFIDENTIAL DATA

3.01 The Parties to this AGREEMENT shall have access to the following 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 Number  
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**  
**HHS AWARD DOCUMENT**

## ATTACHMENT V

### WITNESSETH:

#### *HIPAA BUSINESS ASSOCIATE AGREEMENT*

This HIPAA Business Associate Agreement (**Agreement**) 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**”), (collectively, the “**Parties**”).

WHEREAS, the Covered Entity and BA have entered into an Agreement (“Service Contract”), effective on February 1, 2024, whereby BA provides education services to the Covered Entity through January 31, 2029; and

WHEREAS, Covered Entity and BA may need to use, disclose and/or make available certain information pursuant to the terms of the Service Contract, some of which may constitute Protected Health Information (“PHI”); and

WHEREAS, Covered Entity and BA intend to protect the privacy and provide for the security of PHI disclosed to each other pursuant to the Service Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”), Health Information Technology for Economic and Clinical Health Act (“HITECH Act”) and other applicable laws; and

WHEREAS, the purpose of this Agreement is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations (“C.F.R.”), as the same may be amended from time to time;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

A. Definitions. For the purposes of this Agreement, the following terms have the meanings ascribed to them:

- (1) “Breach” shall mean an impermissible use or disclosure under the Privacy Rule that compromises the security or privacy of the protected health information. An impermissible use or disclosure of protected health information is presumed to be a breach unless the covered entity or business associate, as applicable, demonstrates that there is a low probability that the protected health information has been compromised based on a risk assessment of at least the following factors:
  - (a) the nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification;
  - (b) the unauthorized person who used the protected health information or to whom the disclosure was made;
  - (c) whether the protected health information was actually acquired or viewed; and
  - (d) the extent to which the risk to the protected health information has been mitigated.
- (2) “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 C.F.R. 164.501.
- (3) “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.
- (4) “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.

- (5) “Individual” means the person who is the subject of protected health information and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).
- (6) “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: (1) is created or received by a health care provider, health plan, employer, 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; and (i) identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- (7) “Privacy Rule” shall mean the regulations for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subpart E.
- (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” means a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits. 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) “Security Rules” shall mean the Security Standards for the Protection of Electronic Protected Health Information codified at 45 C.F.R. Part 164.
- (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 Agreement or as Required by Law;
- (2) Establish and maintain appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect, consistent with the services provided under this Agreement, the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of Covered Entity;
- (3) Mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI by BA in violation of the requirements of this Agreement;
- (4) Report to Covered Entity any use or disclosure of PHI of which BA is aware or becomes aware that is not provided for or allowed by this Agreement as well as any Security Incident as defined by 45 C.F.R. 164.304 that BA becomes aware of;

- (5) Ensure that a business associate agreement is in place with any of its agents or subcontractors with which BA:
  - (a) does business, and
  - (b) to whom it provides PHI received from, or created or received by BA on behalf of, Covered Entity; and ensures such agents or subcontractors are aware of and agree to the same restrictions and conditions that apply through this Agreement to BA with respect to such information, and further agree to implement reasonable and appropriate administrative, physical and technical safeguards that render such PHI unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI;
- (6) Provide access, at the request of Covered Entity, and in a reasonable time and manner as agreed by the Parties, to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements 45 C.F.R. §164.524;
- (7) Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of the Covered Entity or an Individual, and in a reasonable time and manner agreed to by the Parties;
- (8) Make available to the Covered Entity or to the Secretary all internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by the BA on behalf of the Covered Entity, for purposes of the Secretary in determining Covered Entity's compliance with the Privacy Rule;
- (9) Document disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request from an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;
- (10) Provide Covered Entity or an Individual, in a reasonable time and manner as agreed to by the Parties, information collected in accordance with Section B(9) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;
- (11) 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 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 Security Rules requirements;
- (13) Comply with the Privacy Rule for any obligation Covered Entity delegates to BA;
- (14) Under no circumstances sell PHI in such a way as to violate Texas Health and Safety Code, Chapter 181.153, effective September 1, 2012, nor shall BA use PHI for marketing purposes in such a manner as to violate Texas Health and Safety Code Section 181.152, or attempt to re-identify any information in violation of Texas Health and Safety Code Section 181.151, regardless of whether such action is on behalf of or permitted by the Covered Entity.

C. Permitted Uses and Disclosures by BA

- (1) Except as otherwise limited in this Agreement, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- (2) Except as otherwise limited in this Agreement, BA may disclose PHI for the proper management and administration of the BA, provided that disclosures are Required By Law, or BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the BA of any instances of which it is aware in which the confidentiality of the information has been breached.
- (3) Except as otherwise limited in this Agreement, BA may use PHI to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).
- (4) BA may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. 164.502(j)(1).

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

- (1) Notify BA of any limitations in its notice of privacy practices in accordance with 45 C.F.R. 164.520, to the extent that such limitation may affect BA's use or disclosure of PHI;
- (2) Notify BA of any changes in, or revocation of, permission by any Individual to use or disclose PHI, to the extent that such changes may affect BA's use or disclosure of PHI;
- (3) Notify BA of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522 to the extent that such changes may affect BA's use or disclosure of PHI;
- (4) Coordinate with BA regarding any PHI breach and make timely notification to affected individuals within 60 days of discovery.

E. Permissible Requests by Covered Entity.

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

F. Term and Termination.

- (1) This Agreement becomes effective on the date specified herein. This Agreement shall terminate when all PHI encompassed by this Agreement is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy the PHI, protections are extended to such information in accordance with the termination provisions in this Section.
- (2) Termination for Cause. Upon Covered Entity's knowledge of a material breach by BA, Covered Entity shall either (a) provide an opportunity for BA to cure the breach in accordance with the terms of the Service Contract or, if the BA does not cure the breach or end the violation within the time for cure specified in the Service Contract, end the violation and terminate this Agreement and the Service Contract; or (b) immediately terminate this Agreement and the Service Contract if BA has breached a material term of this Agreement and cure is not possible. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

- (3) **Effect of Termination.**
- (a) Except as provided below in paragraph (b) of this Section F(3), upon termination of this Agreement for any reason, BA shall return or destroy all PHI received from the Covered Entity, or created or received by BA on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of BA or its subcontractors or agents. BA shall not retain any copies of PHI.
  - (b) In the event that BA determines that returning or destroying PHI is infeasible, BA shall provide to Covered Entity written notification of the condition that makes the return or destruction of PHI infeasible. Upon BA's conveyance of such written notification, BA shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make its return or destruction infeasible, for so long as BA maintains such PHI.
- (4) Notwithstanding any other provision under this Agreement, the Parties agree that the Service Contract may be terminated by either Party without penalty should the other Party violate a material obligation under this Agreement.
- G. **Amendment to Comply with Law.** The Parties agree to take written action as is necessary to amend this Agreement to comply with any Privacy Rules and HIPAA legal requirements for Covered Entity without the need for additional council action.
- H. **Survival.** The respective rights and obligations of the BA under Sections B, C (2) and (4), and F(3) shall survive the termination of this Agreement.
- I. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit Covered Entity to comply with the Privacy Rule.
- J. **Regulatory References.** A reference in this Agreement to a section in the Privacy Rule means the section as in effect or amended.
- K. **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person other than Covered Entity, BA, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- L. **INDEMNIFICATION.** *BA WILL INDEMNIFY, DEFEND AND HOLD COVERED ENTITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS, FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES ARISING OUT OF OR RELATED TO ANY THIRD-PARTY CLAIM BASED UPON ANY BREACH OF THIS AGREEMENT BY BA IN ACCORDANCE WITH THE INDEMNITY PROVISIONS IN THE SERVICE 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.
- M. **Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.
- N. **Assignment.** Neither party may assign (whether by operation of law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of BA.
- O. **Entire Agreement.** This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Service Contract or any such later agreement(s), the terms of this

Agreement shall control unless the terms of such Service Contract comply with the Privacy Standards and the Security Standards. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. This Agreement is for the benefit of, and shall be binding upon the Parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

- P. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

**EXECUTED** by the Parties, signing by and through their authorized representatives, to be effective February 1, 2024.

**COVERED ENTITY:**

**City of San Antonio,**  
a Texas municipal corporation

**BUSINESS ASSOCIATE:**

**San Antonio Independent School District**

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

By: \_\_\_\_\_  
Dr. Jaime Aquino, Superintendent

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Assistant City Attorney

**ATTACHMENT VI**  
**Additional OMB Provisions**  
**from Appendix II to Part 75—Contract Provisions**  
**for Non-Federal Entity Contracts Under Federal Awards**

In addition to other provisions required by HHS or the City, all contracts made by the City under the Federal award must contain provisions covering the following, as applicable (45 C.F.R. 75, Appendix II).

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

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

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

During the performance of this Agreement, contractor agrees:

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

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

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

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

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

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

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

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

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

(1) Minimum wages.

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

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

(ii)

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

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

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate



(including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

(2) Withholding.

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

(3) Payrolls and basic records.

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

- (ii) (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HHS if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to HHS. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HHS if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to HHS, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).
- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (1) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
  - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
  - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
- (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of HHS or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees—

- (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

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

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

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

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

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

(10) Certification of eligibility.

(i) By entering into this Agreement, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this Agreement shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

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

(1) Overtime requirements.

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

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

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

(3) Withholding for unpaid wages and liquidated damages.

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

(4) Subcontracts.

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