

**CITY OF SAN ANTONIO EARLY CHILDHOOD EDUCATION
MUNICIPAL DEVELOPMENT CORPORATION
MEMORANDUM OF UNDERSTANDING**

TABLE OF CONTENTS

RECITALS	2
I. PROGRAM PURPOSES AND COMPONENTS	2
II. RESPONSIBILITIES OF THE CORPORATION	3
III. RESPONSIBILITIES OF PARTICIPATING SCHOOL	18
IV. SPECIAL PROGRAMS	19
V. SECOND LANGUAGE LEARNERS	22
VI. ASSESSMENT AND EVALUATION	23
VII. PUBLIC INFORMATION ACT	23
VIII. CHANGE OF PARTICIPATION, CLOSURE OR TERMINATION.	24
IX. GENERAL PROVISIONS.	26
EXHIBIT A	30

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

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is entered into by and between the City of San Antonio Early Childhood Education Municipal Development Corporation (“Corporation” or “Pre-K 4 SA”), a municipal development corporation created by the City of San Antonio (“City”), and the Essence Preparatory Public School, an open-enrollment charter school in the State of Texas, (“Participating School”) (collectively referred to hereinafter as “the Parties”). The purpose of this MOU is to set forth the objectives, understandings, and agreements of the Parties in connection with the operation of the “Pre-K 4 SA” early childhood education initiative for which voters initially approved funding on November 6, 2012 and reauthorized on November 3, 2020.

RECITALS

WHEREAS, Texas Local Government Code, Chapter 379A, authorizes a municipality to establish a municipal development corporation, to facilitate the development of a skilled workforce, including implementation of programs for early childhood development;

WHEREAS, the City has established the Corporation, for the limited purpose of developing and implementing the “Pre-K 4 SA” early childhood development program;

WHEREAS, Chapter 12, Subchapter D of the Texas Education Code authorizes the City to issue an in- district charter to Pre-K 4 SA and for Essence Preparatory Public School to operate a prekindergarten program under its charter;

WHEREAS, the Texas Education Code, Section 12.104(b)(3)(H) enumerates an open-enrollment charter's ability to operate a prekindergarten program and Section 29.1533 allows for the establishment of a new prekindergarten program with an established site;

WHEREAS, Texas Local Government Code, Section 379A.052, authorizes a municipal development corporation to enter into a memorandum of understanding with a nonprofit organization authorized to operate a charter school by the State of Texas in connection with a program authorized by Chapter 379A, and the parties desire to do so; and

NOW THEREFORE, for and in consideration of the mutual promises set forth herein and other good and valuable consideration, the Parties agree as follows:

I. PROGRAM PURPOSES AND COMPONENTS

1.1 **PROGRAM PUBLIC PURPOSES.** Research strongly supports the conclusion that early childhood interventions, particularly prekindergarten education in quality programs, are one of the best investments to improve educational outcomes. The specific public purposes served by the “Pre-K 4 SA” Program is to increase opportunities for quality preschool education in the City, increase high school graduation rates for at- risk children, reduce the instance of later student placement in special education programs, reduce the likelihood that students served by the

program will be retained in one or more grades; and, ultimately, to facilitate the development of a skilled workforce.

1.2 **PROGRAM COMPONENTS.** The Corporation will work collaboratively with Participating Schools, to achieve the public purposes set out above by investing in three distinct, but inter-related, priorities (“Program Components”), to wit:

1.2.1 **Establishing Early Learning Schools.** The Corporation will operate Early Learning Schools (“Pre-K 4 SA Schools”) to provide full-day, high- quality early education to selected eligible students residing in the City, in accordance with the plan described below in this MOU (“Early Learning School Component”).

1.2.2 **Providing Competitive Grant Program.** The Corporation will award grant funding to qualifying schools, districts, open enrollment charter schools, and nonprofit organizations which propose innovative and cost effective approaches to increasing the availability of and improving the quality of early learning and care in San Antonio and surrounding counties.

1.2.3 **Investing in Professional Learning.** The Corporation will support increased student achievement in existing prekindergarten and early childhood education programs by investing in research-based ongoing professional learning for educators in early learning programs throughout the City (“Professional Learning Component”).

II. RESPONSIBILITIES OF THE CORPORATION

2.1 **GENERAL.** The Corporation shall:

2.1.1 Maintain the corporate status of the Municipal Development Corporation as a valid Texas Municipal Development Corporation subject to Chapter 379A of the Texas Local Government Code, and, as applicable, the Texas Non-Profit Corporation Act, and all other applicable laws to which the Corporation is subject;

2.1.2 Prepare the annual budget for the overall Program, as well as for each Pre-K 4 SA School, and disburse and account for all funds as required by law;

2.1.3 Provide qualified employees necessary to adequately staff the Pre-K 4 SA Schools;

2.1.4 Comply with any and all Criminal History Record and Department of Family and Protective Services (DFPS) Minimum Standards for Child Care Centers requirements pursuant to Texas Education Code Chapter 22, Subchapter C, including those provisions concerning Certified Educators, Noncertified Employees, Contract Employees, Student Teachers, Substitute Teachers, Bus Drivers, Bus Monitors, Bus Aides, and Volunteers. The Corporation shall provide annual certification of satisfaction of the requirements of this Section;

2.1.5 Develop and implement a facilities safety plan that satisfies any minimum requirements imposed by the Texas Education Code and the Texas Administrative Code,

and DFPS Minimum Standards for Child Care Centers;

2.1.6 Employ certified teachers and at all times be responsible for hiring, managing and supervising all professional and support personnel serving each Pre-K 4 SA School to the extent required to assure funding through the Foundation School Program, Title I, or any other state or federal funding provider; provide all professional development as required by DFPS Minimum Standards and the Texas Education Code; and

2.1.7 Maintain all educational records applicable to the Program and relating to all students participating in the Program; communicate with each participating school regarding the status of each student served in a Pre-K 4 SA School; provide all necessary curriculum and assume all other responsibilities normally associated with the administration and provision of education services.

2.2 **PROGRAM IMPLEMENTATION.** The Corporation shall be responsible for implementation of the Program Components as follows:

2.2.1 Implementation of Early Learning School Component.

A. Location, Construction and Operations of Pre-K 4 SA Schools.

- a. The Corporation in its sole discretion shall select the location(s) of each Pre-K 4 SA School.
- b. The Corporation is solely responsible for all costs of operating each Pre-K 4 SA School, including but not limited to maintenance, utilities, repairs, renovations, and security; and all liabilities associated with the Pre-K 4 SA Schools and the Corporation's operation of the Pre-K 4 SA Schools.
- c. The Schools provided by the Corporation shall comply with all federal and state legal requirements for school construction/renovation and operation, including but not limited to assuring that all construction/renovations meet the standards contained in 19 TAC Section 61.1036, and all other applicable standards, and shall provide any and all modifications required by the American's with Disabilities Act ("ADA") and other applicable codes and statutes.

B. Establishment of Pre-K 4 SA Schools.

- a. **Initial Schools.** From 2013-2015, the Corporation established four Pre-K 4 SA Schools serving Eligible Students as defined by Subsection C of this Section and students who are served as part of the Pre-K 4 SA School's tuition program for Non-Eligible Students.
- b. These schools shall be hereinafter referred to as the "Initial Pre-K 4 SA Schools."

- c. **Expansion.** While not obligated to do so, the Corporation maintains enrollment in the four Initial Pre-K 4 SA Schools, with a goal of serving approximately 500 children in each of the four Initial Pre-K 4 SA Schools, for a total of 2,000 children. The Corporation may also elect to establish additional Pre-K 4 SA Schools.

C. Student Eligibility and Selection.

a. **Eligibility Defined.**

i. Eligible Students: In order to attend a Pre-K 4 SA School, an Eligible Student must: (1) be a resident of the City's Extraterritorial Jurisdiction ("ETJ"); (2) be enrolled in a Participating School; (3) be four years of age on or before September 1 of the current year; (4) be eligible for prekindergarten education classes under Texas Education Code, Section 29.153; and (5) for those students with an Individualized Education Program ("IEP") under the Individuals with Disabilities Education Improvement Act of 2004 ("IDEA"), or Accommodation Plan ("504 Plan") under Section 504 of the Rehabilitation Act of 1973 ("Section 504"), have an IEP or 504 Plan that can be implemented at the Pre-K 4 SA School, as specified in the following Sub-paragraph 2.2.1.C.b. ("IEP Review").

ii. Non-Eligible Students: Non-Eligible Students are defined as students whose circumstances do not satisfy any one of the first four requirements set out above for Eligible Students, and whose parents or guardians apply for their child to attend a Pre-K 4 SA School. The Corporation has established a sliding scale tuition schedule for such Non-Eligible Students and may enroll these Non-Eligible Students directly through its "Non-Eligible Student Tuition Program". The Corporation shall be solely responsible for collecting any such tuition and providing such Non-Eligible Students attending the Pre-K 4 SA Schools, all State required services.

- b. **IEP Review.** Upon selection of an otherwise Eligible Student pursuant to Paragraph a. of this Section C., and with the written consent of a student's parent or guardian, the Participating School will provide a copy of the otherwise Eligible Student's current IEP for review by the Pre-K 4 SA School. Within ten (10) business days, the Pre-K 4 SA School will issue a written determination as to whether the IEP in effect for the otherwise Eligible Student during the student's period of attendance can be implemented by the Pre-K 4 SA School. The Pre-K 4 SA School's determination shall consider whether the otherwise Eligible Student's goals, objectives, modifications, accommodations, related services, behavior interventions and supplementary aids and services can be implemented at the Pre-K 4 SA School. If the Pre-K 4 SA School determines that the IEP cannot be implemented, the Pre-K 4 SA School will notify the parent or guardian of the student and the Participating School of the decision in

writing, including a description of the basis of the decision. Any challenge to the Pre-K 4 SA School's determination under this Paragraph shall be subject to Section 2.3.7.B.

- c. **Duty of Participating School to Non-Eligible Students.** Unless otherwise required by law to provide prekindergarten services to a Non- Eligible Student, the Participating School shall have no responsibility for enrolling a Non-Eligible Student in its prekindergarten program. Participating School shall not be required to provide funding or services for any Non-Eligible Student who resides within its boundaries and who attends a Pre-K 4 SA School. The Participating School shall also have no responsibility to perform any PEIMS reporting or track data for Non- Eligible Students during their prekindergarten year who are not enrolled in the Participating School.
- d. **Non-Eligible Students seeking Dual Enrollment.** As permitted by Chapter 19 T.A.C. 89.1096(c) parents of certain students with disabilities may elect to "dual enroll" in both the Participating School and enroll in the Pre-K 4 SA School as a private school. Should a parent seek dual enrollment of their student as permitted under 89.1096(c), the Corporation and the Participating School will have fulfilled all obligations to that student under this agreement as though the student were an Eligible Student. Further, the Corporation will accept liability and specific obligations as specified under Section 2.3, herein for those students.

2.2.2 Implementation of Professional Development Component

A. The Corporation will sponsor professional development opportunities for educators employed in Early Childhood Education programs at Participating Districts, open enrollment charter schools and childcare facilities located in the City of San Antonio.

B. The professional development opportunities may include, but not be limited to: utilizing the Pre-K 4 SA Schools as "lab schools," in which educators work with master teachers in the Pre-K 4 SA Schools' classrooms; side-by-side teacher mentoring; training events; and summer in-service training programs.

2.3 **LIABILITY AND SPECIFIC OBLIGATIONS.** The Corporation acknowledges its liability for the following functions of the Corporation.

2.3.1 **General Defense Obligations.**

A. The Participating School may elect to use its own counsel for defense of any claims arising under this MOU or in connection with liabilities assumed by the Corporation under this MOU.

B. The obligations contained in this Article 2.3 shall be subject to Article 2.8

of this MOU, and shall be secured, and limited by, the proceeds of the insurance policy referenced in this MOU.

2.3.2 For Challenges to Determinations of Student Eligibility for Program Participation. The Corporation agrees to reimburse reasonable and necessary costs, and to defend and hold Participating School, its Trustees officers, agents and employees harmless against any and all claims, disputes, investigations, lawsuits, judgments, or other proceedings, costs and expenses that may arise out of or be occasioned by the Corporation's determination of student eligibility or ineligibility for Program participation.

2.3.3 For Educational Services.

A. Services provided by the Corporation under this MOU will be performed in a manner consistent with that degree of care and skill ordinarily exercised by public schools providing educational services to prekindergarten students in the same locality under similar circumstances.

B. The Corporation agrees to reimburse reasonable and necessary costs, and to defend and hold Participating School, its Trustees officers, agents and employees harmless against any and all claims, disputes, investigations, lawsuits, judgments, or other proceedings, costs and expenses that may arise out of or be occasioned by the Corporation's administration or delivery of educational services to the pre-kindergarten students attending the Program.

2.3.4 For Operation of Pre-K 4 SA Schools and Transportation. The Corporation agrees to reimburse reasonable and necessary costs, and to defend and hold Participating School, its Trustees officers, agents and employees harmless against any and all claims, disputes, investigations, lawsuits, judgments, or other proceeding, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by the Corporation's failure to properly maintain, operate or repair the Pre-K 4 SA Schools, or the vehicles providing transportation to students served at any of the Pre-K 4 SA Schools.

2.3.5 For True Accurate and Timely Reporting.

A. The Corporation understands, acknowledges and accepts that TEA imposes deadlines on Participating School for the provision of Public Education Information Management System ("PEIMS") reports, attendance data and other information required to be reported regarding each student enrolled at a Participating School and attending a Pre-K 4 SA School. ("Required Data and Reports"). The Corporation understands that TEA may withhold future funding or require repayment of funding from a Participating School that submits inaccurate, false or untimely information as part of Required Data and Reports. Because Eligible Students attending the Pre-K 4 SA School(s) are enrolled at their School-assigned campus, the School remains responsible for submission of all Required Data and Reports related to its students who are attending the Pre-K 4

SA Schools, it is therefore imperative that the Corporation timely and accurately submit the Required Data and Reports to the Participating School. The Corporation expressly acknowledges its awareness that the Participating School must and shall rely upon receiving from the Corporation timely and accurate Required Data and Reports, in making its required reports to TEA. Should any TEA audit be commenced and involve any data reported to the Participating School by the Corporation, the Corporation agrees, upon request of the Participating School, to fully assist the Participating School in responding to any TEA audit or inquiry and implementing any corrective action required by TEA.

B. In the event TEA requires offset or seeks a refund of any of a Participating School's funding as a result of untimely, inaccurate and/or false data provided by the Corporation, the Participating School may offset the amount of funds offset or demanded by TEA, as well as costs associated with defending or responding to the audit, from any future payments due from it to the Corporation under this MOU. To the extent such offset does not cover the Participating School's loss of funding the Corporation will, upon demand, reimburse the Participating School for such lost funding. This obligation shall be secured, and limited by, the proceeds of the insurance policy referenced in Section 2. 8 of this MOU established herein, as applicable.

2.3.6 For General Complaints.

A. The Corporation shall be responsible for hearing, deciding and responding to any and all complaints, concerns or grievances from its employees. The Participating School shall have no responsibility for hearing, deciding or responding to complaints, concerns or grievances brought by the Corporation's employees.

B. The Corporation shall be responsible for hearing, deciding or responding to any and all complaints, concerns, or grievances from parents, guardians or other interested individuals related to a student attending the Pre-K 4 SA Schools. The Participating School shall not be responsible for hearing, deciding or responding to such complaints, concerns, or grievances, unless required by Federal, State law or local policy or elsewhere in this MOU.

C. The Corporation shall establish its own policies with regard to hearing, deciding or responding to the complaints, concerns, or grievances covered by this Section 2.3.6.

2.3.7 Complaints, Due Process Hearings and Appeals Regarding Special Education and Related Services.

A. **Costs of Defense/Reimbursement Obligations:** Unless otherwise specified in Paragraphs D through H, below, the Corporation and the Participating School shall be equally responsible for the Participating School's reasonable and necessary costs of defense in connection with a request for due process hearing or other litigation arising under 20 U.S.C. 1400 et seq., or asserting claims under Section 504 of the Rehabilitation Act of 1973 in which a

student is a real party in interest for claims concerning the implementation of IEPs or Section 504 accommodation plans. Under all circumstances, the Corporation shall be responsible for its own legal fees associated with providing its own defense, should any be necessary pursuant to the provisions of 2.3.7 (B). The Corporation's responsibility for its own legal fees includes those fees accrued through the course of any appeal arising from a request for due process hearing. The Participating School shall have the ability to retain its own counsel in the defense of such a hearing and subsequent appeal. The Parties shall cooperate fully with each other in the defense of such a due process hearing.

B. Party of Interest: Subject to the provisions within this MOU concerning obligations of the Corporation, the Participating School acknowledges that it shall always be the proper party of interest in any filing of any due process hearing involving students served by the Corporation.

C. Consultation Prior to Settlement: The Participating School and the Corporation shall consult one another prior to the settlement of any due process hearing filed pursuant to or involving the conditions or circumstances described in this Section 2.3.7 or Section 4.3.7 of this MOU.

D. Claims Asserting Failure to Implement IEP or Challenging the Appropriateness of the Student's Placement at The Pre-K 4 SA School: In the event the parent or guardian of a student attending the Pre-K 4 SA School requests a special education due process hearing or in any way asserts claims alleging any failure to implement that student's IEP or otherwise challenges the appropriateness of the student's placement at the Pre-K 4 SA School:

- a. If as a result of a due process hearing, including a final decision by a court of competent jurisdiction, there is a final finding that a student's IEP was not fully implemented, or that the student's placement at the Pre-K 4 SA School is inappropriate, the Corporation shall reimburse all of the Participating School's reasonable and necessary costs of defense including those costs accrued through the course of any litigation or appeal arising from such claims.
- b. If as a result of a due process hearing, including a final decision by a court of competent jurisdiction, there is a final finding that a student's IEP was not fully implemented, or that the student's placement at the Pre-K 4 SA School is inappropriate, the Corporation shall reimburse the Participating School's actual costs in fulfilling any relief ordered.
- c. In the event that a court of competent jurisdiction awards reasonable attorneys' fees to a parent or guardian who is a prevailing party, under 20 U.S.C. 1415(i)(3), as a result of a final finding that a student's IEP was not fully implemented, or a student's placement at the Pre-K 4 SA School is inappropriate, the Corporation shall reimburse the Participating School's costs for

satisfying any such award.

E. **Claims Asserting Inappropriateness of the IEP:** In the event the parent or guardian of a student attending the Pre-K 4 SA School requests a special education due process hearing or in any way asserts claims alleging that the content of that student's IEP is inappropriate:

- a. Subject to Subparagraph d. of this Paragraph E., the Participating School shall be responsible for providing its defense to the due process hearing, including those fees and costs accrued through the course of any litigation or appeal arising from such claims.
- b. Subject to Subparagraph e. of this Paragraph E., the Participating School shall be responsible for providing any relief ordered by a special education hearing officer, or other court of competent jurisdiction, for a finding that the content of a student's IEP was inappropriate.
- c. Subject to Subparagraph f. of this Paragraph E., in the event that a court of competent jurisdiction awards reasonable attorneys' fees to a parent or guardian who is a prevailing party, under 20 U.S.C. 1415(i)(3), solely as a result of a finding that the content of a student's IEP was inappropriate, the Participating School shall be responsible for satisfying any such award.
- d. If a hearing officer or other court of competent jurisdiction finds that the Participating School failed to convene an ARD committee meeting requested by the parent or guardian or that a Pre-K 4 SA School employee believed was necessary, but the Participating School was denied notice of the same pursuant to Section 4.2.5, the Corporation shall be responsible for providing the Participating School's defense to the due process hearing, including those fees and costs accrued through the course of any litigation or appeal arising from an administrative hearing,.
- e. If a hearing officer or other court of competent jurisdiction finds that the Participating School failed to convene an ARD committee meeting requested by the parent or that a Pre-K 4 SA School employee believed was necessary, but the Participating School was denied notice of the same pursuant to Section 4.2.5, the Corporation shall reimburse the Participating School's actual costs in fulfilling any relief required by Section 2.3.7, Paragraph E. Subparagraph b.
- f. If a hearing officer or other court of competent jurisdiction finds that the Participating School failed to convene an ARD committee meeting requested by the parent or that a Pre-K 4 SA School employee believed was necessary, but the Participating School was denied notice of the same pursuant to Section 4.2.5, the Corporation shall reimburse the Participating School's costs for

satisfying any such award required by Section 2.3.7, Paragraph E. Subparagraph c.

F. Claims Asserting Problems Related to Evaluation, Including Claims Related to Child Find: In the event the parent or guardian of a student attending the Pre-K 4 SA School requests a special education due process hearing or in any way asserts claims alleging that the Participating School has failed in its Child Find or evaluation duties:

- a. If as a result of a due process hearing, including a final decision by a court of competent jurisdiction, there is a final finding that the Participating School failed in its Child Find or evaluation duties, the Corporation and the Participating School will share equally in the Participating School's actual costs in fulfilling any relief ordered.
- b. In the event that a court of competent jurisdiction awards reasonable attorneys' fees to a parent or guardian who is a prevailing party, under 20 U.S.C. 1415(i)(3), as a result a finding that the Participating School failed in its Child Find or evaluation duties, the Corporation and the Participating School will share equally the Participating School's costs in its defense to the due process hearing, including those fees and costs accrued through the course of any litigation or appeal arising from an administrative hearing,.

G. Complaints to TEA: In the event that a student attending the Pre-K 4 SA School is the subject of a complaint to TEA in accordance with 34 C.F.R. 300.153, alleging a failure to implement a student's IEP, and/or asserts that a student's placement at the Pre-K 4 SA School is inappropriate, the Corporation shall reimburse the Participating School's reasonable and necessary costs. If, as a result of a complaint to TEA, TEA finds that a student's IEP was not implemented or that a student's placement was not appropriate, the Corporation will reimburse the Participating School's costs. The Corporation will cooperate in the implementation of any corrective action ordered by TEA.

2.4 REPORTING REQUIREMENTS.

2.4.1 Responsibility. The Corporation shall be responsible for gathering, obtaining, preparing and maintaining all enrollment records, attendance reports, progress reports, student records, accounting and source documentation, in any way related to students attending the Pre-K 4 SA Schools, which are required by the Texas Education Agency ("TEA"), and/or by other applicable state and federal agencies to be maintained by the Participating School. The Corporation will submit this data to the Participating School by the process date and will continue to send the necessary data through the due date as required by the PEIMS Data Collection Schedule set by TEA.

2.4.2 Standards. The Corporation shall utilize the standardized attendance accounting system described in the then current TEA-developed Student Attendance Accounting Handbook (“Handbook”), which sets out the official attendance accounting rules and regulations for all public school schools in Texas, when collecting and maintaining enrollment and attendance documentation for transmission to the participating schools. In addition, the Corporation shall:

- A. Comply with all attendance rules and regulations set out in the Handbook, including but not limited to providing the reconciliation of student membership to the attendance accounting records at the end of the first and fourth six-week reporting periods.
- B. Provide accurate and up-to-date daily attendance data meeting the minimum requirements established in the Handbook for all of the Participating School’s students attending a Pre-K 4 SA School.
- C. Provide electronic copies of any and all documentation required by the Handbook to document student attendance to the Participating School at the end of each day following the day on which it was created.
- D. Provide all required attendance data daily to appropriate personnel designated by the Participating School not later than the “snapshot time” utilized by the Participating School.

2.4.3 Coordination and Cooperation. Prior to the commencement of each school year in which Participating School students will attend a Pre-K 4 SA School, the Parties shall each designate a point of contact for coordination of procedures to be used to collect and report daily attendance data as well as any other information that must be reported to TEA and/or to other applicable state and federal agencies. These designated representatives shall coordinate and agree upon reporting procedures acceptable to both Parties and adopt agreed Attendance System Procedures to be included in the Participating School’s Attendance Systems Procedures Manual, as required by Section 2.2.5 of the Handbook. If procedures cannot be agreed upon by such representatives the matter shall be referred to the Superintendent of the Participating School and the Chief Executive Officer of the Program for final resolution.

2.4.4 Audit Rights of Participating Schools.

- A. The Participating School shall have the right, upon request as provided below, to review and audit any PEIMS data, and any other data reported by the Corporation to the School, including all source documentation, to ensure accuracy. The Participating School shall provide the Corporation with written notice five (5) business days prior to commencing the review and/or audit. Any audit will be conducted during normal business hours. The Participating School will provide the Corporation with a copy of any report or findings from the audit. The Corporation or the auditing Participating School may release reports or findings to other Participating Schools as either deems appropriate.

2.5 **CURRICULUM.** In order to assure seamless reincorporation of Program-served students into Participating School-assigned campuses for their continued education, the Corporation shall provide a prekindergarten curriculum for the Pre-K 4 SA School Students that utilizes the Texas Education Agency Pre-kindergarten Guidelines as a basis to guide its decisions regarding the specific curriculum content.

2.6 **TRANSPORTATION.** Subject to the requirement to provide transportation in Section 4.3.6, the Corporation may provide transportation and any necessary supervision of students to and from the Pre-K 4 SA Schools for the convenience of students attending the Pre-K 4 SA Schools. The Participating School shall not be required to provide transportation for students to the Pre-K 4 SA Schools. The Corporation may contract with one or more participating schools, or with another governmental or private transportation service entity, to provide students with transportation and any necessary supervision of students to and from the Pre-K 4 SA Schools. The agreement between the Corporation and the party providing such transportation and any necessary supervision of students with regard to the cost and details of such service shall be negotiated and documented by separate contract.

2.7 **FERPA/HIPAA COMPLIANCE AND STUDENT RECORDS.**

2.7.1 **Ownership and Retention of Documents and Student Records.** During its participation in the MOU, the Participating School shall have reasonable access to all such information during reasonable business hours, with the right to make and retain copies of documents, notes and data, whether or not the student's participation in the Program has been completed.

2.7.2 **FERPA Compliance.**

A. The Corporation will be permitted to access individual student information with appropriate parental or guardian consent, in accordance with the Family Educational Rights and Privacy Act of 1974 (FERPA) and its implementing federal regulations found in 34 CFR Part 99. The Corporation agrees that properly released information concerning individual students is to be held in confidence and will be handled in compliance with FERPA.

B. For purposes of this MOU, pursuant to the Family Educational Rights and Privacy Act of 1974 (FERPA) and the Program, Participating School hereby designates the Corporation, its Program faculty and staff, as school officials with a legitimate educational interest in the educational records of the students of the Participating School who receive educational services in the Program to the extent that access to the records are required by the Corporation, its Program faculty and staff to carry out the provisions of this MOU. The Corporation shall put in place procedures to ensure compliance by its corporate officers and directors, employees and Program faculty and staff with FERPA as a material element of this MOU.

C. The Corporation understands and acknowledges that once students are incorporated back into the Participating School's kindergarten program, parental consent will be required to access student information for follow-up assessment

and will take appropriate action to secure such agreement and consent at the time of a student's admission to the Program.

2.7.3 **HIPAA Compliance.** In such instances and to the extent required by the Health Insurance Portability and Accountability Act (HIPAA), and subject to 45 CFR Parts 160 and 164 ("the HIPAA Privacy Regulations"), the Corporation agrees to comply with HIPAA and the HIPAA Privacy Regulations.

2.8 IMMUNITY, REIMBURSEMENT OF COSTS AND INSURANCE.

2.8.1 The Corporation agrees to defend, reimburse reasonable and necessary costs, and hold Participating School, its trustees, officers, agents and employees, harmless against any and all claims, disputes, investigations, lawsuits, judgments, or other proceedings, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by the Corporation's breach of any of the terms or provisions of this MOU and/or any of the contractual obligations set out herein, or by any negligent, grossly negligent or strictly liable act or omission of its officers, agents, or employees in the performance of this MOU.

2.8.2 All of the Corporation's obligations to reimburse reasonable necessary costs of the Participating Schools and their trustees, officers, agents, or employees, contained in this MOU shall not apply to any liability resulting from the sole negligence or fault of Participating School, its trustees, officers, agents, or employees; in the event of joint and concurrent negligence or fault of the Corporation and the Participating School(s), the Corporation's responsibility for reimbursement of reasonable and necessary costs, if any, shall be apportioned comparatively in accordance with the law of the State of Texas, without, however, waiving any governmental immunity available to the either the Corporation or the Participating Schools under Texas or federal law, and without waiving any defenses of the parties under Texas or federal law. Notwithstanding the foregoing, the Corporation's reimbursement obligations arising under or related to those matters described in Section 2.3.8, shall be governed by Section 2.3.8.

2.8.3 The provisions of this Section 2.8 are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity and shall apply to all obligations under Article 2.3, as well as any claims arising under this MOU or in connection with liabilities assumed by the Corporation under this MOU.

2.8.4 The Participating School(s) shall timely notify the Corporation of any demand, lawsuit or other notice of a claim to which the Corporation's duty to defend and reimburse reasonable and necessary costs extends; and Participating School shall be entitled to select and be represented by counsel of its choice at the expense of the Corporation.

2.8.5 The Participating School and the Corporation shall consult one another prior to the settlement of any lawsuit or hearing filed in connection with any matter for which the Corporation has assumed representation, defense or reimbursement of reasonably

necessary costs under this Section 2.8 and/or Section 2.3, above.

2.8.6 The Parties acknowledge that they are subject to, and shall 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. The Participating School and Corporation shall promptly notify each other in writing of any claims or demands that become known against them in relation to or arising out of activities under this MOU.

2.8.7 It is expressly understood and agreed that no party to this MOU waives any immunity, defense, or other protection to which it may be entitled, under either state or federal law, as a result of its participation in this MOU and the Program nor as the result of any reimbursement or hold harmless obligations contained in this MOU. The inclusion of any reimbursement or hold harmless provisions herein shall not create liability on the part of either Party to third-parties, for which either Party would not otherwise be liable.

2.8.8 Insurance Obligation -- Creation of Limitation on Potential Indebtedness.

A. Corporation hereby agrees to provide and maintain in effect during the existence of this MOU a third-party policy of insurance of the type and with indemnification limits not less than the amounts indicated in **Exhibit A**, which is attached hereto and incorporated herein by reference.

B. The policy or policies required herein shall establish the limits of the Corporation's defense and reimbursement obligations to the Participating School, its trustees, officers, agents and employees, and will provide currently available funds to satisfy such obligations. The insurance coverage shall be funded by annual commitments from which any obligation of the Corporation under any reimbursement or hold harmless agreements contained in this MOU may be satisfied, in compliance with the requirements of Tex. Const. art. XI § 7.

III. RESPONSIBILITIES OF PARTICIPATING SCHOOL

3.1 **ENROLLMENT.** The Participating School shall be responsible for enrollment of all students for whom the Participating School is required to provide half-day prekindergarten in compliance with Texas Education Code, Section 29.153 at a Participating School-assigned campus. ("Section 29.153 Eligible Students")

3.2 **CONSIDERATION TO BE PAID BY PARTICIPATING SCHOOL FOR STUDENT SERVICES.** In consideration of the Corporation's provision of the educational services set out above, the Participating School shall pay to the Corporation a maximum Program Tuition Amount of **THREE THOUSAND TWO HUNDRED AND 00/100 DOLLARS (\$3200.00)** per student attending any Pre-K 4 SA School. The Program Tuition Amount shall be payable by the Participating School to the Corporation in four installments based on student daily attendance, payable on October 1, January 1, April 1, and July 1. In the event that a student ceases participation in the Program, the

Corporation shall refund the prorated Program Tuition Amount, unless the Allocated Space is filled by an alternate student from the Participating School. Any funds received by the Corporation under this Article III, are subject to repayment by the Corporation in the event that the Participating School is required to repay such amounts to any other funding source, for any reason.

3.3 REPORTING AND ACCOUNTABILITY. For purposes of accountability under the Texas Education Code, Chapter 39, and for funding under the Foundation School Program, Chapters 41 and 42, a student who is provided prekindergarten education services in a Pre-K 4 SA School shall be reported by the Participating School as if the student is served in the student's Participating School-assigned campus. The Participating School shall make the required reports and shall retain accountability for the student. The Participating School shall be responsible for submitting required PEIMS reports to TEA. The Corporation shall remain responsible for the provision of timely and accurate information to assist the Participating School in submitting the reports as set forth in this MOU, and the Corporation's reporting shall be subject to the reimbursement obligations set out in Section 2.8 and Section 2.3.3.

IV. SPECIAL PROGRAMS

4.1 CHILD FIND AND EVALUATION. Any students attending a Pre-K 4 SA School, regardless of disability, who are experiencing difficulty in the general classroom, shall be considered for all support services available to all students, such as: tutorial; remedial; compensatory; response to scientific, research-based intervention; and other academic or behavior support services.

4.1.1 The Pre-K 4 SA School shall engage in, as appropriate and necessary, a Response to Intervention ("RtI") process consistent with all applicable laws and regulations and will be responsible for gathering and reporting any and all necessary data concerning student progress and RtI. The Pre-K 4 SA School shall document the applicable RtI process to be used with students experiencing difficulty in the general classroom.

4.1.2 The Pre-K 4 SA School shall designate a "Child Find Coordinator" who will be responsible for ensuring that the RtI process is appropriately documented and monitored for each student requiring such intervention. Should a student continue to experience difficulty in the classroom after the provision of interventions, the Child Find Coordinator will obtain written consent from the parent to release information to/from the School of residence. Pre-K 4 SA will make the referral to the School of residence. The referral packet should have a cover form that includes the reason for referral and the interventions that have been provided.

4.1.3 If a parent, guardian or teacher of a student attending the Pre-K 4 SA School indicates his or her concern that the student may require special assistance or that the child may be a student with a disability, the Child Find Coordinator will obtain written consent from the parent to release information to/from the School of residence and provide that information in writing to the Participating School without delay. For Non-Eligible Students attending the Pre-K 4 SA School, the Child Find Coordinator will also obtain the written consent from the parent to release information to/from the School of residence and notify the Office of the Director of Special Education for the School of residence. The School of residence will provide to the parent written notification of the proposal or refusal to

evaluate. The School will pursue consent for evaluation from the parent as necessary. The School of residence will also notify Pre-K 4 SA within 10 days whether they will initiate a full and individual initial evaluation (“FIIE”) pursuant to Section 4.1.5, for any non-Eligible Student attending a Pre-K 4 SA School pursuant to Section 2.2.1. The School of residence will designate the Child Find Coordinator as an agent of the School of residence for purposes of FERPA. The School of residence will communicate with the child’s Pre-K 4 SA Pre-K 4 SA School regarding the status of the evaluation and scheduling of the subsequent ARD/IEP meeting, to the extent permitted by FERPA.

4.1.4 The Participating School, at its sole discretion, may determine whether a referral for a FIIE will be initiated. The Participating School will provide to the parent written notification of the proposal or refusal to evaluate and will pursue consent for evaluation from the parent as necessary. The participating School will communicate with the child’s Pre-K 4 SA Pre-K 4 SA School regarding the status of the evaluation and scheduling of the subsequent ARD/IEP meeting. The Pre-K 4 SA School staff will cooperate and may assist with the Participating School in the evaluation process.

4.1.5 Participating School has sole discretion concerning the selection of personnel and instruments for the purposes of conducting a FIIE.

4.2 **ELIGIBILITY DETERMINATIONS, INDIVIDUAL EDUCATION PROGRAM (“IEP”) DEVELOPMENT, INDIVIDUAL FAMILY SERVICE PLANS (“IFSP”) AND PLACEMENT.**

4.2.1 The Participating School will convene an Admission, Review, and Dismissal (“ARD”) Committee meeting for any student for whom a FIIE is conducted. The purpose of the ARD committee meeting will be to determine eligibility for special education and related services under IDEA, pursuant to 20 U.S.C. Section 1400, et seq. and Title 19 of the Texas Administrative Code Section 89.1050, and for the purpose of the development, review, and revision of each eligible student’s Individualized Education Program (“IEP”). Each IEP shall be designed to offer an eligible student a free appropriate public education (“FAPE”), as defined by state and federal laws, in the least restrictive environment as determined by each student’s ARD committee.

4.2.2 The Participating School shall convene a Section 504 Committee meeting for any student for whom the Participating School suspects may be a qualified student with a disability. The purpose of the Section 504 Committee meeting will be to determine eligibility under Section 504 of the Rehabilitation Act of 1973, pursuant to 34 C.F.R. 104.31, et seq., and for the purpose of ensuring that each eligible student’s unique needs are met as adequately as the needs of students without disabilities. If developed, a “504 Plan” will be designed by the 504 Committee to offer the student a FAPE, as defined by state and federal laws, in the least restrictive environment determined by each student’s 504 committee.

4.2.3 **Placement.** Each student’s placement will remain at the sole discretion of that student’s ARD committee or 504 committee as required by 19 T.A.C. § 89.1050; 34 C.F.R. § 300.116; and 34 C.F.R. 104.34. For students that meet Pre-K 4 SA School Eligibility

requirements specified in Paragraph 2.2.1., the Pre-K 4 SA School will be treated as the school the student would attend if he or she were nondisabled, for purposes of 34 C.F.R. 300.116(c).

4.2.4 ARD Committee Meetings. The Participating School shall be responsible for convening all ARD committee meetings for students attending the Pre-K 4 SA School, including issuing any notices required before or after an ARD committee meeting pursuant to 34 C.F.R. 300.300, 300.322, 300.503, and Title 19 of the Texas Administrative Code § 89.1045. The Participating School shall notify Pre-K 4 SA. Pre-K 4 SA will provide data for the PLAAFP and development of goals. The Participating School will use this data to prepare the IEP draft, and will coordinate the ARD meeting, and maintain the audit file.

4.2.5 Requests for ARD Committee Meetings by the Pre-K 4 SA School or A Parent or Guardian. In the event that Pre-K 4 SA employees believe an ARD committee meeting is necessary or if a parent or guardian requests an ARD committee meeting, Pre-K 4 SA shall immediately notify the student's Participating School- in writing and by telephone to relay the request. **THE PARTIES EXPRESSLY AGREE THAT PRE-K 4 SA'S FAILURE TO NOTIFY THE PARTICIPATING SCHOOL OF SUCH A REQUEST AS SPECIFIED HEREIN WITHIN TWO BUSINESS DAYS OF SUCH EVENT WILL BE SUFFICIENT TO ESTABLISH THE CORPORATION'S OBLIGATIONS UNDER SECTION 2.3.8, PARAGRAPH E, SUBPARAGRAPHS d., e. AND f. OF THIS MOU.**

4.2.6 ARD Committee Participation. The Corporation shall ensure that a general education teacher of the student (if the student is, or may be, participating in the general education environment) is available to participate in any and all required ARD committee meetings convened by the Participating School during the student's period of attendance at the Pre-K 4 SA School. The Participating School shall coordinate with Pre-K 4 SA to schedule the ARD committee meeting, giving no less than 5 days' notice prior to scheduling the same. Any costs related to those teachers' or providers' participation in such meetings shall be borne exclusively by the Corporation.

4.2.7 IFSP Development. In the event that a student's parent seeks to enroll a student at Pre-K 4 SA, but seeks the development of an Individual Family Service Plan ("IFSP"), the Participating School will convene an ARD committee meeting to consider an IFSP and, if deemed appropriate by the Participating School, develop an IFSP for the student as a parentally placed private school student.

4.3 PROVISION OF SERVICES FOR STUDENTS WITH DISABILITIES AT THE PRE-K 4 SA SCHOOLS.

4.3.1 Students meeting the eligibility requirements of Section 2.2.1, Paragraph C., and selected pursuant to Article 3.2, or students meeting the requirements of 2.2.1 Paragraph (C)(d) will be provided prekindergarten services and related services as determined by each Student's ARD committee and as articulated in the IEP or IFSP for the student, such that the student receives a FAPE at the Pre-K 4 SA School. The Participating School will provide a copy of the IEP or IFSP to appropriate Pre-K 4 SA School personnel for

implementation of the student's IEP, to include any and all modifications and accommodations, including behavior interventions, necessary for the student to receive FAPE, or all services otherwise owed the student under his or her IFSP. The schedules of services will be developed as if the child is receiving services in the School.

4.3.2 The Corporation shall fully implement the IEP or 504 Plan for each student in attendance at the Pre-K 4 SA School, which may include, but is not limited to, the provision of related services as defined by 34 C.F.R. 300.34 and services related to positive behavioral intervention needs, English Language Learners, Braille, auditory impairment language and communication needs, assistive technology needs, and supplementary aids and services. The Pre-K 4 SA School shall ensure that the student's schedule as set forth in the IEP or Section 504 Plan is followed and that all specified accommodations are provided pursuant to that plan. The Corporation shall be responsible for collecting and maintaining any and all necessary data related to student performance relative to the student's present levels of academic achievement and functional performance and shall also provide the Participating School all information necessary for the preparation of required IEP progress reports for each student. The Pre-K 4 SA School shall have sufficient personnel available for providing related service counseling, speech therapy, and sign language interpretation for those students whose IEP or Section 504 Plan requires such related services.

4.3.3 Should a student require, by virtue of identification within the student's IEP or IFSP, services beyond counseling, speech therapy or sign language interpretation, the Corporation may contract with a qualified third-party to provide these services. The Corporation shall notify appropriate persons at Participating School of the qualified third-party who will provide these services. Such services could include, but are not limited to, direct and/or consultative services in such areas of audiology, interpreting services, psychological services, occupational and/or physical therapy, recreation, in-home and parent training, orientation and mobility services, school health services and school nursing services, and behavior intervention.

4.3.4 The Corporation shall permit any Participating School staff or Participating School-selected contractor to access the student at the Pre-K 4 SA School for the purposes of conducting evaluations or observations of the student.

4.3.5 The Corporation will ensure that proper space is available for any related services or evaluation to be provided to the student, including evaluations provided by Participating School staff or Participating School selected contractors. Any Participating School staff person or contractor will be required to comply with any security requirements of the Corporation.

4.3.6 In the event that a student with a disability who receives services under IDEA or Section 504 requires related service transportation to and/or from a Pre-K 4 SA School, the Corporation shall be fully responsible for providing such transportation.

4.3.7 The Corporation shall be responsible to the Participating School for all reasonable

and necessary costs incurred as the result of Corporation's failure to comply with, or as a result of any allegation that it failed to comply with, any part of its responsibilities related to the provision of a student's services as required by the IEP.

V. SECOND LANGUAGE LEARNERS

5.1 If a student attending a Pre-K 4 SA School has been identified as a second language learner, the Participating School shall obtain appropriate documentation from its Language Proficiency Assessment Committee ("LPAC") with regard to the student's dominant oral language, the student's level of oral proficiency, and the type, level, frequency and duration of instruction and/or support services needed. Pre-K 4 SA School will provide direct instruction by certified bilingual/ESL teachers as well as appropriate translators and interpreters.

VI. ASSESSMENT AND EVALUATION

6.1 **PRE-K 4 SA SCHOOL ASSESSMENT PROCESSES.** Unless specific assessment procedures are required by law for the students of Participating School, the Corporation may develop, identify, purchase, or otherwise acquire the use of a common assessment process that the Pre-K 4 SA Schools will use to evaluate performance and progress of students attending the Pre-K 4 SA Schools, to provide consistent professional development and assistance to educators at the Pre-K 4 SA Schools, and to evaluate the effectiveness and cost-efficiency of the Program. This assessment process will be used exclusively by the Pre-K 4 SA Schools and the Corporation but will not be binding on or have any effect in any way on the Participating School. The Participating School will continue to use its own assessment process to evaluate the Participating School's Students not attending the Pre-K 4 SA Schools, the performance of its staff and effectiveness of its own program.

6.2 REPORTING FOLLOWING PREKINDERGARTEN ATTENDANCE AT PRE-K 4 SA SCHOOL.

6.2.1 The Participating School agrees to provide to the Corporation requested student data that is collected and reduced to reports in the regular course of the Participating School's operations related to performance of students to which this obligation applies, as provided in Section 6.2.2 below. Such reports shall be provided by the Participating School upon written request by the Corporation, describing in reasonable detail the reports requested. The Participating Schools may, but shall not be required to, customize reports to fit the needs of the Corporation.

6.2.2 **LIMITS ON PARTICIPATING SCHOOL'S OBLIGATION.** The Participating School agrees to provide data in its possession related to student performance from kindergarten through third grade. The Corporation and its independent evaluators must abide by the Family Educational Rights and Privacy Act. The Participating School agrees to provide student-level data for students who attended the Pre-K 4 SA Schools and a comparative limited data set for students in the School in kindergarten through third grade who did not attend the Pre-K 4 SA Schools as determined by the Participating School ("Non-Attending Student Group"). This limited data set comprised of the Non-Attending Student Group will be used by the Corporation and its independent evaluator solely as a comparison group in order to assess the impact of the Pre-K 4 SA Schools on student outcomes. The

Corporation and its independent evaluator must comply with all FERPA requirements for an organization conducting studies to improve educational instruction and must maintain the data securely, report all evaluation results in aggregate so as to identify no student, and will destroy all data at the end of the evaluation period. The parties agree that prior to release of this information by the Participating School the Parties will enter into a more detailed data sharing agreement setting out the obligations of the Parties with regard to supply, use and reporting results of evaluation by the Corporation's independent evaluator.

VII. PUBLIC INFORMATION ACT

7.1 The Texas Better Jobs Act and the Texas Public Information Act, ("PIA") Government Code Section 552.021, require the Corporation and/or Participating School to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it.

7.2 The Parties agree that, if any Party hereto receives inquiries regarding or requests for documents within its possession under the PIA in any way related to the Program, the Pre-K 4 SA Schools, or this MOU, said party shall, within twenty-four (24) hours of receipt by the designated officer for that Party who handles PIA requests ("Designated Public Information Liaison"), provide notice of such requests to the other Party for the coordination of disposition of that request.

7.3 For the purposes of communicating and coordinating with regard to PIA requests, all communications shall be made to the Designated Public Information Liaison for each Party. Each Party shall designate in writing to the other party the Public Information Liaison for its organization and provide notice of any change in the Designated Public Information Liaison, and all such notices shall be made promptly to the other Party.

VIII. CHANGE OF PARTICIPATION, CLOSURE OR TERMINATION.

8.1 WITHDRAWAL BY A PARTICIPATING SCHOOL.

8.1.1 A Participating School that wishes to withdraw from participation in any or all components of the Program ("Withdrawing Participating School"), may withdraw as a Participating School from participation in any or all of the Program Components at the end of any school year by giving prior written notice to the Corporation of its intent to withdraw as a Participating School and the Program components from which it wishes to withdraw. Such notice shall be provided no later than March 1st of the ongoing school year and shall be effective on the last school day of that school year. The last day of school shall be determined by the school calendar of the Withdrawing Participating School. Withdrawing Participating School's notice of withdrawal must be signed by the President of the Board of Trustees and the Superintendent of Schools, or by individuals with comparable authority within the Participating School's organization, for the Withdrawing Participating School and shall be delivered to the Corporation in accordance with the Notice Provisions of this MOU.

8.1.2 A Withdrawing Participating School shall remain responsible for all of its obligations under this MOU arising prior to the effective date of withdrawal.

8.1.3 The Corporation and the Withdrawing Participating School agree to reasonably cooperate with one another after the effective date of its withdrawal with regard to settle-up of funding, as well as correction and/or completion of student records and other information, audits, and similar matters for which either party requests the assistance of the other.

8.2 **TERMINATION OF PROGRAM OR CLOSURE OF PRE-K 4 SA SCHOOLS.**

8.2.1 **Termination or Closure for Convenience.** In the event that the City desires to terminate operation of any of the Pre-K 4 SA Schools, or to terminate the Program for convenience, and its reasons for doing so are not the result of exigent financial circumstances, it may do so only at the end of any school year. In such event the Corporation shall provide the Participating School prior written notice of its intent to terminate operation of any of the Pre-K 4 SA Schools, or to terminate the Program, by no later than March 1st of the school year prior to such termination or closure. The Corporation's notice of termination or closure must be signed by the Chief Executive Officer of the Program and be accompanied by a written Resolution adopted by the Corporation's Board of Directors terminating the Program or closing any or all of the Pre-K 4 SA Schools. Notice shall be delivered to the Participating School in accordance with the Notice Provisions of this MOU.

8.2.2 Termination or Closure -- Circumstances Beyond the Corporation's Control.

A. In the event the Corporation is required at any time, due to circumstances beyond its control (e.g. unexpected funding cuts or operation of law), to close a Pre-K 4 SA School or terminate the Program in its entirety, then it shall provide the Participating School at least sixty (60) days' notice prior of the date of the closure of the Pre-K 4 SA School(s) or termination of the Program.

B. In the event any or all Pre-K 4 SA School(s) are closed, or the Program is required to be terminated prior the end of any school year:

a. Students enrolled in a Participating School but receiving services at a Pre-K 4 SA School to be closed shall be re-integrated into their Participating School- assigned campus as soon as practicable, but in no event later than the closure of the Pre-K 4 SA School or termination of the Program.

b. Participating School shall not be obligated to continue prekindergarten services for students not enrolled as a prekindergarten

student of the Participating School.

c. The Corporation shall immediately return funding provided by the Participating School for its students attending the Pre-K 4 SA School, prorated on a per diem basis.

d. The Corporation shall effect an orderly transfer to Participating School or to such person(s) or third-parties(s) as the Participating School may designate, at no additional cost to Participating School, all completed or partially completed documents, papers, student records, reports, and any other materials or information produced by, or provided to the Corporation, in connection with the services rendered by the Corporation under this MOU, regardless of storage medium. Such record transfer shall be completed within thirty (30) calendar days of the Program or closure of any Pre-K 4 SA School and shall be completed at the Corporation's sole cost and expense. Payment of compensation due or to become due to the Corporation is conditioned upon delivery of all such documents.

e. The Corporation and the Participating Schools agree to reasonably cooperate with one another after the effective date of termination with regard to settle-up of funding, correction and/or completion of student records and other information, audits, and similar matters for which either party requests the assistance of the other.

8.3 TERMINATION BY PARTICIPATING SCHOOL.

8.3.1 If the Corporation neglects or refuses to provide any insurance coverage or if any insurance is cancelled, the Participating School may terminate participation in this MOU immediately or at any time prior to full compliance, upon written notice to the Corporation. Upon such termination, the procedures set out in Section 8.2.2 B. shall apply, and the Corporation will refund a prorated Program Tuition Amount to the Participating School.

IX. GENERAL PROVISIONS.

9.1 **PARTIAL INVALIDITY.** If any provision, section, subsection, paragraph, sentence, clause or phrase of this MOU, or the application of same to any person or set of circumstances, is for any reason held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, or if a change in applicable law results in the same, the remaining provisions shall continue in full force and effect, unless a written amendment to this MOU is approved by the Parties.

9.2 **INTEGRATION AND COMPLETE AGREEMENT.** This MOU, together with any instruments or documents expressly incorporated herein by reference, and any attachments hereto, contains the entire agreement between the parties with respect to the subject matter hereof. No other agreement, statement, or promise made by or to any officer, employee, official, trustee, or agent of any party that is not contained herein shall be of any force and effect. Any modifications to the terms of this MOU must be in writing and approved and signed by the Parties.

9.3 **INDEPENDENT RELATIONSHIP.** None of the provisions of this MOU are intended to create, nor may be deemed to create, any relationship between the Parties other than that of independent entities contracting with each other to perform services and functions together that each Party is authorized by law to perform independently. Nothing in this MOU shall create an employer/employee relationship or agency relationship among or between any of the Parties, and no Party to this MOU is an employer, employee or agent of any other party to this MOU.

9.4 **ASSIGNMENT.** Except as otherwise required herein, neither Party may sell, assign, pledge, transfer or convey any interest in this MOU nor delegate the performance of any duties hereunder, by transfer, by subcontracting or by any other means, without the prior written consent of the other Party. Services to be performed under this MOU may be subcontracted upon the written approval of Participating School's representative. As a condition of consent, if same is given, the Corporation shall remain liable for completion of the services outlined in this MOU in the event of default by the successor, assignee, transferee or subcontractor. Any references in this MOU to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by Participating School in accordance with this Article 9.4. Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under this MOU, without said written approval, shall be void, and shall confer no rights upon any third person.

9.5 **CONSTRUCTION OF MOU.** Unless the context requires otherwise, words used in this MOU shall be given their ordinary meaning. If a word is connected with and used with reference to a particular subject matter or is used as a word of art, the word shall have the meaning commonly used by persons working within that particular subject matter or art. Words in the present or past tense include the future tense unless otherwise provided. The singular includes the plural and the plural includes the singular unless otherwise provided. Words of one gender include both genders unless otherwise provided. The headings at the beginning of the various provisions of this MOU have been included only in order to make it easier to locate the subject covered by each provision and are not to be used in construing this MOU unless otherwise provided.

9.6 **ALL PARTIES REPRESENTED.** This MOU shall be construed without regard to the identity of the person or persons who drafted the provisions contained herein. Each and every provision of this MOU has been reviewed by each party and each party has participated equally in the settlement process. As a result, each and every provision of this MOU shall be construed as if each party hereto participated equally in the drafting hereof. Any rule of construction that the document is to be construed against the drafting parties shall not be applicable to this MOU.

9.7 **ALTERNATIVE DISPUTE RESOLUTION.** The Parties expressly acknowledge and agree that nothing in this MOU is meant to waive, release or extinguish any right on the part of any Party to file a lawsuit to enforce this MOU and to seek to recover any and all damages caused by the breach of this MOU. However, **PRIOR TO AND AS A CONDITION PRECEDENT TO THE INSTITUTION OF ANY SUCH LEGAL PROCEEDING**, the Parties agree to attempt to resolve any dispute arising from or with regard to the interpretation or performance of this MOU through non-binding mediation presided over by a mediator mutually acceptable to the Parties involved in the dispute.

9.8 **APPLICABLE LAW.** This MOU shall be governed by, and interpreted and enforced in accordance with, the laws of the State of Texas, without regard to any provisions relating to a choice of laws. This MOU is performable in Bexar County, Texas. Unless otherwise required by law, exclusive venue for any dispute or proceeding concerning the interpretation and/or enforcement of this MOU shall be in the state and federal courts of Bexar County, Texas.

9.9 **NOTICE.** Any notice or communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery, or (b) expedited delivery service with proof of delivery, (c) United States mail, postage prepaid, registered or certified mail, or (d) via facsimile, telegram or e-mail, address as follows:

If to Participating School

Akeem Brown, CEO and Superintendent
Essence Preparatory Public School
1447 E. Crockett Street
San Antonio, Texas 78202

If to the Corporation:

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

9.10 **SURVIVAL.** The terms and obligations contained in Sections 2.3 (including all subparts) and 2.8 (including all subparts) shall survive the termination or expiration of this MOU.

9.11 **LEGAL AUTHORITY.** The signatories to this MOU for the Participating School and the Corporation each represent, warrant, assure and guarantee that he or she has full legal authority to execute this MOU on behalf of the Participating School and the Corporation respectively, and to bind the Participating School and the Corporation to all of the terms, conditions, provisions and obligations herein contained.

PARTICIPATING SCHOOL:

CORPORATION:

By: _____

President, Board of Directors

Date: _____

By: _____

Chair, Board of Directors

Date: _____

By: _____

CEO and Superintendent

Date: _____

By: _____

Chief Executive Officer

Date: _____

EXHIBIT A
Insurance and Indemnification Limits

A.1 Prior to the selection of students to attend any Pre-K 4 SA School, the Corporation shall provide and maintain in effect for the duration of this MOU insurance of the following types and with indemnification limits not less than the amounts indicated, or their equivalents:

Workers' Compensation

(Including Waiver of Subrogation
Endorsement)

All liability arising out of Corporation's employment of workers and anyone for who the Corporation shall be liable for Worker's Compensation claims.

*If the Pre-K 4 SA School employees are employees of the City, and the City extends its coverage to these employees, the Corporation need not provide this coverage. In such event, the Corporation shall provide a summary description of the coverage provided by the City, which will be extended to the Corporation's employees.

Errors and Omissions:

\$1,000,000.00 per claim
\$2,000,000.00 in the aggregate

Directors' and Officers' Liability:

\$1,000,000.00 per claim
\$2,000,000.00 in the aggregate

*defense costs shall be covered outside of policy limits.

Commercial General Liability:

Occurrence Aggregate
Personal Injury (Libel and Slander)

\$1,000,000.00
\$3,000,000.00
\$1,000,000.00 each person

Abuse & Molestation Liability

\$1,000,000.00 per claim
\$3,000,000.00 in a policy period

* Must cover professional liability, third-party discrimination, fiduciary liability, supervision/ retention of persons actually or allegedly engaged in sexual misconduct, reporting or failure to report sexual misconduct, bodily injury and property damage.) shown below and CGL Policy provides for defense costs to be covered outside of policy limits), and must comply with requirements of Paragraph A3 and A4 below.

Automobile Liability:

\$2,000,000.00 combined single limit

Program Consultants

\$1,000,000.00 per claim

\$2,000,000.00 in the aggregate

*Corporation may choose to require Program Consultants to carry this coverage or it can be provided by the Corporation.

Excess Umbrella Liability

\$8,000,000.00

A.2 The required insurance must be written by a company authorized to do business in Texas and which issues such policies in the State of Texas at the time the policy is issued..

A.3 The Abuse & Molestation Policy required above shall contain no bodily injury deductible or Self Insured Retention requirements, shall provide for defense costs to be covered outside of the liability limits, and shall include coverage for all employees and volunteers of the Corporation who provide supervision of any kind for any student of a Participating School.

A.4 It is the intent of the parties to this Agreement that the Commercial General Liability and the Abuse and Molestation Liability coverage provided herein shall be primary to and shall seek no contribution from insurance available to Participating School, with Participating School's insurance being excess, secondary and non-contributing. The Commercial General Liability coverage and the Abuse and Molestation Liability coverage shall be endorsed to provide such primary and non-contributing liability.

A.5 Prior to the selection of students to attend any Pre-K 4 SA School, the Corporation shall have its insurance carrier(s) furnish to the Participating School insurance certificates in form satisfactory to the Participating School that at a minimum specify the following:

- (a) The types and amounts of coverage in effect;
- (b) All exclusions and limitations added by endorsement to any of the insurance policies;
- (c) The expiration dates of each policy;
- (d) A statement that no insurance will be canceled or materially changed while the MOU is in effect without thirty (30) calendar days' prior written notice to the Participating School; and
- (e) A statement that, except for Workers' Compensation, Errors and Omissions, Directors' and Officers', and Program Consultant's Liability Insurance, the Participating School is named as an additional insured.

The Corporation shall notify the Participating School in writing by certified mail or personal delivery, within ten (10) days after the Corporation knows or should have known, of any change that materially affects the provision of the coverage required.

A.6 Upon reasonable notice, the Corporation shall permit Participating School to examine all of the insurance policies, or at Participating School's option, Corporation shall furnish the Participating School with copies, certified by the carrier(s), of insurance policies required.

A.7 If Corporation neglects or refuses to provide any insurance required herein, or if any insurance is canceled, the Participating School may (1) terminate participation in this MOU pursuant to Section 8.3.1 or (2) may, but shall not be obligated to, procure such insurance at the Corporation's expense. Insurance provided pursuant to this Section shall be reimbursed by deduction from the next Quarterly Tuition Payment following the payment of such sums by the Participating School or Schools.