

**THIS SUBCONTRACT AGREEMENT WILL BE POSTED ON THE CPS INTERNET WEBSITE**

**SUBCONTRACT AGREEMENT**

(LATISHA SMITH)

This Subcontract Agreement ("**Agreement**") dated October 19, 2009 ("**Effective Date**") is by and between the Board of Education of the City of Chicago, a body politic and corporate, and commonly known as the Chicago Public Schools (the "**Board**" or "**CPS**") and Latisha Smith ("**Subrecipient**").

**RECITALS**

- A. WHEREAS, the City of Chicago ("**City**") has received Head Start and Early Head Start Grant Funds from the United States Department of Health and Human Services ("**HHS**") and Child Care Funds from the State of Illinois Departments of Human Services ("**DHS**") and Children and Family Services ("**DCFS**") (collectively "**Collaboration Grant Funds**"); and
- B. WHEREAS, in addition, the City has entered into grant agreements with DHS and DCFS utilizing, in part, funds received from HHS under Titles IV-A and XX of the Social Security Act, the Child Care and Development Block Grant Program, 42 U.S.C. § 9858 *et seq.*, and the Social Services Block Grant Program, 42 U.S.C. § 9801 *et seq.* (collectively, the "**Child Care Funds**"); and
- C. WHEREAS, Collaboration Grant Funds are to be used for the social and educational development of young children, and Child Care Funds are to be used for the social and educational development of young children and the employment and economic development of their families, under the Head Start and Early Head Start Programs, the Child Care Collaboration Program and the Child Care Services Program; and
- D. WHEREAS, the City of Chicago and the Board entered into a Delegate Agency Grant Agreement ("**Grant Agreement**") authorizing the Board to provide services under the under the Head Start and Early Head Start Programs, the Child Care Collaboration Program and the Child Care Services Program; and the term of such Grant Agreement commences December 1, 2008 and continues through November 30, 2011 or until the services to be provided by the Board are completed or until the Grant Agreement is terminated, whichever occurs first; and
- E. WHEREAS, the Grant Agreement permits the Board to subcontract with others to provide services under the Grant Agreement and Subrecipient represents that she has the professional experience and expertise to provide these services to the full satisfaction of the City and the Board, and that she is ready, willing and able to enter into this Agreement; and
- F. WHEREAS, the Board desires to enter into this Agreement to secure the professional services of Subrecipient as hereinafter set forth and not otherwise.

**NOW, THEREFORE**, in consideration of the mutual promises and the terms and conditions set forth herein, the Board and Subrecipient do hereby agree as follows:

**TERMS AND CONDITIONS**

**1. INCORPORATION OF RECITALS AND THE GRANT AGREEMENT.**

- 1.1 **Recitals.** The matters recited above are hereby incorporated into and made a part of



this Agreement.

- 1.2 **Grant Documents.** In performing its responsibilities under this Agreement, Subrecipient further agrees to comply with all provisions that apply to subrecipients in the Grant Award Notifications and in the Grant Agreement (collectively, "Grant Documents"). Specifically, Subrecipient certifies and agrees that it shall comply with the provisions of Attachment 1 (Federal Funding Terms and Conditions) of this Agreement. Subrecipient also agrees to fully comply with Grantor's cost principals and Grantor's General Terms and Conditions, a copy of which is attached hereto and incorporated herein by reference as Attachment 2.

2. **TERM AND OPTIONS TO RENEW:**

- A. **Term:** This Agreement is for a term commencing with the Effective Date of this Agreement and continuing through October 19 2010 ("Term"), unless terminated sooner as provided herein.
- B. **Options to Renew.** The BOARD reserves the right to renew this Agreement for up to two consecutive 12-month periods. Any such extension shall be known as a "Renewal Term" and shall be subject to the provisions of this Agreement, except for "Compensation and Payment" which shall be negotiated prior to the expiration of the preceding term. The exercise of any option to renew shall be subject to approval by the Board's Chief Purchasing Officer or the members of the Chicago Board of Education, as applicable, and shall be documented by a writing signed by both parties hereto.

3. **SCOPE OF SERVICES:** Subrecipient agrees to provide the services set forth on Exhibit A ("Services"), in accordance with the terms and conditions of this Agreement. "Services" means, collectively, the services, deliverables, duties and responsibilities described in Exhibit A of this Agreement and any and all work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement. The Board retains final authority with respect to all Services related decisions. The Board may, from time to time, request changes in the scope of Services. Any such changes, including any increase or decrease in Subrecipient's fees, shall be documented by a written amendment to this Agreement signed by both parties.

4. **COMPENSATION AND PAYMENT; REIMBURSABLES:**

- 4.1 The total maximum compensation payable to Subrecipient under this Agreement during the initial term shall not exceed Seventy-four Thousand, Four Hundred and Ninety-five and 00/100 Dollars (\$74,495), inclusive of all reimbursable expenses, if any ("Total Maximum Compensation"). Payments under this Agreement shall not exceed the Total Maximum Compensation amount without a written amendment to this Agreement in accordance with Section 25 (Entire Agreement and Amendment). The Board shall pay Subrecipient for Services provided and Materials delivered by Subrecipient in accordance with the provisions of this Agreement. Payments shall be made as specified in the attached Scope of Services (Exhibit A).

- 4.2 **Reimbursables:** There shall be no reimbursable expenses payable hereunder.

5. **BILLING AND PAYMENT PROCEDURES:** All invoices must include: a valid purchase order



number, the CPOR # indicated on the signature page of the Agreement, an itemized description of the Services rendered and/or materials delivered, dates the services were rendered, dates the materials were delivered, invoice date, and invoice amount. Invoices shall be submitted in a timely manner. The final invoice shall be submitted no later than thirty (30) days after the expiration or termination of this Agreement. If Subrecipient has more than one contract with the Board, separate invoices must be submitted for each contract. The Board shall process payments in its normal course of business after receipt of invoices and all supporting documentation necessary for the Board to verify the Services provided under this Agreement.

**Submit original invoices to:**

Chicago Public Schools  
Attn: Accounts Payable  
PO Box 661  
Chicago, IL 60690-0661

**Submit a copy to:**

Chicago Public Schools  
Doolittle West Early Childhood Center  
Chicago, IL 60616  
Attn: Adrienne Stewart

6. **STANDARDS OF PERFORMANCE:** Subrecipient must perform all Services required of it under this Agreement with that degree of skill, care and diligence normally shown by a Subrecipient performing services of a scope, purpose and magnitude comparable with the nature of the Services to be provided under this Agreement. Subrecipient acknowledges that, if in the course of providing Services hereunder, it is entrusted with or has access to valuable and confidential information and records of the Board, that with respect to that information, Subrecipient agrees to be held to the standard of care of a fiduciary. Any review, approval, acceptance of Services or deliverables or payment for any of the Services by the Board does not relieve Subrecipient of its responsibility for the professional skill and care and technical accuracy of its Services and deliverables. This provision in no way limits the Board's rights against the Subrecipient under this Agreement, at law or in equity.
7. **PERSONNEL:** It is understood and agreed that this is a personal services contract and Subrecipient may not use any employees or subcontractors to provide Services hereunder.
8. **NON-APPROPRIATION AND DUTY TO MONITOR:**
  - 8.1 Funding for this Agreement is subject to (i) availability of Grant funds from Grantor, (ii) the approval of the acceptance and expenditure of federal grant funds by the Board, and (iii) Subrecipient's satisfactory performance of the Work. Furthermore, in the event that no funds or insufficient funds are appropriated and budgeted in any fiscal period of the Board for payments to be made under this Agreement, then the Board shall notify Subrecipient of such occurrence and this Agreement shall terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or when the funds appropriated for payment under this Agreement are exhausted. Payments for Services completed to the date of notification shall be made to Subrecipient except that no payment shall be made or due to Subrecipient under this Agreement beyond those amounts appropriated and budgeted by the Board to fund payments under this Agreement. In no event shall the Board be liable to the Subrecipient for any amount in excess of the current appropriated amount.
  - 8.2 Subrecipient recognizes and acknowledges (i) that it has an affirmative duty to monitor its performance and billings to insure that the Scope of Services is completed within the



Maximum Compensation amount for the Term and (ii) that billings are consistent with the rates specified in the attached Scope of Services. If the Board and Grantor amend an underlying Grant budget and such amendment causes a reduction or expansion in the Scope of Services, Subrecipient and the Board shall execute an amendment to this Agreement that includes an amended Scope of Services including an amended budget, and shall document their approval of such amendments in writings signed by authorized representatives of each party hereto.

**9. EVENTS OF DEFAULT AND REMEDIES:**

9.1 Events of default ("**Events of Default**") include, but are not limited to, the following:

- a. Any material misrepresentation by Subrecipient in the inducement or the performance of this Agreement.
- b. Breach of any term, condition, representation or warranty made by Subrecipient in this Agreement.
- c. Failure of the Subrecipient to perform any of its obligations under this Agreement including, but not limited, to the following:
  - (i) Action or failure to act which negatively affects the safety and/or welfare of students or Board staff;
  - (ii) Failure to perform the Services with sufficient personnel or material to ensure the timely performance of Services;
  - (iii) Failure to timely perform Services;
  - (iv) Failure to perform the Services in a manner reasonably satisfactory to the Chief Purchasing Officer of the Board;
  - (v) Failure to promptly re-perform Services that were rejected by the Board as incomplete or unsatisfactory within a reasonable time and at no cost to the Board; and
  - (vi) Discontinuance of the Services for reasons within Subrecipient's reasonable control.
- d. Default by Subrecipient under any other agreement Subrecipient may have or may enter into with the Board.
- e. Assignment by Subrecipient for the benefit of creditors or consent by Subrecipient to the appointment of a trustee or receiver or the filing by or against Subrecipient of any petition or proceeding under any bankruptcy, insolvency or similar law.

9.2. **Remedies.** The occurrence of any event of default permits the Board, at the Board's sole option, to declare Subrecipient in default. The Chief Purchasing Officer may in her/his sole discretion give Subrecipient an opportunity to cure the default within a





certain period of time ("Cure Period"), which period of time must not exceed 30 days unless extended by the Chief Purchasing Officer. Whether or not to declare Subrecipient in default is within the sole discretion of the Chief Purchasing Officer.

The Chief Purchasing Officer shall give Subrecipient written notice of the default either in the form of a cure notice ("Cure Notice") or, if no opportunity to cure shall be granted, a default notice ("Default Notice"). If the Chief Purchasing Officer gives Default Notice, she/he shall also indicate any present intent she/he may have to terminate this Agreement. It is understood and agreed that any such decision to terminate this Agreement in whole or in part is final and effective upon giving the notice. If the Chief Purchasing Officer decides not to terminate, this decision shall not preclude him or her from later deciding to terminate the Agreement in a later notice, which shall be final and effective upon the giving of the notice or on the date set forth in the notice, whichever is later. The Chief Purchasing Officer may give a Default Notice if Subrecipient fails to effect a cure within the Cure Period given in the applicable Cure Notice. When a Default Notice with intent to terminate is given as provided in this Section, Subrecipient must discontinue all Services, unless otherwise directed in the notice, and must deliver to the Board all materials prepared or created in the performance of this Agreement, whether completed or in-process. Following the giving of notice hereunder and the expiration of any Cure Period, if no adequate cure is made, the Board may invoke any or all of the following remedies:

- a. Take over and complete the Services or any part thereof, either directly or through others, as agent for and at the cost of Subrecipient. In such event, Subrecipient shall be liable to the Board for any excess costs incurred by the Board. Any amount due Subrecipient under this Agreement or any other agreement Subrecipient may have with the Board may be offset against amounts claimed due by the Board in exercising this remedy.
- b. Terminate this Agreement, in whole or in part, as to any or all of the Services yet to be performed, effective at a time specified by the Board.
- c. Suspend Services during the designated Cure Period if the default results from an action or failure to act by Subrecipient which affects the safety and/or welfare of students or Board staff.
- d. Seek specific performance, an injunction or any other appropriate equitable remedy.
- e. Receive from Subrecipient any and all damages incurred as a result or in consequence of an Event of Default.
- f. Money damages.
- g. Withhold all or part of Subrecipient's compensation under this Agreement that are due or future payments that may become due under this Agreement.
- h. Deem Subrecipient non-responsible in future contracts to be awarded by the Board, pursuant to the Board's Debarment Policy on Non-Responsible Persons



in Procurement Transactions (08-0602-PO1), as may be amended from time to time.

If the Board considers it to be in its best interest, it may elect not to declare Subrecipient in default or it may elect not to terminate this Agreement. The parties acknowledge that if the Board permits Subrecipient to continue to provide the Services despite one or more Events of Default, Subrecipient is not relieved of any responsibilities, duties or obligations under this Agreement, nor shall the Board be deemed to have waived or relinquished any of the rights it has to declare an Event of Default in the future.

The remedies under the terms of this Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default shall be construed as a waiver of any Event of Default or acquiescence thereto, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

If the Board's election to terminate this Agreement for default under this Section is determined by a court of competent jurisdiction to have been wrongful, then in that case the termination is to be considered an early termination as described in Section 10 below (Early Termination).

10. **EARLY TERMINATION.** In addition to termination under Article 8 (Non-appropriation) and Section 9.2 (Remedies) of this Agreement, the Board may terminate this Agreement at any time by a notice to the Subrecipient in accordance with the provisions of Article 22 (Notices). The effective date of termination shall be the date the notice is received by Subrecipient or the date stated in the notice, whichever is later.

After notice is received, Subrecipient must restrict its activities and those of its subcontractors, to winding down any reports, analyses, or other activities previously begun. No costs incurred after the effective date of the termination are allowed. Payment for any Services actually and satisfactorily performed before the effective date of the termination is on the same basis as set forth in Article 4 above (Compensation and Payment) and the Schedule of Compensation.

Subrecipient must include in its contracts with subcontractors an early termination provision in form and substance equivalent to this early termination provision to prevent claims against the Board arising from termination of subcontracts after the early termination of this Agreement.

Subrecipient shall not be entitled to make any early termination claims against the Board resulting from any subcontractor's claims against Subrecipient or the Board to the extent inconsistent with this provision.

11. **ASSIGNMENT:** This Agreement shall be binding on the parties and their respective successors and assigns, provided however, that neither party may assign this Agreement or any obligations imposed hereunder without the prior written consent of the other party.



12. **CONFIDENTIAL INFORMATION, DISSEMINATION OF INFORMATION, OWNERSHIP, INJUNCTIVE RELIEF, FREEDOM OF INFORMATION ACT, SURVIVAL:**

- 12.1 **Confidential Information.** In performance of Services and/or delivery of Materials to the Board, Subrecipient may have access to or receive certain information that is not generally known to others ("**Confidential Information**"). Subrecipient shall not use or disclose any Confidential Information or any finished or unfinished, documents, screens, reports, writings, procedural manuals, forms, source code, object code, work flow charts, methods, processes, data, data studies, drawings, maps, files, records, computer printouts, designs, equipment descriptions, or other materials prepared or generated as a result of this Agreement ("**Work Product**") without the prior written consent of the Board. Subrecipient shall use at least the same standard of care in the protection of the Confidential Information of the Board as Subrecipient uses to protect its own confidential information, but in any event such Confidential Information shall be protected in at least a commercially reasonable manner.
- 12.2 **Dissemination of Information.** Subrecipient shall not disseminate any information obtained in performance or delivery of Services and/or Materials for the Board to a third party without the prior written consent of the Board. Subrecipient shall not issue publicity news releases or grant press interviews during or after the performance or delivery of the Services and/or Materials, except as may be required by law or with the prior written consent of the Board. If Subrecipient is presented with a request for documents by any administrative agency or with a *subpoena duces tecum* regarding any Confidential Information and/or Work Product which may be in Subrecipient's possession as a result of Services and/or Materials provided under this Agreement, Subrecipient shall immediately give notice to the Board and its General Counsel with the understanding that the Board shall have the opportunity to contest such process by any means available to it prior to submission of any documents to a court or other third party. Subrecipient shall not be obligated to withhold delivery of documents beyond the time ordered by a court of law or administrative agency, unless the request for production or subpoena is quashed or withdrawn, or the time to produce is otherwise extended. Subrecipient shall cause its personnel, staff and subcontractors, if any, to undertake the same obligations regarding confidentiality and dissemination of information as agreed to by Subrecipient under this Agreement.
- 12.3 **Ownership.**
- a. Subrecipient agrees that, to the extent permitted by law, and subject to the provisions of Section 12.3 (b) hereunder, any and all Work Product shall exclusively be deemed "works for hire" within the meaning and purview of the *United States Copyright Act, 17 U.S.C. 101§ et seq.* All intellectual property, Confidential Information, and Work Product shall at all times be and remain the property of the Board. Subrecipient shall execute all documents and perform all acts that the Board may request in order to assist the Board in perfecting or protecting its rights in and to the Work Product and all intellectual property rights relating to the Work Product. To the extent any Work Product does not qualify as a "work for hire," the Subrecipient irrevocably grants, assigns, and transfers to the Board all right, title, and interest in and to such Work Product in all media throughout the world in perpetuity and all intellectual property rights



therein, free and clear of any liens, claims, or other encumbrances, to the fullest extent permitted by law. All of the foregoing items shall be delivered to the Board upon demand at any time and in any event, shall be promptly delivered to the Board upon expiration or termination of this Agreement within three (3) business days of demand. In addition, Subrecipient shall return the Board's data in the format requested by the Board. If any of the above items are lost or damaged while in Subrecipient's possession, such items shall be restored or replaced at Subrecipient's expense.

- b. All pre-existing materials, if any, that Subrecipient or its subcontractors independently developed and copyrighted and which are used and distributed by Subrecipient or its subcontractors in the course of providing Services hereunder (collectively, "**Pre-Existing Materials**"), are and shall remain the copyrighted property of the owner of record and they shall not be considered Work Product as defined hereinabove. Subrecipient hereby gives and shall cause its subcontractors to give the Board a perpetual, irrevocable license to use, copy and modify such Pre-Existing Materials for the benefit of the Chicago Public Schools and its Charter Schools.

12.4 **Injunctive Relief.** In the event of a breach or threatened breach of this Section, Subrecipient acknowledges and agrees that the Board would suffer irreparable injury not compensable by money damages and would not have an adequate remedy at law. Accordingly, Subrecipient agrees that the Board shall be entitled to immediate injunctive relief to prevent or curtail any such breach, threatened or actual. The foregoing shall be in addition and without prejudice to such rights that the Board may have in equity, by law or statute.

12.5 **Freedom of Information Act.** Subrecipient acknowledges that this Agreement and all documents submitted to the Board related to this contract award are a matter of public record and are subject to the *Illinois Freedom of Information Act* (5 ILCS 140/1), as amended from time to time, and any other comparable state and federal laws and that this Agreement is subject to reporting requirements under 105 ILCS 5/10-20.40. Subrecipient further acknowledges that this Agreement shall be posted on the Board's Internet website at [www.cps.edu](http://www.cps.edu).

12.6 **Survival.** The provisions of this Article 12 shall survive the termination or expiration of this Agreement.

13. **REPRESENTATIONS AND WARRANTIES OF SUBRECIPIENT:** Subrecipient represents and warrants that the following shall be true and correct as of the effective date of this Agreement and shall continue to be true and correct during the Term of this Agreement.

13.1 **Licensed Professionals.** Subrecipient is appropriately licensed under Illinois law to perform Services required under this Agreement and shall perform no Services for which a professional license is required by law and for which Subrecipient, its employees, agents, or subcontractors, as applicable, are not appropriately licensed.

13.2 **Compliance with Laws.** Subrecipient is and shall remain in compliance with all applicable federal, state, county, and municipal, statutes, laws, ordinances, and





regulations relating to this Agreement and the performance of Services in effect now or later and as amended from time to time, including but not limited to the *Prevailing Wage Act*, 820 ILCS 130/1 et seq., the *Drug-Free Workplace Act*, the *Illinois Student Records Act*, the *Family Educational Rights and Privacy Act*, the *Protection of Pupil Rights Act* and any others relating to non-discrimination. Further, Subrecipient is and shall remain in compliance with all Board policies and rules, including, but not limited to, tuberculosis testing and warrants that Subrecipient, and any individual who Subrecipient assigns to provide Services hereunder, is free from a communicable disease in accordance with 105 ILCS 5/24-5. Board policies and rules are available at <http://www.cps.edu/>.

- 13.3 **Good Standing.** Subrecipient is not in default and has not been deemed by the Board to be in default under any other Agreement with the Board during the five (5) year period immediately preceding the effective date of this Agreement.
- 13.4 **Authorization.** In the event Subrecipient is an entity other than a sole proprietorship, Subrecipient represents that it has taken all action necessary for the approval and execution of this Agreement, and execution by the person signing on behalf of Subrecipient is duly authorized by Subrecipient and has been made with complete and full authority to commit Subrecipient to all terms and conditions of this Agreement which shall constitute valid, binding obligations of Subrecipient.
- 13.5 **Financially Solvent.** Subrecipient warrants that it is financially solvent, is able to pay all debts as they mature and is possessed of sufficient working capital to complete all Services and perform all obligations under this Agreement.
- 13.6 **Gratuities.** No payment, gratuity or offer of employment was made by or to Subrecipient in relation to this Agreement or as an inducement for award of this Agreement.
- 13.7 **Contractor Disclosure Form.** The disclosures in the Contractor Disclosure Form, previously submitted by Subrecipient, are true and correct. Subrecipient shall promptly notify Board in writing of any material change in information set forth therein, including but not limited to change in ownership or control, and any such change shall be subject to Board approval which shall not be unreasonably withheld.
- 13.8 **Criminal History Records Search.** It is understood and agreed that Subrecipient previously submitted to the Board's agent for the purpose of having a complete fingerprint-based criminal history records check ("**Records Check**") conducted on her in accordance with the Illinois School Code (§105 ILCS 5/34-18.5); the *Sex Offender and Child Murderer Community Notification Law*, created under Illinois Public Act 94-219, eff. August 2005; the *Child Murderer Violent Offender Against Youth Notification Law*, created under Public Act 94-945; the *Adam Walsh Child Protection and Safety Act*, created under Illinois Public Law 109-248, eff. July 2006; and Illinois Public Act 94-556 which amended §10-21.9 of the Illinois School Code to prohibit employment in the public schools for anyone who has been convicted for an offense under the *Methamphetamine Control and Community Protection Act* [720 ILCS 646/1]; and that such completed Records Check confirmed that Subrecipient has not been convicted of any of the criminal or drug offenses enumerated in subsection (c) of §105 ILCS 5/34-18.5



or any offenses enumerated under the *Sex Offender and Child Murderer Community Notification Law*, or the *Sex Offender and Child Murderer Community Notification Law*, or the *Methamphetamine Control and Community Protection Act*, or any other felony within the past 7 years under the laws of Illinois or of any offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in the State of Illinois, would have been punishable as a felony under the laws of Illinois.

14. **INDEPENDENT CONTRACTOR:** It is understood and agreed that the relationship of Subrecipient to the Board is and shall continue to be that of an independent contractor and neither Subrecipient nor any of Subrecipient's employees shall be entitled to receive Board employee benefits. As an independent contractor, Subrecipient agrees to be responsible for the payment of all taxes and withholdings specified by law which may be due in regard to compensation paid by the Board. Subrecipient agrees that neither Subrecipient nor its employees, staff or subcontractors shall represent themselves as employees or agents of the Board. Subrecipient shall provide the Board with a valid taxpayer identification number as defined by the United States Internal Revenue Code, including but not limited to, a social security number or federal employer identification number.
15. **INDEMNIFICATION:** Subrecipient agrees to defend, indemnify and hold harmless the Board, its members, employees, agents, officers and officials from and against liabilities, losses, penalties, damages and expenses, including costs and attorney fees, arising out of all claims, liens, damages, obligations, actions, suits, judgments or settlements, or causes of action, of every kind, nature and character arising or alleged to arise out of the negligent or willful acts or omissions of the Subrecipient, its officials, agents and employees and subcontractors in the performance of this Agreement. This includes, but is not limited to, the unauthorized use of any trade secrets, U.S. patent or copyright infringement.

Subrecipient shall, at its own cost and expense, appear, defend and pay all attorney fees and, other costs and expenses arising hereunder. In addition, if any judgment shall be rendered against the Board in any such action, the Subrecipient shall, at its own expense, satisfy and discharge such obligation of the Board. The Board shall have the right, at its own expense, to participate in the defense of any suit, without relieving the Subrecipient of any of its obligations hereunder. The Board retains final approval of any and all settlements or legal strategies which involve the interest of the Board.

However, if Subrecipient, after receiving notice of any such proceeding, fails to immediately begin the defense of such claim or action, the Board may (without further notice to Subrecipient) retain counsel and undertake the defense, compromise, or settlement of such claim or action at the expense of Subrecipient, subject to the right of Subrecipient to assume the defense of such claim or action at any time prior to settlement, compromise or final determination thereof. The cost and expense of counsel retained by the Board in these circumstances shall be borne by Subrecipient and Subrecipient shall be bound by, and shall pay the amount of, any settlement, compromise, final determination or judgment reached while the Board was represented by counsel retained by the Board pursuant to this paragraph, or while Subrecipient was conducting the defense.

The indemnities set forth herein shall survive the expiration or termination of this Agreement.

16. **NON-LIABILITY OF BOARD OFFICIALS:** Subrecipient agrees that no Board member, employee,



agent, officer or official shall be personally charged by Subrecipient, its members if a joint venture, or any subcontractors with any liability or expense under this Agreement or be held personally liable under this Agreement to Subrecipient, its members if a joint venture, or any subcontractors.

17. **FAVORED NATION:** Subrecipient shall furnish Services to the Board at the lowest price that Subrecipient charges to other similarly situated parties. If Subrecipient overcharges, in addition to all other remedies, the Board is entitled to a refund in the amount of the overcharge, plus interest at the rate of 1% per month from the date the overcharge was paid by the Board until the date refund is made. The Board has the right to offset any overcharge against any amounts due to Subrecipient under this or any other Agreement between Subrecipient and the Board, and at the Board's sole option the right to declare Subrecipient in default under this Agreement.
18. **BOARD NOT SUBJECT TO TAXES:** The federal excise tax does not apply to the Board by virtue of Exemption Certificate No. 36-600584, and the State of Illinois sales tax does not apply to the Board by virtue of Exemption No. E9997-7109. The compensation set in the Schedule of Compensation is inclusive of all other taxes that may be levied or based on this Agreement, including without limitation sales, use, nonresident, value-added, excise, and similar taxes levied or imposed on the Services to be provided under this Agreement, but excluding taxes levied or imposed on the income or business privileges of the Subrecipient. The Subrecipient shall be responsible for any taxes levied or imposed upon the income or business privileges of the Subrecipient.
19. **INSURANCE.**
  - 19.1 **Insurance.** Subrecipient, at Subrecipient's own expense, shall procure and maintain insurance for all operations under this Agreement, whether performed by Subrecipient or by subcontractors. All insurers shall be licensed by the State of Illinois and rated A-VII or better by A.M. Best or a comparable rating service. Subrecipient shall submit to the Board satisfactory evidence of insurance coverage prior to commencement of the Services. Minimum insurance requirements are:
  - 19.2 **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance affording workers' compensation benefits for all employees as required by Illinois law and Employers' Liability Insurance with limits of not less than Five Hundred Thousand and 00/100 Dollars (\$500,000.00) per occurrence for accident and disease. The workers' compensation policy shall contain a waiver of subrogation clause.
  - 19.3 **Commercial General Liability Insurance.** Commercial General Liability Insurance or equivalent with limits of not less than Three Hundred Thousand and 00/100 Dollars (\$300,000.00) per occurrence and in the aggregate for bodily injury, personal injury and property damage liability. Coverage shall include, but not be limited to: all operations, contractual liability, independent contractors, products/completed operations (for a minimum of two (2) years following completion) and defense.
  - 19.4 **Automobile Liability Insurance.** Automobile Liability Insurance when any motor vehicle (whether owned, non-owned or hired) is used in connection with any Services under this Agreement, with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage.



19.5 **Additional Insured.** Subrecipient shall have its General and Automobile Liability Insurance policies endorsed to provide that the Board of Education of the City of Chicago, a body politic and corporate, and its members, employees and agents, and any other entity as may be designated by the Board are named as additional insured on a primary basis without recourse or right of contribution from the Board.

19.6 **Insurance Certificate.** The insurance company, or its representative, shall submit an insurance certificate evidencing all coverage as required hereunder and indicating the Additional Insured status as required above. Board shall not pay the Subrecipient for any work if satisfactory proof of insurance is not provided prior to the commencement of Services. The Certificate must provide sixty (60) days prior written notice of material change, cancellation, or non-renewal be given to:

Chief Purchasing Officer  
Board of Education of the City of Chicago  
125 S. Clark Street, 10th Floor  
Chicago, IL 60603

19.7 **General.** Any failure of the Board to demand or receive proof of insurance coverage shall not constitute a waiver of Subrecipient's obligation to obtain the required insurance. The receipt of any certificate does not constitute an agreement by the Board that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements.

Subrecipient's failure to carry or document required insurance shall constitute a breach of this Agreement. Non-fulfillment of the insurance conditions may constitute a violation of this Agreement, and the Board retains the right to stop the Services until proper evidence of insurance is provided, or this Agreement may be terminated. The Board shall not pay the Subrecipient for any Services if satisfactory proof of insurance is not provided before the commencement of Services.

Any deductibles or self-insured retentions on referenced insurance coverage must be borne by Subrecipient. Any insurance or self-insurance programs maintained by the Board of Education do not contribute with insurance provided by the Subrecipient under the Agreement.

All subcontractors are subject to the same insurance requirements of Subrecipient unless otherwise specified in this Agreement. The Subrecipient shall require any subcontractors under this Agreement to maintain comparable insurance naming the Subrecipient, the Board inclusive of its members, employees and agents, and any other entity designated by the Board, as Additional Insureds. The Subrecipient shall maintain a file of subcontractor's insurance certificates evidencing compliance with these requirements.

The coverages and limits furnished by Subrecipient in no way limit the Subrecipient's liabilities and responsibilities specified within this Agreement or by law. The required insurance is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.





The Subrecipient agrees that insurers waive their rights of subrogation against the Board.

Upon Board request, Subrecipient and/or its subcontractors shall promptly provide a certified copy of any applicable policy of insurance. The Board reserves the right to modify, delete, alter or change insurance requirements at any time.

20. **AUDIT AND DOCUMENT RETENTION:** Subrecipient shall furnish the Board with such information as may be requested relative to the progress, execution and costs of the Services. Subrecipient shall maintain all records, correspondence, receipts, vouchers, memoranda and other data relating to Subrecipient's Services provided under this Agreement. All records referenced above shall be retained for five (5) years after completion of the Services and shall be subject to inspection and audit by the Board, which shall include the right to copy such records. Subrecipient shall include in all subcontractor agreements for Services, provisions requiring subcontractors to maintain the above-described records and allowing the Board the same right to inspect and audit said records as set forth herein.
21. **M/WBE PROGRAM:** Subrecipient acknowledges that it is familiar with the requirements of the Board's Remedial Program for Minority and Women Owned Business Enterprise Participation in Goods and Services Contracts and agrees to comply with the provisions of such program.
22. **NOTICES:** All notices required under this Agreement shall be in writing and sent to the addresses and persons set forth below, or to such other addresses as may be designated by a party in writing. All notices shall be deemed received when (i) delivered personally, or (ii) sent by confirmed telex or facsimile (followed by the actual document), or (iii) one day after deposit with a commercial express courier specifying next day delivery, with written verification of receipt. Refusal to accept delivery has the same effect as receipt.

**IF TO THE BOARD:** Chief Purchasing Officer  
The Board of Education of the City of Chicago Public Schools  
125 South Clark Street, 10<sup>th</sup> Floor  
Chicago, IL 60603  
Fax: (773) 553-1224

**Copy to:**  
General Counsel  
The Chicago Board of Education  
125 South Clark Street, Suite 700  
Chicago, IL 60603  
Fax: (773) 553-1701

**Copy to:**  
Chief Officer  
The Office of Early Childhood Education  
Chicago Public Schools  
125 South Clark Street, 9th Floor  
Chicago, IL 60603  
Fax: (773) 553-2018

**IF TO SUBRECIPIENT:** Latisha Smith  
522 East 92<sup>nd</sup> Street  
Chicago, IL 60619  
Phone: (773) 474-1575

23. **RIGHT OF ENTRY:** Subrecipient and any of its officers, employees, subcontractors or agents, performing Services hereunder shall be permitted to enter upon Board property in connection



with the performance of the Services hereunder, subject to the terms and conditions contained herein and those rules established by the Board and the subject school principal. Subrecipient shall provide advance notice to the Board whenever applicable, of any such intended entry. Consent to enter upon a site given by the Board shall not create, nor be deemed to imply, the creation of any additional responsibilities on the part of the Board. Subrecipient shall use, and shall cause each of its officers, employees and agents to use, the highest degree of care when entering upon any property owned by the Board in connection with the Services. Any and all claims, suits or judgments, costs, or expenses, including reasonable attorney fees, arising from, by reason of, or in connection with any such entries shall be treated in accordance with the applicable terms and conditions of this Agreement, including without limitation, the indemnification provisions contained in this Agreement.

24. **NON-DISCRIMINATION:** It shall be an unlawful employment practice for Subrecipient or any of its subcontractors to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to compensation, or other terms, conditions, or privileges of employment, because of such individual's race, color, ancestry, religion, sex, sexual orientation, age, disability, marital status, parental status, military discharge status or national origin; or to limit, segregate, or classify employees or applicants for employment in any way that would deprive or tend to deprive any individual from equal employment opportunities or otherwise adversely affect an individual's status as an employee because of such individual's race, color, ancestry, religion, sex, sexual orientation, age, disability, marital status, parental status, military discharge status or national origin. Subrecipient shall particularly remain in compliance at all times with: the Civil Rights Act of 1964, 42 U.S.C.A. §2000a, *et. seq.*, as amended; the Age Discrimination in Employment Act, 29 U.S.C.A. §621, *et. seq.*; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. §701, *et. seq.*; as amended; the Americans with Disabilities Act, 42 U.S.C.A. §12101, *et. seq.*; the Individuals with Disabilities Education Act, 20 U.S.C.A. §1400 *et. seq.*, as amended; the Illinois Human Rights Act, 775 ILCS 5/1-101, *et. seq.* as amended; the Illinois School Code, 105 ILCS 5/1-1 *et. seq.*; the Illinois Public Works Employment Discrimination Act, 775 ILCS 10/0.01 *et. seq.*; and the Chicago Human Rights Ordinance, ch. 2-160 of the Municipal Code of Chicago, and all other applicable federal statutes, regulations and other laws.
25. **ENTIRE AGREEMENT AND AMENDMENT:** This Agreement, including all exhibits attached to it and incorporated into it, constitutes the entire agreement of the parties with respect to the matters contained herein. All attached exhibits are incorporated into and made a part of this Agreement. No modification of or amendment to this Agreement shall be effective unless such modification or amendment is in writing and signed by both parties hereto. Any prior agreements or representations, either written or oral, relating to the subject matter of this Agreement are of no force or effect.
26. **GOVERNING LAW AND JURISDICTION:** This Agreement shall be governed as to performance and interpretation in accordance with the laws of the State of Illinois.

Subrecipient irrevocably submits itself to the original jurisdiction of those courts located in the County of Cook, State of Illinois, with regard to any controversy arising out, or relating to, or in any way concerning the execution or performance of this Agreement. Subrecipient agrees that service of process on the Subrecipient may be made, at the option of the Board, by either registered or certified mail addressed to the office identified in Section 22 above, by registered or certified mail addressed to the office actually maintained by the Subrecipient, or by personal



delivery on any officer, director, or managing or general agent of the Subrecipient. If any action is brought by the Subrecipient against the Board concerning this Agreement, the action shall only be brought in those courts located within the County of Cook, State of Illinois.

27. **CONTINUING OBLIGATION TO PERFORM:** In the event of any dispute between Subrecipient and Board, Subrecipient shall expeditiously and diligently proceed with the performance of all its obligations under this Agreement with a reservation of all rights and remedies it may have under or pursuant to this Agreement at law or in equity.
28. **CONFLICT OF INTEREST:** This Agreement is not legally binding on the Board if entered into in violation of the provisions of 105 ILCS 5/34-21.3, which restricts the employment of, or the letting of contracts to, former Board members within a one year period following expiration or other termination of their office.
29. **INDEBTEDNESS:** The Subrecipient agrees to comply with the Board's Indebtedness Policy adopted June 26, 1996 (96-0626-PO3), as amended from time to time, which policy is hereby incorporated by reference into and made a part of this Agreement as fully set forth herein.
30. **ETHICS:** No officer, agent or employee of the Board is or shall be employed by the Subrecipient or has or shall have a financial interest, directly, or indirectly, in this Agreement or the compensation to be paid hereunder except as may be permitted in writing by the Board's Ethics Policy adopted June 23, 2004 (04-0623-PO4), as amended from time to time, which policy is hereby incorporated by reference into and made a part of this Agreement as fully set forth herein.
31. **INSPECTOR GENERAL:** Each party to this Agreement hereby acknowledges that in accordance with 105 ILCS 5/34-13.1, the Inspector General of the Board of Education of the City of Chicago has the authority to conduct certain investigations and that the Inspector General shall have access to all information and personnel necessary to conduct those investigations.
32. **WAIVER:** No delay or omission by the Board to exercise any right hereunder shall be construed as a waiver of any such right and the Board reserves the right to exercise any such right from time to time as often and as may be deemed expedient.



IN WITNESS WHEREOF, the parties hereto have caused this Subcontract Agreement to be executed by their duly authorized representatives as of the date first above written.

BOARD OF EDUCATION OF THE  
CITY OF CHICAGO

Subrecipient:  
LATISHA SMITH

By: Opal L. Walls 10/19/09  
Opal Walls  
Chief Purchasing Officer

Latisha Smith

Date: 10/19/09

Date: 10/11/09

CPOR # 09-0929-CPOR-1023

Approved as to legal form: 2 H

Patrick Rocks  
Patrick Rocks, General Counsel

CFDA # 93.600 and # 93.575

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**Attachments and Exhibits:**

Exhibit A – Scope of Services and Time Limits for Performance

Attachment 1 - Federal Funding Terms and Conditions

Attachment 2 - General Terms and Conditions of Delegate Agency Grant Agreement by and between the City of Chicago and the Board of Education of the City of Chicago and having an effective date of December 1, 2008





**Exhibit A**

**SCOPE OF SERVICES**

**LATISHA SMITH (CPS Vendor #91544)**

**CPOR # 09-0929-CPOR-1023**

**Project Names: Head Start Program: Mental Health/ PAS Initiative**

**CPS Head Start Citywide Manager: Adrienne Stewart Phone: (773) 553-3723**

**E-Mail: ~~kearradine@cps.k12.il.us~~**

**amstewart@cps.k12.il.us**

**Subrecipient: Latisha Smith**

**Phone: (773) 474-1575 E-Mail: lasmith@cps.k12.il.us**

**Start Date: October 19, 2009**

**End Date: October 19, 2010**

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This Scope of Services is for two separate projects -- The Head Start Mental Health Project and the PAS Project. It shall be conducted pursuant to the terms and conditions of the above-referenced CPOR and that Subrecipient Agreement ("Agreement") dated October 19, 2009 between Latisha Smith ("Subrecipient") and the Board of Education of the City of Chicago, commonly known as the Chicago Public Schools (the "Board" or "CPS"). Defined terms used in this Scope of Services shall have the same meanings as those ascribed to such terms in the Agreement.

**I. DESCRIPTION OF SERVICES and MILESTONES/DELIVERABLES**

**A. Subrecipient Responsibilities under the Head Start/Early Childhood Mental Health Component**

1. Develop the Community Assessment Tool: Subrecipient will develop a community assessment tool ("Assessment Tool") for profiling Head Start communities. This Assessment Tool shall include the categories required by the Head Start Performance Standards, and will be subject to the approval of the CPS Head Start Citywide Manager

**Target Date:** Subrecipient shall submit a draft of the Assessment tool to the CPS Head Start Citywide Manager for comments within 90 days of executing the Agreement. Subrecipient shall make any requested changes and shall finalize the Assessment Tool within 30 days of receiving the CPS Head Start Citywide Manager's comments.

2. Create and Update Community Profiles: Using the Assessment Tool and information obtained from various demographic resources and public records, Subrecipient will create a profile ("Profile") for each of the 77 communities that the CPS Head Start/Early Childhood Programs currently serves and will update these Profiles as necessary. These Profiles will contain such information as the Head Start Performance Standards requires and will be subject to the approval of the CPS Head Start Citywide Manager.

- a. At a minimum, each Profile will include demographic data on the geographic area, details of the type of families living in the community (i.e., families with young children, low income families, single parent families, employed/unemployed



families), and the racial and ethnic composition of a community. Each Profile also will include information on the availability of community services that can assist children and families, - including specialized services, community resources (i.e., libraries, museums, schools) and health and nutrition data. These Profiles will be referred to continually in the CPS Early Childhood planning process.

- b. Subrecipient will update these Profiles regularly as new community information becomes available or changes.
- c. Subrecipient shall create Profiles for other communities as CPS adds Head Start/Early Childhood classrooms and sites, or as existing classrooms and sites are changed.

**Target Dates:**

- Subrecipient shall submit a draft of the Assessment tool to the CPS Head Start Citywide Manager for comments within 90 days of executing the Agreement. Subrecipient shall make any requested changes and shall finalize the Assessment Tool within 30 days of receiving the CPS Project Manager's comments.
- It is understood and agreed that all of the Profiles and updates must be completed and submitted to the CPS Head Start Citywide Manager prior to May 1, 2010.

**2. ABLE Coordination and Assessment:**

- a. Throughout the school year, Subrecipient will coordinate the implementation and administration of the Attention, Behavior, Language and Emotions screening questionnaires ("ABLE") for CPS OECE Head Start Programs and other CPS Early Childhood Education programs as requested.
- b. Subrecipient will analyze the ABLE data for each Head Start Program and Early Childhood Educational program referenced above and will submit the written data analysis to the classroom teachers, Head Start social workers, and the Head Start Citywide Manager.
- c. Subrecipient shall meet with the developer of the ABLE for planning purposes,

**3. Social-Emotional Screening Process:** Subrecipient will oversee the implementation of the OECE adopted Social-Emotional Screening Process for the Head Start Program. This screening process includes the implementation of the Ages and Stages Questionnaires: Social-Emotional and the Adjustment Scales for Preschool Intervention (ASPI). Subrecipient will provide training on the administration of the Questionnaires and provide consulting services to the Head Start Programs associated with this Social-Emotional Screening Process.

**B. Promoting Academic Success (PAS) Project Responsibilities - Two (2) OECE Head Start Programs have agreed to participate in the PAS Project; and for these Head Start Programs, Subrecipient will provide the following Services:**

- 1. Implement and oversee the coordination of the PAS Project components as listed: teacher professional development, parenting support, mentoring, extended-day, and character development activities.



2. Ensure that teachers and parents who participate in PAS will learn about, things such as boys' developmental needs; and they will practice innovative strategies to engage, motivate, nurture, and teach boys of color.
3. Collaborate with community volunteers to provide academic and recreational support for boys of color.
4. Hire, train and monitor 2 student Mentors (one per site) for the PAS sites.
5. Provide monthly written status reports to the CPS Head Start Citywide Manager and the site administrators.
6. Coordinate professional development ("PD") workshops for the Head Start staff and Mentors on topics approved by the CPS Head Start Citywide Manager.
7. Provide support and materials for extended-day PAS programs that are tailored to reinforce the academic progress and character development of boys of color.

C. **Other Services and Deliverables:** In addition to providing the deliverables specified in Sections I (A) and I (B) above, Subrecipient will provide bi-weekly written status reports containing such information as the CPS Head Start Citywide Manager may request and will meet with the CPS Head Start Citywide Manager as requested.

### III. OUTCOMES

- A. Services provided by recipient will: result in each community profile will provide current information, and resources, that can be used by Head Start staff and community partners to help improve the quality and by analyzing neighborhood needs, services and resources.
- B. The ABLE assessment will provide feedback, documentation, and intervention strategies for classroom staff to implement with the individual children regarding any social and emotional, behavioral, and language concerns.
- C. Schools with PAS initiative will receive focused support services to the participating students; which will result in fewer behavior issues and improved academic progress as measured by school based assessments and site administration reports.

### IV. PAYMENT SCHEDULE AND BUDGET:

Services	*Hour Estimate	Hourly Rate	Total Cost
Head Start Project Services	Approximately 20-25 hours /wk	To be billed at \$40 per hour	\$40,000
PAS Project Services	Approximately 15-20 hours/wk	To be billed at \$40 per hour	\$34,495
<b>Total:</b>			<b>\$74,495</b>

Subrecipient shall submit written status reports and invoices every other week that detail the types of Services provided and the hours of services during the period being invoiced. All such invoices must be accurate and also will be subject to the provisions found in Section 5 (Billing and Payment Procedures) of the Agreement.

*\*Subrecipient will not exceed the 45 hours per week.*



## Attachment 1

### FEDERAL FUNDING TERMS AND CONDITIONS

#### A. AUDITS

Subrecipient agrees to comply with the Single Audit Act of 1984, P.L. 98-502, as implemented by OMB circular A-128 or Circular A-133, as applicable. Circular A-133 was revised in 1997 to apply to non-federal entities who expend \$300,000 or more in Federal awards. Subrecipient shall have an audit made as required by A-110 "Uniform Requirements for Grants to Universities, Hospitals and other Nonprofit Organizations."

Subrecipient agrees to provide the Board with copies of required audit reports currently due within nine months after the end of the applicable audit period. Additionally, the Subrecipient agrees to provide the Board with copies of any of the independent auditor's report and of regulations that bear directly on the performance or administration of this Agreement. In cases of reported non-compliance, Subrecipient will provide copies of responses to auditor's reports and a plan for corrective action. All records and reports prepared in accordance with the requirements of the appropriate OMB Circular shall be available for inspection by representatives of awarding institutions or the government during normal business hours. The Board reserves the right to withhold payments, modification, and new or incremental funding to Subrecipients who have not submitted to the Board copies of the required audit information.

#### B. PATENTS, LICENSES, AND INVENTIONS

Compliance with the standard Patent Rights clauses as specified in 37 CFR, part 401, FAR 52.227-11, 45 CFR Part 6 & 8, or U.S.C. 203, whichever is appropriate and applicable.

#### C. PUBLICATION [Note: This section only applies if the Subrecipient is allowed to publish data under the Subcontract Agreement.]

Subject to the provisions of the underlying Grant Agreement between the Board and Grantor (the "Grant Agreement"), and the provisions of the Subcontract Agreement regarding the publication of data, if any, the Subrecipient shall be allowed to publish the data produced in the performance of the Agreement. With respect to any Work identified in the Agreement as Subrecipient's property, the Subrecipient grants to the Government, and the Board a royalty-free, nonexclusive, irrevocable, worldwide license to use the Work produced under the Agreement.

#### D. ASSURANCES AND CERTIFICATIONS

The Subrecipient certifies, by signing the agreement that the following assurances and certifications required by the federal funding agency are met. The Subrecipient agrees to fulfill the requirements of any other assurance(s) as applicable not mentioned as may be required in the future by the federal, or applicable local law and regulations to perform the Work undertaken. Such assurances and certifications required of Subrecipient shall include but not necessarily be limited to:

1. **Civil Rights** – Title VI of *Civil Rights Act of 1964* & paragraphs 1 through 7, Part II, Subpart B, Section Executive Order 11246; Section 504 *Rehabilitation Act of 1973* as amended & 45 CFR 84; *Age Discrimination Act of 1975* as amended & 45 CFR 86; Section 704 of Title VII; Section 855 of Title VIII of *Public Health Service Act* as amended & 45 CFR 83; Section 407 of *Drug Abuse Office & Treatment Act of 1972* as amended & 45 CFR 84; Section 321 of *Comprehensive Alcohol Abuse & Alcoholism Prevention Treatment and Rehabilitation Act of 1970* as amended; Section 501 of the *Mental Health*





*Systems Act; Section 333 of the Comprehensive Alcohol Abuse & Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 as amended & 45 CFR 2.*

2. **Handicapped Individuals** – Compliance with Section 504 of the *Rehabilitation Act of 1973* as amended.
3. **Sex Discrimination** – Compliance with section 901 of Title IX of the *Education Amendments of 1972* as amended.
4. **Student Unrest Provisions** – Compliance with Section 407 of the *DHHS Appropriation Act*.
5. **Human Subjects** – Compliance with the requirements of federal funding agency, as applicable, policy concerning the safe-guarding of the rights and welfare of human subjects who are involved in activities supported by Federal funds; 45 CFR 6.
6. **Vertebrate Animals** – Compliance with applicable portions of the *Animal Welfare Act* (P.L. 89-544 as amended).
7. **Debarment and Suspension** – Subrecipient certifies that is not debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in the Agreement by any Federal department or agency; 45 CFR 76.
8. **Non-Delinquency on Federal Debt** Compliance in accordance with OMB Circular A-129 (revised November 25, 1988).
9. **Drug-Free Workplace** – Compliance with the *Drug-Free Workplace Act of 1988*, 45 CFR Part 76, Subpart F.
10. **Misconduct in Science** – Each entity which received or applies for a research, research-training, or research-related grant cooperative agreement under the *Public Health Service Act* must submit an annual assurance certifying that the entity has established administrative policies as required by 42 CFR part 50, Subpart A, and it will comply with the policies and the requirements set forth therein. Subrecipient, in accepting this Agreement, certifies that it has: (1) met the above requirements, (2) filed the "small organization" assurances with the office of Scientific Integrity, Department of Health and Human Services, and it has been accepted, or (3) agrees to be bound by the policies of the Board with respect to this Agreement
11. **Restrictions and Lobbying** – Compliance with 101-121, Title 31, Section 1352, which prohibits the use of Federal appropriated funds for lobbying in connection with this particular Agreement.
12. **Anti-Kick Back Act of 1986** – Subrecipient certifies that, to the best of its knowledge and belief, it has not received any money, fee, commission, credit, gift, gratuity, things of value, or compensation of any kind, provided directly or indirectly, for the purpose of improperly obtaining or rewarding favorable treatment in connection with the prime grant or in connection with this Agreement relating to the prime grant.
13. **Certificate of Conflict of Interest** – The Board agrees that it has a conflict of interest policy which compiles with the U.S. Department of Education policies; namely the Subrecipient has a conflict of interest policy which requires disclosure and resolution of all conflicts of interest, potential and actual, which exist for those involved in the design, conduct and reporting of research under this



agreement prior to acceptance of funding. The Subrecipient is responsible for informing its investigators of its conflict of interest policy and procedures, designating officials to review conflict of interest financial disclosures, managing conflicts, informing the Board and the cognizant federal sponsor(s) of conflicts and remedying same, certifying in each proposal for funding that required conflict of interest policies are in place and that no conflicts exist related to the proposed project, notifying the Board and federal sponsor(s) of any post-award conflicts and otherwise complying in all other respects with all applicable federal regulations, including 42 CFR 50, Subpart F.



## **TERMS AND CONDITIONS**

### **ARTICLE 1**

#### **INCORPORATION OF BACKGROUND INFORMATION AND EXHIBITS**

The Background Information is incorporated by reference. The following attached Exhibits are incorporated by reference and made a part of this Agreement.

- Exhibit A Additional Requirements
- Exhibit B Scope of Services
- Exhibit C Budget Summary
- Exhibit D Economic Disclosure Statement and Affidavit
- Exhibit E Insurance Requirements and Insurance Certificate
- Exhibit F HIPAA Requirements

### **ARTICLE 2**

#### **TERM AND FUNDING**

##### **2.1 CONTRACT PERIOD**

The Term of this Agreement is noted in the Background Information. Also, you acknowledge that in the performance of the Services, **TIME IS OF THE ESSENCE**.

##### **2.2 PROGRAM FUNDING**

Any payments under this Agreement will be made from the Fund Number noted in the Background Information and is subject to annual appropriation and availability of funds. The Maximum Compensation that you may be paid under this Agreement without an amendment to this Agreement authorizing a higher amount, is noted

based on periodic reviews of the spending levels under this Agreement, may reduce the Maximum Compensation and/or Committed Compensation. Upon reduction of the Maximum Compensation and/or Committed Compensation, you will fully cooperate with the City's deobligation and/or reprogramming of funds. See Article 5 and other provisions for further terms and conditions related to compensation under this Agreement.

##### **2.3 EXTENSION OPTION**

The Commissioner of the Department or other legally designated official, as applicable (the "Commissioner") may, prior to this Agreement's expiration, extend this Agreement for up to 2 additional periods, each period not to exceed 1 year, by written notice to you.

##### **2.4 EARLY TERMINATION**

In addition to its termination rights under Section 5.3 and Article 8, and subject to the appeal process described in 45 CFR Part 1303, Subpart C, "Appeals by Current or Prospective Delegate Agencies" (Sections 1303.20 through 1303.23), the City may terminate this Agreement, or any portion of it remaining to be performed, at any time, upon written notice to you with your consent. If the City terminates this Agreement, other than pursuant to Section 5.3 or Article 8, then you will agree with the City upon termination conditions including the effective date and, in the case of a partial termination, the portion to be terminated. You may terminate this Agreement upon 15 calendar days prior written notice to the City setting forth the reasons for the termination, the effective date and, in the case of a partial termination, the portion to be terminated, provided, however, that if you give notice of a partial termination, the City may terminate this Agreement in its entirety in accordance with 45

its sole discretion, including without limitation

data, studies, and reports prepared by you under

this Agreement. Payment for the work performed before the effective date of such termination will be based upon a proration of the work actually performed by you to the date of termination, as determined by the Commissioner. Payment made by the City, pursuant to such proration, will be in full settlement for all Services rendered by you.

## 2.5 SUBGRANTEE CONTRIBUTIONS

You will contribute to the payment of expenses incurred in performing the Services, the amounts, if any, described in Exhibit C. Your contribution will be cash or in-kind.

## 2.6 NON-APPROPRIATION

Funding for this Agreement is subject to the availability of funds and their appropriation by the City Council or the City. If no funds or insufficient funds are appropriated and budgeted in any City fiscal period for payments to be made under this Agreement, the City may notify you of such occurrence and this Agreement will terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted. No payments will be made or due to you under this Agreement beyond those amounts appropriated and budgeted by the City to fund payments under this Agreement.

## ARTICLE 3 DUTIES OF SUBGRANTEE

### 3.1 SCOPE OF SERVICES

You will carry out the Services pursuant to the Scope of Services attached as Exhibit B and the Budget Summary attached as Exhibit C in

description of your Services nor a limitation on the Services which you will provide. Services means collectively, your services, duties and responsibilities described in this Agreement and any and all work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement.

### 3.2 STANDARD OF PERFORMANCE

You will perform all Services under this Agreement with the degree of skill, care and diligence normally shown by a contractor performing services of a scope, purpose and magnitude comparable with the Services ("Standard of Performance"). You will use your best efforts on behalf of the City to assure timely and satisfactory completion of the Services.

If you fail to comply with the Standard of Performance, you will continue to perform any Services required by the City as a result of the failure. This provision in no way limits the City's legal or equitable rights against you.

### 3.3 YOUR PERSONNEL; BACKGROUND CHECKS

If assignment of personnel is required for the proper completion of the Services or is otherwise required by this Agreement, then you will assign immediately and maintain for the duration of the Services, a staff of competent personnel that is fully licenced, equipped, competent and qualified to perform the Services. You will retain and make available to the City, state and federal agencies governing funds provided under this Agreement, proof of certification or expertise including, but not limited to, licences, resumes and job descriptions.

If you provide any Services to children you shall

rules, requirements and executive orders relating

to background checks; fingerprinting and screening procedures as in effect from time to time (the "Legal Requirements"). In connection with the Services, you will not permit any adult, whether a member of your staff or otherwise, to be involved with the Services or to have direct contact with children if any applicable Legal Requirements would prohibit such adult from having such involvement or contact.

The Legal Requirements shall include, without limitation, the following: you certify that a criminal history check via fingerprints of persons age 18 and over, a check of the Child Abuse and Neglect Tracking System and other state child protection systems, as appropriate, drug testing in accordance with Administrative Procedure #24, and a check of the Illinois Sex Offender Registry have been conducted for each employee, operator, others in family home, individual used to replace or supplement staff, service provider who has access to children, work study student, contractual staff, volunteers and parents, all as set forth in DCFS rules, regulations, procedures and protocols. You further acknowledge that DCFS may declare this Agreement void if this certification is false.

### **3.4 MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISE PROCUREMENT PROGRAM**

- A. If your Scope of Services is solely limited to social services (including, but not limited to, job training and placement, education, child day care, emergency shelter, home-delivery meals and health care), you need not comply with the Minority-Owned and Women-Owned Business Enterprise Procurement Program (the "**MBE/WBE Ordinance**"), Section 2-92-420 et seq of the Municipal Code of Chicago, as amended (the "**Municipal Code**") or with

- B. If, however, your Scope of Services includes construction, renovation, rehabilitation or facility enhancement, you must comply with the MBE/WBE Ordinance and with Section 2-92-586 of the Municipal Code, except to the extent waived by the Chief Procurement Officer.

### **3.5 NON-DISCRIMINATION**

In performing the Services under this Agreement, you must comply with applicable laws prohibiting discrimination against individuals and groups.

#### **A. Federal Requirements**

In performing the services under this Agreement and in your employment practices you must not engage in unlawful employment practices, such as:

- i. failing or refusing to hire or discharging any individual, or otherwise discriminating against any individual with respect to his or her compensation, or the terms, conditions, or privileges of his or her employment, because of such individual's race, color, religion, sex, age, handicap/disability or national origin; or
- ii. limiting, segregating, or classifying your employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee, because of that individual's race, color, religion, sex, age, handicap/disability or national origin.

You must comply with, and the procedures you utilize and the services you provide under this Agreement must comply with the Civil

DO NOT WRITE IN THESE SPACES

amended by Executive Order No. 11375 and by Executive Order No. 12086; Executive Order 13160 (2000); the Age Discrimination Act of 1975, 42 U.S.C. §§ 6101-6106; Age Discrimination in Employment Act, 29 U.S.C. §§ 621-34; Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-83 and 1685-86); the Rehabilitation Act of 1973, 29 U.S.C. §§ 793-794; the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.; 41 CFR part 60 et seq. (1990); Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104-193); and all other applicable federal statutes, regulations and other laws.

**B. State Requirements**

In performing the Services under this Agreement, you must comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., the Public Works Employment Discrimination Act, 775 ILCS 10/0.01 et seq. and any rules and regulations promulgated thereunder, including, but not limited to, the Equal Employment Opportunity Clause, 44 Ill. Admin. Code § 750 Appendix A, and all other applicable state statutes, regulations and other laws.

**C. City Requirements**

In performing the Services under this Agreement, you must comply with the Chicago Human Rights Ordinance Municipal Code § 2-160-010 and all other applicable City ordinances and rules. Further, you must furnish and cause every subcontractor to furnish, such reports and information as may be requested from time to time by the Chicago Commission on Human Relations.

**D. Subcontractors Required to Comply**

You will incorporate all of the provisions set

skilled, unskilled and craft union skilled labor, or which may provide any materials, labor or services in connection with this Agreement.

You must cause your subcontractors to execute such certificates as may be necessary to furtherance of these provisions. Such certifications will be attached and incorporated by reference in the applicable subcontracts. If any subcontractor is a partnership or joint venture, you will also include provisions in your subcontract insuring that the entities comprising such partnership or joint venture will be jointly and severally liable for the partnership or joint venture's obligations under the subcontract.

**3.6 INSURANCE**

You must provide and maintain or cause to be provided during the term of this Agreement the insurance coverages and requirements specified in Exhibit E, insuring all operations related to this Agreement. You must submit Certificates of Insurance (to be attached hereto as Exhibit E) of the required coverages prior to this Agreement being fully executed to:

City of Chicago  
Comptroller's Office  
Federal Funds Insurance Unit  
33 North LaSalle Street  
Room 800  
Chicago, Illinois 60602.

In addition, you shall provide and maintain or cause to be provided and maintained during the term of this Agreement (a) reasonable amounts of student accident insurance, liability insurance for accidents on your premises, and transportation liability insurance, in each case as



Department; provided, however, that the bond shall be in the amount of at least \$100,000. You must submit to the Department evidence of the fidelity bond prior to this Agreement being fully executed.

### 3.7 INDEMNIFICATION

A. You must defend, indemnify, keep and hold harmless the City, its officers, representatives, elected and appointed officials, agents and employees from and against any and all losses, including those related to:

- i. injury, death or damage of or to any person or property;
- ii. any infringement or violation of any property right (including any patent, trademark or copyright);
- iii. your failure to pay or perform or cause to be paid or performed your covenants and obligations as and when required under this Agreement or otherwise, including your failure to pay or perform your obligations to any subcontractor, employee, agent or vendor;
- iv. the City's exercise of its rights and remedies under this Agreement; and

v. injuries to or death of any employee of you or any subcontractor under any workers compensation statute.

B. "Losses" means, individually and

court costs and reasonable attorneys' fees and disbursements), claims, demands, actions, suits, proceedings, judgments or settlements, any or all of which in any way arise out of or relate to your breach of this Agreement or to your acts or omissions or those of your officers, agents, employees, consultants, subcontractors or licensees.

C. At the City Corporation Counsel's option, you must defend all suits brought upon all such Losses and must pay all costs and expenses incidental to them, but the City has the right, at its option, to participate, at its own cost, in the defense of any suit, without relieving you of any of your obligations under this Agreement. Any settlement must be made only with the prior written consent of the City Corporation Counsel, if the settlement requires any action on the part of the City.

D. To the extent permissible by law, you waive any limits to the amount of your obligations to indemnify, defend or contribute to any sums due under any Losses, including any claim by any employee of you that may be subject to the Workers Compensation Act, 820 ILCS 305/1 et seq. or any other law or judicial decision (such as, Kotecki v. Cyclops Welding Corporation, 146 Ill. 2d 155 (1991)). The City, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code, any other statute or judicial decision. Your waiver under this provision, however, is not intended and does not require you to indemnify the City

seq., if the Anti-Indemnity Act applies.

- E. The indemnities contained in this section survive expiration or termination of this Agreement for matters occurring or arising during the term of this Agreement or as the result of or during your performance of Services beyond the term. You acknowledge that the requirements set forth in this section to indemnify, keep and save harmless and defend the City are apart from and not limited by your duties under this Agreement, including the insurance requirements under Section 3.6. If a court or other governmental authority having competent jurisdiction determines any portion or provision of this Section to be inoperative or unenforceable pursuant to the Anti-Indemnity Act, the inoperative or unenforceable portion or provision will be deemed severed and deleted, and the remaining provisions will remain enforceable to the maximum extent permitted by applicable law.

### 3.8 NON-EXPENDABLE PERSONAL PROPERTY

You will comply with all Federal, State and local laws and ordinances regarding property ownership, use and management.

You will request and receive written authorization from the City prior to the purchase of tangible personal property having a **useful life of more than 1 year and an acquisition cost of \$5,000 or more per unit** with funds received pursuant to this Agreement ("*Non-expendable Personal Property*").

All Non-expendable Personal Property will be the

You will maintain a current inventory listing of such Non-expendable Personal Property and will deliver a copy of such listing to the City on an annual basis.

You will return all Non-expendable Personal Property to the City, upon the termination of the Services, completion of this Agreement or at any time requested by the Department. However, upon the receipt of the final inventory of all Non-expendable Personal Property, the City may allow such property to remain in your possession if the City, in its sole discretion, determines that the Non-expendable Personal Property is necessary for the performance of any new or other services by you for the City.

When this Agreement expires or is terminated, you will return to the City the balance of any funds received under this Agreement and any accounts receivable attributable to those funds. In addition, if you acquired or improved real property with funds received under this Agreement, then you will comply with the provisions of 45 CFR 92.31 or 45 CFR 74.32, as applicable.

### 3.9 SUBCONTRACTS

All subcontracts and all approvals of subcontractors, regardless of their form, will be deemed to be conditioned upon performance by the subcontractor in accordance with the terms and conditions of this Agreement. The approval of subcontractors will under no circumstances operate to relieve you of any of your obligations or liabilities under this Agreement.

Upon entering into any subcontract, you will furnish the City with 5 copies of the subcontract for distribution to the Department. All subcontracts will contain provisions that require

the rights of the City to approve or disapprove of the use of any subcontractor. As long as such subcontractors do not prejudice any of the City's interests under this Agreement and do not affect the quality of the Services to be rendered in any way, subcontractors may contain different provisions than are provided in this Agreement.

### 3.10 PROGRAM INCOME

You will return to the City all gross income received by you that is directly generated by the use of funds received from the City ("**Program Income**"), in any form or manner the City requires. Program Income is defined in 45 CFR 92.25 or 45 CFR 74.24, as applicable. The City may require you to return all or part of any Program Income balances you hold at the end of the program year, subject to the exceptions described in 45 CFR 92.25 or 45 CFR 74.24, as applicable.

### 3.11 RELIGIOUS ACTIVITIES.

- A. You warrant that you will not engage in any inherently religious activities, such as worship, religious instruction, or proselytization, as part of or while carrying out the funded programs or Services.
- B. You warrant that if you do engage in inherently religious activities, such as worship, religious instruction, or proselytization,
  - i. Such activities will always be conducted separately, in time or location, from the funded programs or Services; and
  - ii. nonparticipation in such activities

- C. You warrant that you will not discriminate against a beneficiary or prospective beneficiary of the funded programs or Services on the basis of religion, religious belief, or participation or nonparticipation in any inherently religious activities.
- D. If the Agreement involves any Grant Funds for the acquisition, construction, or rehabilitation of structures, you warrant:
  - i. The room or space that the Grant Funds will be used to acquire, construct or rehabilitate is not your primary place of worship; and
  - ii. Grant Funds will be used only for those portions of the acquisition, construction, or rehabilitation of the structures that are attributable to eligible activities; and
  - iii. If in the future the structure is used for inherently religious activities or otherwise ceases being used for eligible activities, you will adhere to the rules on real property use and disposition and government reimbursement found in 45 CFR 92.31 or 45 CFR 74.32, as applicable.
- E. For purposes of this section, "beneficiary" means a child participating in a Program and, in addition, his or her parents, guardians, other responsible adults and family members.
- F. This Agreement is subject to 45 CFR Part 97, Equal Treatment for Faith-Based

You certify that neither you nor your employees shall engage in the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance in the performance of this Agreement. You must administer a policy designed to ensure that the program facility is free from the illegal use, possession, or distribution of drugs or alcohol by its beneficiaries. You must further maintain a drug free workplace in accordance with the requirements of the Drug Free Workplace Act of 1988 (Pub. L. 100-690 and 45 CFR Part 76), and the Illinois Drug Free Workplace Act (30 ILCS 580/1 et seq.) and must implement specific policies and guidelines as may be adopted by the City. In addition, you must execute certifications pursuant to the Drug Free Workplace Act of 1988, as may be requested by the Department.

You will establish procedures and policies to promote a drug free workplace. Further, you will notify all employees of your policy for maintaining a drug free workplace, and the penalties that may be imposed for drug abuse violations occurring in the workplace. You will notify the City if any of your employees are convicted of a criminal drug offense in the workplace no later than 10 calendar days after such conviction.

### 3.13 ACKNOWLEDGMENT OF FUNDING SOURCES

A. You will not make any public announcement with respect to the Services without the prior written approval of the City. You will conspicuously acknowledge the co-sponsorship of the City on all promotional materials including, but not limited to, brochures, flyers, written or electronic public notices, news releases, public service announcements, acknowledgments, at

prior written approval.

All reports, maps and other documents completed as part of this Agreement, other than documents exclusively for internal use within the City, will contain the following information in a conspicuous place on the front of the report, map or document:

- i. the name of the City of Chicago;
- ii. the month and year of preparation; and
- iii. the name of the project.

B. Also, if you are expending federal funds under this Agreement, you, when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with federal money, will clearly state:

- i. the percentage of the total costs of the program or project which will be financed with federal money;
- ii. the dollar amount of federal funds for the project or program; and
- iii. the percentage and dollar amount of the total costs of the project or program that will be financed by nongovernmental sources.

Such statement must not represent or suggest in any way that the views expressed are those of the federal government.

## **ARTICLE 4** **REPORTING, MONITORING &** **DOCUMENTATION**

### **4.1 REPORTING REQUIREMENTS**

The City will set forth the specific reporting requirements, if any, in the Scope of Services attached as Exhibit B. In addition to any reporting requirements described in Exhibit B, you will submit quarterly fiscal reports to the Department's Finance Division, at the Department's Mailing Address noted in this Agreement's Preamble, in a format to be determined by the Department.

### **4.2 RECORDS**

You will maintain and make available to the City information such as, but not limited to, dates of and reports or memoranda describing your activities that is necessary to assist the City in its compliance with all applicable laws. You will maintain all documents pertaining to this Agreement including, but not limited to, all financial, statistical, property and participant information documentation.

You will retain books, documentation, papers, records and accounts in connection with this Agreement in a safe place for at least 5 years after the City and, if applicable, the federal government determines that you have met all closeout requirements for this Agreement (and, if later (a) until any related litigation, claim or audit started during such 5-year period is finally resolved and (b) 4 years after disposing of any real property and equipment bought with federal funds) and will keep them open to audit, inspection, copying, abstracting and transcription, and will make these records available to the City, HHS, DHS, DCFS, the United States Comptroller

- period specified in this paragraph.

If you conduct any business operations separate from the Services using any personnel, equipment, supplies or facilities also used in connection with this Agreement, then you will maintain and make available to the City, HHS, DHS, DCFS, the U.S. Comptroller General and Auditor General of the State of Illinois detailed records supporting your allocation of the costs and expenses attributable to any such shared usages. You will provide to the City by October 1 of each year a cost allocation plan for the following fiscal year.

You will maintain books, records, and documents, and will adopt accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred for or in connection with the performance of this Agreement. This system of accounting must be in accordance with generally accepted federal accounting principles and practices, as set forth in the applicable OMB Circulars A-21, A-87, A-102, A-110, A-122 and A-133.

Your failure to maintain any books, records and supporting documents required by this Section will establish a presumption in favor of the City for the recovery of any funds paid under this Agreement for which adequate books, records, and supporting documentation are not available to support their purported disbursement.

No provision in this Agreement granting the City a right of access to records and documents impairs, limits or affects any right of access to such records and documents that the City would have had in the absence of such provisions.

You must maintain and provide to the City the

in connection with the Services, an affidavit stating whether the landlord is a Related Party (as defined below), and with respect to any insurance, utility or other costs not based on your actual use, documentation satisfactory to the City in its sole discretion supporting the allocation of these costs to you; (B) within six months after the end of your fiscal year, annual financial statements for you that include a statement of financial position and statement of activities, and a trial balance; provided, that delivery to the City of an audit conducted in accordance with OMB Circular A-133 and that satisfies all requirements described in Section 4.3 would satisfy the requirements of this clause (B); (C) within 30 days after the transaction occurs, a report of any transaction between you and any Related Party. For purposes of this Section 4.2, "Related Party" means any board member, officer or employee of you, and any relative of any board member, officer or employee of you.

#### 4.3 AUDIT REQUIREMENT

If you are a not-for-profit corporation and are expending federal funds under this and other agreements totaling \$500,000 or more during your fiscal year, you must submit an audit conducted in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-07), OMB Circular A-133 (entitled "Audits of States, Local Governments and Non-Profit Organizations"), the compliance requirements set forth in OMB Compliance Supplement, and any additional testing and reporting required by the City. If an A-133 audit is required, that audit must cover the time period specified by OMB Circular A-133 and its implementing regulations. Organization-wide audited financial statements must, at a minimum, cover the Term of this Agreement. You also are responsible for meeting

expending federal funds under this and other agreements totaling \$500,000 or more during your fiscal year, then you must submit a program-specific audit of the program(s) funded by the City under this Agreement. This audit must be performed in accordance with program-specific audit requirements contained in Section .235 of OMB Circular A-133, applicable program-specific audit guides, and with generally accepted government auditing standards (Government Auditing Standards). The audit must cover the time period specified by OMB Circular A-133 for program-specific audits. In addition to the audit opinion, reports, and schedules required by OMB Circular A-133, the program-specific audit shall include the following financial statements:

- Statement of Financial Position (Balance Sheet) (if applicable)
- Statement of Activities (Revenue and Expenses)

If your organization has expended federal funds under this and other agreements totaling less than \$500,000 during your fiscal year, you must submit to the City a notarized "Delegate Agency Certification of Federal Expenditures" form certifying that your organization is exempt from Federal audit requirements for that year pursuant to OMB Circular A-133, Section .200(d). Copies of this Certification form may be obtained from the City's Office of Compliance.

You acknowledge that the City may perform, or cause to be performed, various monitoring procedures relating to your award(s) of federal funds, including, but not limited to, "limited scope audits" of specific compliance areas.

You must submit the audit reports within 6 months after the end of the audit period. You must submit the audit within this time frame to

If you are a for-profit corporation and are

City of Chicago  
Office of Compliance  
DePaul Center, Room 540  
333 S. State St.  
Chicago, Illinois 60604

If an OMB audit is required, you will also send a copy of the audit, within the same time frame indicated in Sec. 320 of OMB Circular A-133, to:

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

Further, you must submit, with the audit, a report which comments on the findings and recommendations in the audit, including corrective action planned or taken. If no action is planned or taken, an explanation must be included. Copies of written communications on non-material compliance findings must be submitted to the Department and the City's Office of Compliance. The City retains its right to independently audit you.

If you are found in non-compliance with these audit requirements, by either the City or any federal agency, you may be required to refund financial assistance received from the City or the applicable federal agency(ies).

Each of the City, HHS, DHS, DCFS, the U.S. Comptroller General or the Auditor General of the State of Illinois may in its sole discretion audit the records of you or your subcontractors, or both, at any time during the term of this Agreement or within five years after the Agreement ends, in connection with the goods, work, or Services provided under this Agreement. Each calendar year or partial calendar year is considered an "audited period." If, as a result of such an audit

the City has paid you due to the overcharges and also some or all of the cost of the audit, as follows:

- A. If the audit has revealed overcharges to the City representing less than 5% of the total value, based on the contract prices, of the goods, work, or Services provided in the audited period, then you must reimburse the City for 50% of the cost of the audit and 50% of the cost of each subsequent audit that the City conducts;
- B. If, however, the audit has revealed overcharges to the City representing 5% or more of the total value, based on the contract prices, of the goods, work, or Services provided in the audited period, then you must reimburse the City for the full cost of the audit and of each subsequent audit.

If the City is unable to make a determination regarding overcharges to City as a result of your not having maintained records as required under this Agreement, you must promptly reimburse the City for some or all of the cost of the audit, as determined in the sole discretion of the City. Your failure to reimburse the City in accordance with this Section 4.3 is an event of default under this Agreement, and you will be liable for all of the City's costs of collection, including any court costs and attorneys' fees.

#### 4.4 CONFIDENTIALITY

- A. All reports, deliverables and documents prepared, assembled or encountered by or provided to you under this Agreement are property of the City and are confidential, and you warrant and represent that, except as may be required

Commissioner. You will implement measures to ensure that your staff and your subcontractors will be bound by this Section.

- B. You must not issue any publicity news releases or grant press interviews, and except as may be required by law during or after the performance of this Agreement, disseminate any information regarding your Services or the project to which the Services pertain without the prior written consent of the Commissioner.
- C. If you are presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any records, data or documents which may be in your possession by reason of this Agreement, you must immediately give notice to the Commissioner and the City's Corporation Counsel with the understanding that the City will have the opportunity to contest such process by any means available to it, before such records or documents are submitted to a court or other third party. You will not be obligated to withhold such delivery beyond that time as may be ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.
- D. To the extent not defined herein, the capitalized terms below and in Exhibit F will have the same meaning as set forth in the Health Insurance Portability and Accountability Act ("HIPAA"). See 45 CFR parts 160, 162 and 164. You and all

Identifiable Health Information at 45 CFR part 160 and part 164 subparts A and E; the Standards for Electronic Transactions, which are located at 45 CFR parts 160 and 162 and the Security Standards, which are located at 45 CFR parts 160, 162 and 164. You must also comply with the Illinois AIDS Confidentiality Act (410 ILCS 305/1 through 16), the Illinois Mental Health and Developmental Disabilities Confidentiality Act (740 ILCS 110/1 through 17) and all other Illinois state statutes concerning the confidentiality, preservation, and disclosure of protected health information (as that term is defined in HIPAA) and the rules and regulations promulgated under those state statutes. If you fail to comply with the applicable provisions under HIPAA and the Illinois state statutes, rules and regulations concerning the confidentiality, preservation, and disclosure of protected health information, such failure will constitute an event of default under this Agreement for which no opportunity for cure will be provided. Additionally, if you are a Business Associate you must comply with all requirements of HIPAA applicable to Business Associates including the provisions contained in Exhibit F. You shall maintain for a minimum of six (6) years all protected health information.

#### 4.5 MONITORING

You will allow the City:

- A. to have access at all times to all facilities supported under this Agreement

Standards for Privacy of Individually

supported under this Agreement



whenever requested;

- C. to make physical inspections of the premises used by you in the performance of the Services and to require such physical safeguards to safeguard the property and/or equipment authorized including, but not limited to, requiring locks, alarms, safes, fire extinguishers and sprinkler systems; and
- D. to be present at any and all meetings held by you, including, but not limited to, staff meetings, board of directors meetings, advisory committee meetings and advisory board meetings, if an item relating to this Agreement is to be discussed.

You must respond within 2 weeks to quarterly questionnaires, regarding demographics, staff, quality, etc., from the Department.

You must make staff available on a regular basis at meetings convened by the Department, for the purpose of, but not limited to, making presentations, answering questions, and addressing issues related to the Services. Your chief executive officer, or their designee, will participate in all delegate agency conferences.

Nothing in this Agreement will be construed as restricting or otherwise limiting the rights of the City toward the appropriate management of this program.

#### 4.6 INTELLECTUAL PROPERTY

##### A. Patents and Copyrights

The City reserves an exclusive, perpetual and irrevocable license to reproduce, publish or otherwise use, and to authorize

- i. the copyright or patent in any work developed under this Agreement; and
- ii. any rights of copyright or patent to which you purchase ownership with the funds awarded pursuant to this Agreement.

If the federal government determines that a patent or copyright which is developed or purchased by you serves a federal government purpose, a royalty-free, non-exclusive and irrevocable license will vest in the federal government.

Any discovery or invention arising out of, or developed in conjunction with the Services will be promptly and fully reported to the federal government for a determination as to whether patent protection on such invention or discovery should be sought. The rights to such patent will be administered as set forth above and in 37 CFR Part 401.

##### B. Ownership of Documents

All required submittals, including but not limited to work products, materials, documents, and reports, if any, described in Exhibit B, will be the property of the City. During the performance of the Services, you will be responsible for any loss or damage to the documents while they are in your possession and any such document lost or damaged will be restored at your expense. If not restorable, you will be responsible for any loss suffered by the City on account of such destruction. Full access to all finished or unfinished documents, data,

reasonable notice.

**C. Hold Harmless**

Unless prohibited by state law, upon request by the Federal government, you will indemnify, save, and hold harmless the City and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by you of proprietary rights, patents, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any material or data produced under the Agreement.

**4.7 TECHNICAL ASSISTANCE**

At the request of the Department, you will be required to attend technical assistance sessions sponsored by the Department during the term of the Agreement.

**ARTICLE 5**  
**COMPENSATION**

**5.1 BASIS OF PAYMENT**

You will be compensated for Services performed and costs incurred and paid directly by you pursuant to the Budget Summary, which is attached to this Agreement as Exhibit C and incorporated by reference as if fully set forth herein. Requests for budget revisions which do not affect the Maximum Compensation or Committed Compensation must be submitted for review and approval to the Department. If the Department approves and signs the request for

If you provide the same or similar services to DCFS or DHS, you shall not charge the City more per unit of service than you charge DCFS or DHS for the same service.

**5.2 METHOD OF PAYMENT**

**A. Provisions applicable to all Programs**

You will submit requisitions for reimbursement (also referred to as "vouchers") at least **MONTHLY** identifying the payment due for the Services performed and/or costs incurred and paid directly by you in such detail and supported by such documents as the City may require. Requisitions must be submitted within 15 calendar days after the end of the month in which the Services were performed and/or costs were incurred. The City will reject any reimbursement requisition that includes costs that were incurred or paid by any party other than you. The requisitions for reimbursement will be on a form provided and approved by the City. The City will use reasonable efforts to respond to your requisition for reimbursement within 60 calendar days after submission by either (a) processing the payment or (b) notifying you of the way in which the requisition is deficient and the adjustments you must make in order to receive payment. Within 45 days after receiving such notification from the City, and after completing such adjustment, you may resubmit a revised requisition for reimbursement and the City thereafter will use reasonable efforts to respond to your request within thirty (30) days by either (a) processing the payment or (b) notifying you of the way in which the requisition is deficient and the adjustments you must make in order to receive payment.

**B. Provisions for Child Care Services**

documents for Child Care Services Program and Child Care Collaboration Program will be sent to the Department's Mailing Address noted in this Agreement's Preamble.

Specific Time Lines for Child Care Billings:

The Finance Division of the Department will publish billings by the 6<sup>th</sup> business day of each month. You must submit billings online and a hard copy with a signature by the 15<sup>th</sup> business day of each month.

Quarterly Child Care Billing:

You must reconcile any supplemental billings by the last business day of the subsequent month following the quarter or as directed by the Department's Finance Division.

You waive all rights to payment if the request for reimbursement and any resubmissions are submitted after the earlier of (a) 10 calendar days following the end of the Child Care fiscal year in which the expenses were incurred or as directed in writing by the Department's Finance Division or (b) 10 calendar days following the termination or completion of this Agreement. Costs incurred by you after the expiration date or after earlier termination of this Agreement will not be paid by the City.

**C. Provisions for Head Start and Early Head Start Programs**

The requests for reimbursement and supporting documents for the Head Start and Early Head Start Programs will be sent to:

City of Chicago  
Comptroller's Office  
Voucher Audit Unit

for reimbursement and any resubmissions are submitted more than 30 calendar days after the earlier of (a) the end of the applicable Release Period or (b) the termination or completion of this Agreement. Costs incurred by you after the expiration date or after earlier termination of this Agreement will not be paid by the City. As used in this Agreement, "**Release Period**" shall mean the annual funding period under the Grant(s) used to fund this Agreement, which may be different than your fiscal year or the City's fiscal year.

**5.3 REDUCTION OF COMPENSATION**

If, after this Agreement is signed, anticipated local, federal and/or state funding is reduced for any reason, any Grant has been terminated for any reason, or the City determines in its sole discretion that your performance is not satisfactory, then the City reserves the right upon written notice to you to reduce or modify the Maximum Compensation, the Committed Compensation, the time for performance and/or the number of unfilled participant slots. If local, federal and/or state appropriations are reduced to such an extent that, in the sole discretion of the City, no funds will be available to compensate you under this Agreement, then the City will provide you notice of such occurrence. The notice will constitute notice of Early Termination in accordance with this Agreement.

If the Maximum Compensation and/or Committed Compensation is reduced, you will have 30 calendar days from the date of the written notice to submit a revised work program, budget or any other necessary document ("**Revised Submittals**") to the City reflecting the reduction in Maximum Compensation and/or Committed Compensation, as applicable, and accordingly modifying the Services to be performed. The City

After (a) final approval and signature by the Department of the Revised Submittals and (b) final review and approval by the City Comptroller of the revised budget included in the Revised Submittals, the Revised Submittals will become a part of this Agreement superseding the relevant previous documents. If you fail to comply with the written notice or submit Revised Submittals which are not accepted by the City, you must perform this Agreement as originally executed for the reduced Maximum Compensation or, if less, the reduced Committed Compensation.

#### **5.4 ALLOWABLE COSTS**

All costs allowed by the City Comptroller's Office, are not considered final and may be disallowed upon the completion of audits ordered or performed by the City or the appropriate federal or state agency. In the event of a disallowance, you will refund the amount disallowed to the City.

#### **ARTICLE 6** **NON-SOLICITATION**

You warrant and represent that you have not employed any person solely for the purpose of soliciting or procuring this Agreement, and has not made, and will not make, any payment or any agreement for the payment of any commission, percentages brokerage, contingent fee or other compensation in connection with the procurement of this Agreement.

#### **ARTICLE 7** **DISPUTES**

Subject to the appeal process described in 45 CFR Part 1303, Subpart C, "Appeals by Current or Prospective Delegate Agencies" (Sections 1303.20 through 1303.23), and except as

the parties. (A copy of the "Regulations of the Department of Procurement Services for Resolution of Disputes between Contractors and the City of Chicago" is available in City Hall, 121 N. LaSalle Street, Room 301, Bid and Bond Room, Chicago, Illinois 60602.) The Chief Procurement Officer will issue a written decision and send it to you by mail. The decision of the Chief Procurement Officer is final and binding. The sole and exclusive remedy to challenge the decision of the Chief Procurement Officer is judicial review by means of a common law writ of certiorari.

#### **ARTICLE 8** **EVENTS OF DEFAULT & REMEDIES**

##### **8.1 EVENTS OF DEFAULT DEFINED**

In addition to any others mentioned elsewhere in this Agreement, the following will constitute events of default:

- A. Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by you to the City.
- B. Any material failure by you to perform any of your obligations under this Agreement including, but not limited to, the following:
  - i. Failure to perform the Services with sufficient personnel and equipment or with sufficient material to ensure the performance of the Services due to a reason or circumstances within your reasonable control;
  - ii. Failure to perform the Services in

decision based upon the written submissions of

assignment for the benefit of creditors;

- iii. Failure to promptly re-perform within a reasonable time Services that were rejected as erroneous or unsatisfactory;
  - iv. Discontinuance of the Services for reasons or circumstances within your reasonable control; and
  - v. Failure to comply with a material term or condition of this Agreement including, but not limited to, the provisions concerning insurance, compensation, monitoring, licensing and nondiscrimination.
- C. Your default under any other agreement you may presently have or may enter into with the City during the Term of this Agreement. You consent that in the event of a default under this Agreement, the City may also declare a default under any other agreements with the City.
- D. Your failure to comply with Section 9.5 in the performance of the Agreement.
- E. Your repeated or continued violations of City ordinances unrelated to performance under the Agreement that in the opinion of the Commissioner indicate a willful or reckless disregard for City ordinances and regulations.
- F. Any action or failure to act by you that causes the City to be in violation of any agreements it has with Federal or State

The occurrence of any event of default permits the City, at the City's sole option, to declare you in default. The City may in its sole discretion give you an opportunity to cure the default within a certain period of time, which period of time must not exceed 30 days unless extended by the City. Whether to declare you in default is within the sole discretion of the City and neither that decision nor the factual basis for it is subject to review or challenge under the Disputes provision of this Agreement, except to the extent that a statute or regulation applicable to the action involved entitles you to a hearing, appeal or other administrative proceeding, including without limitation the appeal process under 45 CFR Part 1303, Subpart C, "Appeals by Current or Prospective Delegate Agencies" (Sections 1303.20 through 1303.23).

If the City decides to terminate this Agreement and 45 CFR Part 1303, Section 1303.20 applies to this decision, then:

- A. The City will notify you in writing of its decision to terminate this Agreement, explaining the reasons for the City's decision and that you have the right to appeal the decision to the City within ten work days after receipt of the notice.
- B. The City will have 20 days to review the written appeal and issue its decision. If the City sustains its earlier termination of this Agreement, you then may appeal, in writing, to the responsible HHS official. The appeal must be submitted to the responsible HHS official within ten work days after the receipt of the City's final decision. The appeal must fully set forth the grounds for the appeal.
- C. The City may not terminate your

- (i) Notifying you of the defects and deficiencies;
- (ii) If requested by you, providing, or providing for, technical assistance so that you can correct defects and deficiencies; and
- (iii) Giving you the opportunity to make appropriate corrections within 90 days after notice from the City unless this period is modified in writing by the City in its sole discretion.

D. Failure to appeal to the City regarding its decision to terminate this Agreement shall bar any appeal to the responsible HHS official.

In the event of any conflict between this Agreement and 45 CFR Part 1303, if applicable, the provisions of 45 CFR Part 1303 shall control.

The Commissioner will give you written notice of the default, either in the form of a cure notice ("Cure Notice"), or, if no opportunity to cure will be granted, a default notice ("Default Notice"). If the Commissioner gives a Default Notice, the Commissioner will also indicate any present intent the City may have to terminate this Agreement, and the decision to terminate is final and effective upon giving the notice. If the City decides not to terminate, this decision will not preclude the City from later deciding to terminate the Agreement in a later notice, which will be final and effective upon the giving of the notice or on the date set forth in the notice, whichever is later. The Commissioner may give a Default Notice if, within the cure period given in a Cure Notice, in the sole opinion of the City, you fail to effect a cure or fail to commence and continue diligent efforts to cure the event of default. When a

completed or in the process, to the City.

Following or at the same time as the Default Notice, the City may invoke any or all of the following remedies:

- A. The right to take over and complete the Services or any part of them as agent for and at your cost, either directly or through others. You will have, in that event, the right to offset from the cost the amount it would have cost the City under the terms and conditions of this Agreement, had you completed the Services;
- B. The right to terminate this Agreement as to any or all of the Services yet to be performed effective at a time specified by the City;
- C. The right of specific performance, an injunction or any other appropriate legal or equitable remedy against you;
- D. The right to money damages;
- E. The right to withhold all or any part of your compensation;
- F. The right to deem you non-responsible in future contracts to be awarded by the City; and
- G. The right to declare default on any other contract or agreement you may have with the City.

If the City considers it to be in the City's best interests, it may elect not to declare default or to terminate the Agreement. The parties acknowledge that this provision is solely for the

the performance of this Agreement, without:

obligations under this Agreement nor will the City waive or relinquish any of its rights.

The remedies under the terms and conditions of the Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy is cumulative and is in addition to any other remedies, existing now or later, at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any event of default will impair any such right or power nor will it be construed as a waiver of any event of default or acquiescence in it, and every such right and power may be exercised from time to time and as often as the City deems expedient.

### 8.3 RIGHT TO OFFSET

To the extent permitted by applicable law,

- A. In connection with performance under this Agreement, the City may offset any incremental costs and other damages the City incurs in any or all of the following circumstances:
- i if the City terminates this Agreement for default or any other reason resulting from your performance or non-performance;
  - ii if the City exercises any of its remedies under Section 8.2 of this Agreement; or
  - iii if the City has any credits due or has made any overpayments under this Agreement.

The City may offset these incremental costs and other damages by use of any payment due for Services completed before the City terminated this Agreement.

for and must promptly remit to the City the balance upon written demand for it. This right to offset is in addition to and not a limitation of any other remedies available to the City.

- B. As provided under Section 2-92-380 of the Municipal Code and in addition to any other rights and remedies (including any of set-off) available to the City under this Agreement or permitted at law or in equity, the City is entitled to set off a portion of the price or compensation due under this Agreement in an amount equal to the amount of the fines and penalties for each outstanding parking violation complaint and/or the amount of any debt owed by you to the City, as those terms are defined in Section 2-92-380.
- C. Without breaching this Agreement, the City may set off a portion of the price or compensation due under this Agreement in an amount equal to the amount of any liquidated or unliquidated claims that the City has against you unrelated to this Agreement. When the City's claims against you are finally adjudicated in a court of competent jurisdiction or otherwise resolved, the City will reimburse you to the extent of the amount the City has offset against this Agreement inconsistently with such determination or resolution.

### 8.4 SUSPENSION OF SERVICES

The City may, at any time, request that you suspend the Services, or any part of them, (a) by giving 15 calendar days prior written notice to you, (b) upon no notice in the event of emergency, or (c) upon no notice if the City

criminal statute; or (iii) if staff or participants' health and safety are at risk. No costs incurred after the effective date of the suspension will be allowed. You will promptly resume your performance of the Services under the same terms and conditions upon written notice by the City and such equitable extension of time as may be mutually agreed upon by the City and you when necessary for continuation or completion of the Services. Any additional costs or expenses actually incurred by you as a result of recommencing the Services will be treated in accordance with this Agreement.

No suspension will, in the aggregate, exceed a period of 45 calendar days within any one contract year unless the City has declared a summary suspension and the conditions creating the summary suspension have not been corrected. If the total number of days of suspension exceeds 45 calendar days, you, by written notice to the City, may treat the suspension as an Early Termination by the City.

#### 8.5 NO DAMAGES FOR DELAY

Neither you nor your agents, employees, and subcontractors are entitled to any damages from the City, nor is any party entitled to be reimbursed by the City, for damages, charges or other losses or expenses incurred by you by reason of delays or hindrances in the performance of the Services, whether or not caused by the City. On Notice to the City of a delay outside your control, you may request additional time to complete your performance. The decision to grant additional time is in the sole and absolute discretion of the City.

### ARTICLE 9 GENERAL CONDITIONS

Agreement, you:

- A. warrant that you are appropriately licensed and/or certified under Illinois law to perform the Services required under this Agreement and will perform no Services for which a professional license and/or certification is required by law and for which you are not appropriately licensed and/or certified;
- B. warrant that no officer, agent or employee of the City is employed by you or has a financial interest directly or indirectly in this Agreement or the compensation to be paid, except as may be permitted in writing by the City's Board of Ethics; that no payment, gratuity or offer of employment will be made by or on behalf of any subcontractors of any tier, as an inducement for the award of a subcontract or order; you acknowledge that any agreement entered into, negotiated or performed in violation of any of the provisions of City's Ethics Ordinance, Municipal Code § 2-156 et seq., is voidable by the City; in accordance with 41 U.S.C. § 22, you must not admit any member of or delegate to the United States Congress to any share or part of the Services or the Agreement, or any benefit derived therefrom; and
- C. warrant that you are financially solvent; you and each of your employees, agents and subcontractors of any tier are competent to perform the Services required under this Agreement; and you are legally authorized to execute and perform or cause to be performed this Agreement under the terms and

in connection with signing and carrying out this

the services of any foregoing contractor or



subcontractor for any purpose in the performance of the Services under this Agreement.

- E. warrant that you and your subcontractors are not in default at the time this Agreement is signed, and have not been deemed by the Chief Procurement Officer to have, within 5 years, immediately preceding the date of this Agreement, been found to be in default on any contract awarded by the City of Chicago;
- F. represent that you have carefully examined and analyzed the provisions and requirements of this Agreement; you understand the nature of the Services required; from your own analysis you have satisfied yourself as to the nature of all things needed for the performance of this Agreement; this Agreement is feasible of performance in accordance with all of its provisions and requirements, and you warrant that you can and will perform, or cause to be performed, the Services in strict accordance with the provisions and requirements of this Agreement;
- G. represent that you and, to the best of your knowledge, your subcontractors are not in violation of the provisions of Section 2-92-320 of Chapter 2-92 of the Municipal Code, the Illinois Criminal Code, 720 ILCS 5/33E-1, and the Illinois Municipal Code, 65 ILCS 5/11-42.1-1;
- H. acknowledge that any certification, affidavit or acknowledgment made under oath in connection with this Agreement is made under penalty of perjury and, if false, is also cause for termination under

1-21 of the Municipal Code, False Statements, is also cause for termination under Sections 2.4 and 8.1 of this Agreement; and

- J. represent and warrant that neither you nor any Affiliate is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order or judgment: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. "Affiliate," when used to indicate a relationship with a specified person or entity, means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified person or entity, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

## 9.2 INSPECTOR GENERAL

It is the duty of any Subgrantee, bidder, proposer, or contractor, subcontractor, and every applicant

subcontractor of such applicant to cooperate with the Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Municipal Code; that Subgrantee understands and will abide by all provisions of Chapter 2-56 of the Municipal Code; and that it will inform subcontractors of this provision and require their compliance.

### 9.3 WHOLE AGREEMENT - INTEGRATION

This Agreement, including attached Exhibit A through Exhibit F, constitutes the entire agreement between the parties, and no warranties, representations, inducements, considerations, promises or other inferences will be implied that are not expressly stated in the Agreement. No variation or amendment of this Agreement and no waiver of its provisions are valid unless in writing and signed by duly authorized officers of you and the City. This Agreement supersedes all oral or written agreements or understandings on the subject of this Agreement between you and the City.

### 9.4 MODIFICATIONS AND AMENDMENTS

Except as provided in Section 2.3 of this Agreement, no changes, amendments, modifications, cancellations or discharges of this Agreement, or any part of it are effective unless in writing and signed by you and the City, or their respective successors and assigns.

### 9.5 COMPLIANCE WITH ALL LAWS

You will comply with all applicable laws, ordinances and executive orders and regulations of the federal, state, local and city government, which may in any manner affect the performance of this Agreement.

persons with disabilities or environmentally limited persons including, but not limited to: the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.*; and the Rehabilitation Act of 1973, 29 U.S.C. §§ 793-794. In the event the above cited standards are inconsistent, you will comply with the standard providing greater accessibility.

### 9.7 NO FEDERAL, STATE OR CITY OBLIGATIONS TO THIRD PARTIES

You acknowledge that, absent the express written consent of the federal government and the State of Illinois, the State of Illinois and the federal government will not be subject to any obligations or liabilities to any person not a party to the grant agreement between the City and the State of Illinois or between the City and the federal government. Notwithstanding any concurrence provided by the State of Illinois or federal government in or approval of any solicitation, agreement, or contract, the State of Illinois and federal government continue to have no obligations or liabilities to any party, including you.

This Agreement is made for the sole benefit of the City and you and the respective successors and assigns of the City and you and no other party shall have any legal interest of any kind hereunder or by reason of this Agreement. Whether or not the City elects to employ any or all of the rights, powers or remedies available to it hereunder, the City shall have no obligation or liability of any kind to any third party by reason of this Agreement or any of the City's actions or omissions pursuant hereto or otherwise in connection herewith.

### 9.8 NON-LIABILITY OF PUBLIC OFFICIALS

personnel, any former employee or agent of the

red will comply with accessibility standards for

City with any liability or expenses of defense or be held personally liable to you under any term or condition of this Agreement, because of the City's execution or attempted execution of this Agreement, or because of its breach.

#### **9.9 INDEPENDENT CONTRACTOR**

This Agreement is not intended to and will not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, corporation or other formal business association or organization of any kind between the parties, and the rights, and the obligations of the parties will be only those expressly set forth in this Agreement. You will perform under this Agreement as an independent contractor to the City and not as a representative, employee, agent, or partner of the City.

#### **9.10 INTERNATIONAL ANTI-BOYCOTT**

You certify that neither you nor any substantially owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the U.S. Export Administration Act of 1979, (50 U.S.C. Appx 2401 et seq.), or the regulations of the U.S. Department of Commerce promulgated under that Act (15 CFR Parts 730 through 774).

#### **9.11 JOINT AND SEVERAL LIABILITY**

In the event that you, or your successors or assigns, is comprised of more than one person, then every obligation or undertaking to be fulfilled or performed by you will be the joint and several obligation or undertaking of each such person.

#### **9.12 PROOF OF BUSINESS FORM**

Upon request from the City, you will provide

of your authority to do business in the State of Illinois, including without limitation, registrations of assumed names or limited partnerships and certifications of good standing with the Secretary of State of Illinois.

#### **9.13 ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT**

You will provide the City with a correctly completed Economic Disclosure Statement and Affidavit ("EDS"), which is attached as Exhibit D and incorporated by reference, and further will provide any other affidavits or certifications as may be required by federal, state or local law in the award of public contracts, all to be attached under Exhibit D and incorporated by reference. You will cause your subcontractors or, if a partnership or joint venture, all members of the partnership or joint venture, to submit all required affidavits to the City. Notwithstanding acceptance by the City of the EDS, failure of the EDS to include all information required under the Municipal Code renders this Agreement voidable at the option of the City. You and any other parties required by this Section 9.13 to complete an EDS must promptly update their EDS(s) on file with the City whenever any information or response provided in the EDS(s) is no longer complete and accurate, including changes in ownership, and failure to promptly provide the updated EDS(s) to the City will constitute an event of default under this Agreement.

You certify, as further evidenced in the EDS attached as Exhibit D, by your acceptance of this Agreement that neither you nor your principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. You further agree by executing this Agreement that you will

statement, you must attach an explanation to the Agreement.

#### **9.14 CONFLICT OF INTEREST**

No member of the governing body of the City or other units of government and no other officer, employee, or agent of the City or other unit of government who exercises any functions or responsibilities in connection with the Services will have any personal interest, direct, or indirect, in this Agreement. No member of or delegate to the Congress of the United States or the Illinois General Assembly and no alderman of the City or City employee will be admitted to any share or part of this Agreement or to any financial benefit to arise from it.

You covenant that you, your officers, directors and employees, and the officers, directors and employees of each of your members if a joint venture, and your subcontractors, presently have no interest and will acquire no interest, direct or indirect, which would conflict in any manner or degree with the performance of the Services. You further covenant that no person having any such interest will be employed. You acknowledge that if the City determines that any of your services for others conflict with the Services, you will terminate such other services immediately upon request of the City.

In addition to the conflict of interest requirements in OMB Circular A-110 and 45 CFR Part 92.36(b)(3) or 45 CFR 74.42, as applicable, no person who is an employee, agent, officer, or elected or appointed official of the City and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial

business ties, during his or her tenure or for one year thereafter.

Furthermore, you warrant and represent that you are and will remain in compliance with federal restrictions on lobbying set forth in Section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal year 1990, 31 U.S.C. § 1352, and related rules and regulations set forth at 54 Fed. Reg. 52,309 (1989), as amended.

In addition, if State of Illinois funds are used for the Agreement, you must comply with the conflict of interest provisions contained in the Illinois Procurement Code (30 ILCS 500/50-13) and other provisions in the Illinois Procurement Code regarding participation in agreement negotiation by a State employee (30 ILCS 500/50-15).

#### **9.15 COOPERATION WITH CITY**

You will cooperate fully with the City and act in the City's best interests. If this Agreement is terminated for any reason, or if it is to expire on its own terms and conditions, you will make every effort to assure an orderly transition to another provider of the Services, if any, orderly demobilization of your own operations in connection with the Services, uninterrupted provision of Services during any transition period and will comply with the reasonable requests and requirements of the City in connection with the termination or expiration of this Agreement.

#### **9.16 WAIVER**

Nothing in this Agreement authorizes the waiver of any requirement or condition contrary to law or ordinance or which would result in or promote the violation of any federal, state or local law or ordinance.

your performance, the waiver so granted, whether express or implied, will only apply to the particular instance and will not be deemed a waiver forever or for subsequent instances of the performance, requirement or condition. No waiver will be construed as a modification of the Agreement regardless of the number of times the City may have waived the performance, requirement or condition.

#### **9.17 GOVERNING LAW**

This Agreement is governed as to performance and interpretation in accordance with the laws of the State of Illinois.

#### **9.18 SEVERABILITY**

If any provision of the Agreement is held to be or in fact is illegal, inoperative or unenforceable on its face or as applied in any particular case, in any jurisdiction (or in all cases because it conflicts with any other provision of this Agreement, or any constitution, statute, municipal ordinance, rule of law or public policy, or for any other reason), that circumstances will not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision of this Agreement illegal, invalid, inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement does not affect the remaining portions of this Agreement or any part of it.

#### **9.19 INTERPRETATION**

Any headings in this Agreement are for convenience of reference only and do not define or limit its provisions. Words importing the singular number include the plural number and

documents entered into in accordance with the terms and conditions of this Agreement. All references to any person or entity include any person or entity succeeding to the rights, duties, and obligations of the person or entity in accordance with the terms and conditions of this Agreement. In the event of any conflict between this Agreement and any exhibits to it, the terms and conditions of this Agreement control.

#### **9.20 NONASSIGNABILITY**

You will not assign all or any part of your work or responsibilities under this Agreement without the prior written consent of the City; but any such consent will not relieve you of your obligations under this Agreement. Any transfer or assignment without the prior written consent of the City constitutes an event of default under this Agreement and is void as to the City. The City reserves the right to assign, in whole or in part, any funds, claims or interests, due or to become due, under this Agreement.

#### **9.21 YOUR AUTHORITY**

Your execution of this Agreement is authorized by a resolution or ordinance of your governing body. The signature of the individual signing on your behalf has been made with complete and full authority to commit you to all the terms and conditions of this Agreement. Evidence of signature authority should be forwarded to the City with the executed Agreement.

#### **9.22 DEEMED INCLUSION**

Provisions required by law, ordinances, rules, regulations, or executive orders to be inserted in this Agreement are deemed inserted in this Agreement whether or not they appear in this Agreement or upon application by either party.

**ARTICLE 10**  
**NOTICES**

All notices and communications to be provided by the City and you pursuant to this Agreement must be in writing and may be delivered personally, by overnight courier or by First Class certified mail, return receipt requested, with postage prepaid and addressed as follows:

If to the City:

The Department's mailing address noted in the preamble to this Agreement

With Copies to:

Department of Law  
City Hall, Room 600  
121 North LaSalle Street  
Chicago, Illinois 60602  
Attention: Corporation Counsel

If to you:

Your mailing address noted in the preamble to this Agreement

You will advise the City of any significant change in your organizational structure. Significant changes include, but are not limited to, changes to:

- A. the official to whom notice regarding the Agreement is provided and their mailing address;
- B. the officers of the corporation, including president, chairman, vice president, treasurer, secretary; and

agency official address, telephone numbers.

Such communication must be directed within 10 calendar days of such occurrence (or, in the case of changes in name, ownership, FEIN or taxpayer certification, 45 days in advance), to the Department's Mailing Address noted in this Agreement's Preamble.

No promise or undertaking made in this Agreement is an assurance that the City agrees to continue this Agreement should you reorganize, change owners, or otherwise substantially change the character of your corporate or other business structure.

Communications delivered by mail are deemed received 3 business days after mailing in accordance with this Article 10. Communications delivered personally are deemed effective upon receipt. Communications sent via overnight courier are deemed effective on the next business day. Refusal of delivery has the same effect as delivery.

**ARTICLE 11**  
**BUSINESS RELATIONSHIPS WITH ELECTED OFFICIALS**

Pursuant to Section 2-156-030(b) of the Municipal Code, it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected official has a business relationship, or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official

taxpayer certification, and the address of

The term "Business Relationship" is defined as set forth in Section 2-156-080 of the Municipal Code.

Section 2-156-080 defines a "**Business Relationship**" as any contractual or other private business dealing of an official, or his or her spouse or domestic partner, or of any entity in which an official or his or her spouse or domestic partner has a financial interest, with a person or entity which entitles an official to compensation or payment in the amount of \$2,500 or more in a calendar year; provided, however, a financial interest shall not include: (i) any ownership through purchase at fair market value or inheritance of less than one percent of the share of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; (ii) the authorized compensation paid to an official or employee for his office or employment; (iii) any economic benefit provided equally to all residents of the City; (iv) a time or demand deposit in a financial institution; or (v) an endowment or insurance policy or annuity contract purchased from an insurance company.

A "contractual or other private business dealing" shall not include any employment relationship of an official's spouse or domestic partner with an entity when such spouse or domestic partner has

no discretion concerning or input relating to the relationship between that entity and the City.

## **ARTICLE 12** **LIVING WAGE ORDINANCE**

A. Not-for-Profit Corporations: If you are a corporation having federal tax exempt

do not apply.

B. Section 2-92-610 of the Municipal Code provides for a living wage for certain categories of workers employed in the performance of City contracts, specifically non-City employed security guards, parking attendants, day laborers, home and health care workers, cashiers, elevator operators, custodial workers and clerical workers ("**Covered Employees**").

Accordingly, pursuant to Section 2-92-610 and regulations promulgated under it:

- i. If you have 25 or more full-time employees, and
- ii. If at any time during the performance of this Agreement, you and/or any subcontractor or any other entity that provides any portion of the Services (collectively "**Performing Parties**") use 25 or more full-time security guards, or any number of other full-time Covered Employees, then
- iii. you must pay your Covered Employees, and must assure that all other Performing Parties pay their Covered Employees, not less than the minimum hourly rate as determined in accordance with this provision (the "**Base Wage**") for all Services performed under this Agreement.

C. Your obligation to pay, and to assure payment of, the Base Wage will begin at any time during the term of this Agreement when the conditions set forth

- D. As of July 1, 2008, the Base Wage became \$10.60 per hour, and each July 1 thereafter, the Base Wage will be adjusted, using the most recent federal poverty guidelines for a family of four as published annually by the U.S. Department of Health and Human Services, to constitute the following: the poverty guidelines for a family of four divided by 2000 hours or the current base wage, whichever is higher. At all times during the term of this Agreement, you and all other Performing Parties must pay the Base Wage (as adjusted in accordance with the above). If the payment of prevailing wages is required for Services done under this Agreement, and the prevailing wages for Covered Employees are higher than the Base Wage, then you and all other Performing Parties must pay the prevailing wage rates.

E. you must include provisions in all subcontracts awarded under your subcontracts to pay the Base Wage to Covered Employees. You agree to provide the City with documentation acceptable to the Chief Procurement Officer demonstrating that all Covered Employees, whether employed by you or by a subcontractor, have been paid the Base Wage upon the City's request for such documentation. The City may independently audit you and/or subcontractors to verify compliance with this section. Failure to comply with the requirements of this section will be an event of default under this Agreement, and further, failure to comply may result in ineligibility for any award of a City contract or subcontract for up to 2 years.

In the event you, your parent or related corporate entity, becomes a party to any litigation, investigation or transaction that may reasonably be considered to have a material impact on your ability to perform under this Agreement, you must immediately notify the City in writing. You must also notify the Department regarding incidents that significantly impact the health and safety of clients or incidents that could result in the interruption of service. You must follow procedures provided by the Department for reporting incidents.

#### **ARTICLE 14** **PROHIBITION ON CERTAIN** **CONTRIBUTIONS - MAYORAL EXECUTIVE** **ORDER No. 05-1**

You agree that you, any person or entity who directly or indirectly has an ownership or beneficial interest in you of more than 7.5 percent ("Owners"), spouses and domestic partners of such Owners, your subcontractors, any person or entity who directly or indirectly has an ownership or beneficial interest in any subcontractors of more than 7.5 percent ("Sub-owners") and spouses and domestic partners of such Sub-owners (you and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall not make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fundraising committee (i) after execution of this bid, proposal or Agreement by you, (ii) while this Agreement or any Other Contract is executory, (iii) during the term of this Agreement or any Other Contract between you and the City, or (iv) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated.

These requests, if not competitively procured,



from the date the City approached you or the date you approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

You agree that you shall not: (a) coerce, compel or intimidate your employees to make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee; (b) reimburse your employees for a contribution of any amount made to the Mayor or to the Mayor's political fundraising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

You agree that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 05-1 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 05-1.

You agree that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 05-1 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Agreement, under any Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

If you violate this provision or Mayoral Executive Order No. 05-1 prior to award of the Agreement resulting from this specification, the

**"Bundle"** means to collect contributions from more than one source which are then delivered by one person to the Mayor or to his political fundraising committee.

**"Other Contract"** means any other agreement with the City to which you are a party that is (i) formed under the authority of chapter 2-92 of the Municipal Code; (ii) entered into for the purchase or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved or authorized by the city council.

**"Contribution"** means a "political contribution" as defined in Chapter 2-156 of the Municipal Code.

For purposes of this Article 14 only, individuals are **"Domestic Partners"** if they satisfy the following criteria: (a) they are each other's sole domestic partner, responsible for each other's common welfare; and (b) neither party is married, as marriage is defined under Illinois law; and (c) the partners are not related by blood closer than would bar marriage in the State of Illinois; and (d) each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and (e) two of the following four conditions exist for the partners: (i) the partners have been residing together for at least 12 months, (ii) the partners have common or joint ownership of a residence, (iii) the partners have at least two of the following arrangements: (A) joint ownership of a motor vehicle; (B) a joint credit account; (C) a joint checking account; and (D) a lease for a residence identifying both domestic partners as tenants, and (iv) each partner identifies the other partner as a primary beneficiary in a will.

**"Political fundraising committee"** means a "political fundraising committee" as defined in Chapter 2-156 of the Municipal Code.

### **ENVIRONMENTAL AND SAFETY LAWS**

You shall be subject to, obey and adhere to any and all federal, state and local laws, statutes, ordinances, codes, rules, regulations and executive orders relating to public health and safety and the environment as are now or may be in effect during the term of this Agreement which may be applicable to you, including but not limited to the following Sections of the Municipal Code: Section 7-28-390, 7-28-440, 11-4-1410, 11-4-1420, 11-4-1450, 11-4-1500, 11-4-1530, 11-4-1550, or 11-4-1560, whether or not in the performance of this Agreement.

### **ARTICLE 16** **INTERNET ACCESS**

You must have Internet access at the site level. Internet access may be either dial-up or high speed/DSL. You must maintain at a minimum, one business e-mail address that will be the primary receiving point for all e-mail correspondence for the Department. You may list additional addresses at contract execution. The additional addresses may be for a specific department/division of you or for specific employees of you. During any period that the Department directly funds your Internet service, you must use the Department assigned E-Mail address as their primary E-mail address. You may list additional e-mail points of contact in the same manner as listed above. You must notify the Department of any e-mail changes within five business days from the effective date of the change.

### **ARTICLE 17** **EXCLUDED PROVIDER WARRANTY AND** **INDEMNITY**

including Medicare and Medicaid. This is an ongoing obligation of yours to ensure that you are not employing or contracting with individuals that have been sanctioned by the U.S. Department of Health and Human Services Office of Inspector General ("OIG") or barred from federal procurement programs. You shall check the OIG's cumulative sanctions reports and General Series Administration website on a monthly basis. You hereby agree to immediately notify the City of any threatened, proposed, or actual exclusion from any such program of yours or any such program of any of your employees or agents. In the event that you or any of your employees or agents performing Services hereunder are excluded from participation in any federally funded health care program during the term of this Agreement, or at any time after the effective date of this Agreement, you shall be deemed to be in breach of this section and this agreement shall, as of the effective date of such exclusion or breach, automatically terminate. You shall indemnify and hold harmless the City against all actions, claims, demands and liabilities, and against all loss, damage, and costs and expenses, including reasonable attorney's fees, arising directly or indirectly, out of any violation of this section or due to the exclusion of you or any of your employees and agents from a federally funded health care program, including Medicare or Medicaid.

### **ARTICLE 18** **ADDITIONAL AGREEMENT PROVISIONS**

Additional provisions of this Agreement are listed in the Exhibits to this Agreement. The Exhibits to this Agreement are attached and incorporated by reference. All provisions listed in the Exhibits have the same force and effect as if they had been listed in the body of this Agreement.

**EXHIBIT A**  
**ADDITIONAL AGREEMENT PROVISIONS**  
**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
**ILLINOIS DEPARTMENT OF HUMAN SERVICES**  
**ILLINOIS DEPARTMENT OF CHILDREN AND FAMILY SERVICES**  
**HEAD START, EARLY HEAD START, CHILD CARE COLLABORATION AND CHILD CARE**  
**SERVICES PROGRAMS**

**A-1.1 CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE**

You certify that, in accordance with the Pro-Children Act of 1994 (the "Act")(Pub. L. 103-227, 20 U.S.C. §§ 6081-6084), smoking must not be permitted in any portion of any indoor facility owned or leased or contracted for by you and used routinely or regularly for the provision of health, day care, early childhood development services, education, or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan or loan guarantee. The Act also applies to children's services that are provided in indoor facilities that are constructed, operated or maintained with federal funds. The Act does not apply to children's services provided in private residences, portions of facilities used for inpatient drug or alcohol treatment, service providers whose sole source of applicable federal funds is Medicare or Medicaid or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the Act may result in the imposition of a civil monetary penalty of up to \$1,000 per day and/or the imposition of an administrative compliance order on the responsible entity. You certify that you will comply with the requirements of the Act. You further agree that you will require the language contained in this certification to be included in any subawards which contain provision for children's services, and that all subgrantees must certify accordingly.

**A-1.2 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS (2 CFR Part 376, Executive Orders 12549 AND 12689).**

You certify, by execution of this Agreement, that neither you nor your principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. Where you are unable to certify to any of the statements in this certification, you must attach an explanation to this Agreement.

**A-1.3 CERTIFICATION AND RESTRICTIONS ON LOBBYING**

A. You certify that; in accordance with 31 U.S.C. 1352 and subject to restrictions on lobbying found in 45 CFR Part 93:

1. No federal appropriated funds have been paid or will be paid, by you or on your behalf, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any

2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned must complete and submit Standard Form-LLL "Disclosure of Lobbying Activities," in accordance with its instructions.
3. You must require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients must certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certifications shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure. If there are any indirect costs associated with this Agreement, total lobbying costs shall be separately identified in the indirect costs rate proposal, and thereafter treated as other unallowable activity costs.

**B.** This Agreement is subject to the restrictions on lobbying found in both 45 CFR Part 93 and Section 503 of Public Law 105-78. Section 503 provides, in part:

1. No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State legislature, except in presentation to the Congress or any State legislature itself.
2. No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

#### **A-1.4 COMPLIANCE WITH ALL GRANT REGULATIONS**

You must comply with, and certify that you are in compliance with, all applicable provisions of each Grant and must not cause the City to not be compliant with any Grant. You must comply with all the provisions of each Grant, and all federal, state and local laws, ordinances, policies, regulations, rules (including 89 Ill Adm Code 509) and executive orders relating to each Grant, including, but not limited to, the following, in each case as amended:

Child Care and Development Fund at 45 CFR Parts 98 and 99; the Social Services Block Grant Program (42 U.S.C. § 9801 *et seq.*) and Title IV-A and Title XX of the Social Security Act, as implemented by the State of Illinois and the City of Chicago, any applicable program guidance and grant administration manuals, and all state and local laws, ordinances and executive orders relating to child care services.

- B. The DHS Child Care Program Manual and Site Administered Child Care Program Provider Manual, and DHS and DCFS rules, regulations, procedures and policy guides, to the extent applicable.
- C. The applicable provisions of OMB A-21, A-87, A-102, A-110, A-122, A-128 and A-133; as amended, succeeded or revised.
- D. 45 CFR Part 30 (Claims Collection) and 45 CFR Part 100 (Intergovernmental Review of Department of Health and Human Services Programs and Activities).
- E. Burgos Consent Decree of 1977 and Agreed Order of 1991.
- F. Applicable regulations pertaining to precautions to guard against contagious and communicable diseases, including "Universal Precautions" (Policy Guide 87.5) and "Recommendations for Risk Reduction" from the U.S. Centers for Disease Control.
- G. 305 ILCS 5/9A-11 (Child Care), 20 ILCS 505/5.15 (Daycare; Department of Human Services), 89 Illinois Administrative Code, Chapter IV, Part 50, Child Care, and Abused and Neglected Child Reporting Act (325 ILCS 5/4).
- H. Public Health Service Act, Section 247d-3, and implementing regulations promulgated thereunder.
- I. The Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763).
- J. All federal statutes relating to nondiscrimination, including, but not limited to:
  - 1. Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352 and its implementing regulations located at 45 CFR Part 80) which prohibits discrimination on the basis of race, color or national origin
  - 2. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681-1683, 1685-1686 and its implementing regulations located at 45 CFR Part 86) which prohibits discrimination on the basis of sex
  - 3. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 and its implementing regulations located at 45 CFR Part 84) which prohibits discrimination on the basis of handicaps
  - 4. The Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-6107 and its implementing regulations located at 45 CFR Part 91) which prohibits discrimination on the basis of age
  - 5. The Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92-255) relating to nondiscrimination on the basis of drug abuse

- 290 ee-3) relating to confidentiality of alcohol and drug abuse patient records
8. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.) relating to nondiscrimination in the sale, rental or financing of housing; and any other applicable nondiscrimination statutes.
- K. All environmental standards including, but not limited to, those standards which may be prescribed by:
1. National Environmental Policy Act of 1969 (Pub. L. 91-190) and Executive Order 11514
  2. Notification of violating facilities pursuant to Executive Order 11738
  3. Protection of wetland pursuant to Executive Order 11990
  4. Evaluation of flood hazards in floodplains in accordance with Executive Order 11988
  5. Assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.)
  6. Conformity with the approved State Implementation Plan developed pursuant to Section 176(c) of the Clean Air Act of 1955 (42 U.S.C. § 7401 et seq.)
  7. The protection of underground sources of drinking water under the Safe Drinking Water Act of 1974 (Pub. L. 93-523)
  8. The protection of endangered species under the Endangered Species Act of 1973, 16 U.S.C. § 1531 et seq.
  9. Section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234).
  10. Federal Water Pollution Control Act ("Clean Water Act") (33 U.S.C. § 1251 et seq.)
- L. The National Historic Preservation Act of 1966 (16 U.S.C. § 470), Executive Order 11593 and the Archeological and Historic Preservation Act of 1974 (16 U.S.C. § 469a-1 et seq.).
- M. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4801 et seq.); the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Pub.L. 101-550; 42 U.S.C. 4851 et seq.) and implementing regulations at 24 CFR Part 35.
- N. The Program Fraud Civil Remedies Act of 1986 (31 U.S.C. § 3801 et seq.) (in accordance therewith, the authorized official signing on your behalf certifies that the statements in this Agreement are true, complete and accurate to the best of his or her knowledge, and that he or she is aware that any false, fictitious or fraudulent statements or claims may subject him or her to criminal, civil or administrative penalties, and agrees that you will comply with the U.S. Department of Health and Human Services terms and conditions with respect to the Grant).
- O. The Uniform Administrative Requirements contained in 45 CFR Parts 74, 92 and 1300; except that 45 CFR Part 1301, Section 1301.11 supersedes 45 CFR Part 74, Section 74.15 with respect to insurance and bonding of private, non-profit Head Start agencies; and 45 CFR Part 1301, Section 1301.12 supersedes 45 CFR Part 74, Section 74.61 with respect to audit requirements for all Head Start agencies.
- P. You must comply with 45 CFR Part 46, "Procedures of the Departmental Grant Appeals

- Q. To the extent applicable in this Agreement, you must comply with 45 CFR Part 46 (entitled "Protection of Human Subjects").
- R. The Hatch Act (5 U.S.C. 1501-1508 and 7324-7328), which limits the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.
- S. To the extent applicable in this Agreement, The Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.), the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. §§ 276c and 18 U.S.C. § 874), the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333) and Title II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) and implementing regulations at 49 CFR 24.
- T. The Medicare and Medicaid anti-kickback statute (42 U.S.C. 1320a-7b(b))

U. Pursuant to the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. § 7104 et seq.), you and/or your employees and subcontractor may not, under this Agreement: (a) engage in severe forms of trafficking in persons during the period of time that this Agreement is in effect; (b) procure a commercial sex act during the period of time that this Agreement is in effect; or (c) use forced labor in the performance of this Agreement. HHS or the City may terminate this Agreement without penalty if you or any employee or subcontractor (i) engage in severe forms of trafficking in persons or have procured a commercial sex act during the period of time that this Agreement is in effect, or (ii) use forced labor in the performance of this Agreement.

#### A-1.5 HEAD START PROGRAM CERTIFICATIONS

You certify that you are aware of special conditions; assure knowledge of and compliance with these conditions; and understand your responsibility to meet the requirements as set forth by the Department of Children and Youth Services ("CYS"), DHS, DCFS and HHS for the operation of Head Start programs, including without limitation the following:

- A. You are prepared to consent to all requirements governing program reporting, fiscal management, reprogramming of funds, and methods for allocating funds.
- B. You are required to have 100% full enrollment on the first day of service and maintain full enrollment throughout the contract term. Failure to do so will subject this contract to a reduction in slots and/or funding based on policy and formula determined by CYS. You will be notified of any such determination and resultant action through an official CYS written communication. Programs must ensure that Head Start / Early Head Start income and age eligibility requirements are met, and that enrollment files contain applicable documentation.
- C. You agree to have as a goal an Average Daily Attendance (ADA) of 85%, and to maintain records indicating the reason for each absence. You further agree to implement procedures for follow up

program.

- E. You agree to develop management plans for the operation of your Head Start program based on the Head Start Performance Standards; and/or Administrative Standards; and/or the DHS Child Care Program Manual and the DCFS Day Care Licensing Standards as they include: Early Childhood Development and Health Services, Family and Community Partnerships, and Program Design and Management. You further assure that your management plans will be reviewed for approval by the Head Start Policy Committee at the Subgrantee level.
- F. You are required to conduct an annual self-assessment for your Head Start program and assure that the assessment will address all CYS reviews and non-compliance findings. You further assure that improvement plans will be developed and implemented to ensure full compliance with the Head Start Performance Standards, and all other City of Chicago, State and Federal requirements.
- G. You are required to collect child outcome data three times per program year (Fall, Winter and Spring).
- H. You are required to submit timely program reports as directed by CYS.
- I. You assure that as a condition for accepting Head funds: class size, group size and care giver ratios will never exceed Head Start requirements including: seventeen (17) children for a half day center, twenty (20) children for a full day center, eight (8) children for an Early Head Start full day center with an assistant, and licensing capacity for Family Child Care Homes including a care giver / child ratio of one to four for Early Head Start.
- J. You assure that 10% of funded Head Start enrollment is provided to children with disabilities. You further assure that all children receive a screening within forty-five (45) calendar days of their enrollment with follow-up services provided, as indicated.
- K. You assure that members of your Policy Committee and Delegate Agency Board Members have met, discussed, reviewed and approved your application submitted by CYS for funding, as well as, the Fiscal Year 2009 Work Program/Plan and Budget developed by you.
- L. You agree that all buildings, facilities, equipment, and personal and real property to be used as part of the Head Start programs conform to the following requirements:
  - 1. All aspects of the proposed program will conform to all appropriate local, State, and Federal codes, regulations and laws prior to the commencement of the program, and for the entire duration of the program;
  - 2. All local and State fire, health, sanitation, safety and building codes have been complied with prior to the commencement of the program;
  - 3. All assets (buildings, facilities, equipment, personal and financial property) will be properly accounted for and be obtained prior to the commencement of the program, and will be held for the



entire duration of the proposed project period; and

5. There must be a valid lease agreement or title of ownership for the program space or building in which the Head Start / Early Head Start is operated.
- N. You assure that your written personnel policies contain a statement regarding the role of the Parent Policy Committee in personnel matters.
- O. You are required to comply with ACYF PI-HS-05-01 (Cap on Employee Compensation).
- P. You agree to establish safeguards to prohibit nepotism, and have a written policy distributed to staff and board members, which indicates:
1. No person shall hold a job while he/she or an immediate family member (spouse, parent, in-law, sibling, offspring, or other relative, except a cousin), serves on the Board of Directors; and
  2. No person shall hold a job over which a member of his/her immediate family exercises supervisory authority.
- Q. You assure that the Delegate Agency Board will adhere to the Head Start Performance Standards as related to their respective roles and responsibilities to the program.
- R. You agree to comply with Head Start policy regarding the age of enrolled children.
- S. You assure that you have a contract/subcontract with each licensed family child care home, center, and/or child care partner (as applicable) detailing: agreements, requirements and policies signed by both parties.
- T. You agree to provide pre-service training and in-service training opportunities to program staff, home providers and parent volunteers to assist them in acquiring or increasing the knowledge and skills they need to effectively operate a comprehensive Head Start / Early Head Start program.
- U. You assure that you have budgeted funds to adequately cover all parent activities, including reimbursement for carfare. It is further assured that you will make the child care arrangements for Policy Council Delegates and Alternates when parents are attending Policy Council and Standing Committee meetings sponsored by CYS.
- V. You further certify that included in the budget are the following Parent Involvement Activities: training; out of town air fare and per diem; non-program adult food; child care expenses; and local travel and cultural event tickets or fees (see non-personnel detail budget form). The approval of the Head Start Committee Chairperson shall attest to this effect and be authenticated in your non-personnel detail of your budget.

- X. You agree to update your Community Assessment, to include data reflecting changes in community demographics, as they relate to childcare needs. You further assure that your Community Assessment will be reviewed and approved by the Parent Policy Committee, and will be on file at each site prior to your 2009 self assessment.
- Y. You assure that staff qualifications are met as follows:
1. Each Head Start classroom in center-based programs must have a teacher who has at least one of the following qualifications:
    - (A) A Child Development Associate (CDA) credential that is appropriate to the age of the children being served;
    - (B) A State-awarded certificate for preschool teachers that meets or exceeds the requirements for a CDA credential;
    - (C) An associate, baccalaureate or advanced degree in early childhood education;
    - (D) An associate degree in a field related to early childhood education and coursework equivalent to a major relating to early childhood education with experience teaching preschool-age children;
    - (E) A baccalaureate or advanced degree in any field and coursework equivalent to a major relating to early childhood education with experience teaching preschool-age children; or
    - (F) A baccalaureate degree in any field and has been admitted into the Teach For America program, passed a rigorous early childhood content exam, such as the Praxis II, participated in a Teach For America summer training institute that includes teaching preschool children, and is receiving ongoing professional development and support from Teach For America's professional staff.
  2. By October 1, 2011, each Head Start classroom in center-based programs must have a teacher who has at least one of the following:
    - (A) An associate, baccalaureate or advanced degree in early childhood education;
    - (B) An associate degree in a field related to early childhood education and coursework equivalent to a major relating to early childhood education, with experience teaching preschool-age children;
    - (C) A baccalaureate or advanced degree in any field and coursework equivalent to a major relating to early childhood education, with experience teaching preschool-age children or;
    - (D) A baccalaureate degree in any field and has been admitted into the Teach For America program, passed a rigorous early childhood content exam, such as the Praxis II, participated in a Teach For America summer training institute that includes teaching preschool children and is receiving ongoing professional development and support from Teach For America's professional staff.
  3. By September 30, 2013 all teaching assistants in center-based programs must:
    - (A) Have a child development associate (CDA) credential.

4. By September 30, 2013 all education coordinators (including those that serve as curriculum specialists), nationwide in center-based programs must have:
    - (A) A baccalaureate or advanced degree in early childhood education; or
    - (B) A baccalaureate or advanced degree in any subject and coursework equivalent to a major relating to early childhood education with experience teaching preschool-age children.
  5. Independent family child care home providers have or will have attained the Infant Toddler CDA credential within twenty four months of participation in the program; and
  6. Early Head Start teachers are required to have a CDA credential for Infant and Toddler Caregivers, or an equivalent credential that addresses comparable competencies within one year of hire as a teacher of infants and toddlers. By September 30, 2010, all Early Head Start teachers must have, at a minimum, a CDA credential and have been trained (or have equivalent coursework) in early childhood development. By September 30, 2012 all Early Head Start teachers must meet the above requirement and be trained (or have equivalent coursework) in early childhood development with a focus on infant and toddler development.
- Y. You assure that the per diem rates you charge for Collaboration services to clients supported through this contract do not exceed:
1. The rates you charge for the same or similar services to the general public and/or your non-subsidized (private paying) clients, as may be applicable; and
  2. The maximum allowable by the State of Illinois.
- Z. You assure:
1. The full site/provider per diem rate, as set or approved by the State of Illinois for Family Child Care Home services, is passed on to the individual family child care home provider; and
  2. All reimbursement for direct services based on the site/provider per diem rate for eligible days beyond attended days is passed on to the individual home provider.

#### **A-1.6 CHILD CARE LICENSING COMPLIANCE**

At all times during the existence of this Agreement, you must remain in compliance with the licensing requirements of the Child Care Act of 1969, and all applicable rules and regulations made by DHS and DCFS pursuant to the Child Care Act and with any and all other applicable standards prescribed by City, state or Federal law or regulations. You must neither claim nor be paid for activities which are not in compliance with appropriate licensing regulations and licensed capacity as defined in Rules 406,407 and 408.

#### **A-1.7 ADDITIONAL CONFIDENTIALITY PROVISIONS**

- A.** All information obtained by you concerning DCFS wards is confidential pursuant to State and Federal statutes, Federal regulations and DCFS administrative rules. Program plans do not remove the essential rights to privacy or rights to consent to treatment currently afforded to DCFS eligible children and their families.
- B.** For children and families receiving mental health services, including assessments, all of the provisions of confidentiality of client records included in the Mental Health and Developmental Disabilities Confidentiality Act will apply. This includes both the requirements for informed consent for release of information and the requirement of informed consent of treatment.
- C.** You must give notice of any unusual incident report involving a DCFS ward funded under this contract, to the Department and the DCFS Office of Communications, before any unusual incident report is provided by you to the media.

#### **A-1.8 PARENTAL ACCESS TO CHILD CARE FACILITY**

You must allow all parents and/or legal guardians access to the child care facility receiving funds pursuant to this Agreement, at all times while their child is in attendance, unless you have been provided with a court order prohibiting contact between a parent and/or guardian and a child.

#### **A-1.9 COMPLIANCE WITH ILLINOIS REGULATIONS**

You must comply with, and certify that you are in compliance with, all the provisions and regulations of the Program, and all related rules, regulations and requirements of the State of Illinois, including, but not limited to:

- A. Bribery.** You certify under Section 50-5 of the Illinois Procurement Code that you, or an officer or employee of you, (i) have not been convicted of bribery or attempting to bribe an officer or employee of the State of Illinois; (ii) have not made an admission of guilt of this improper conduct that is a matter of record; and (iii) have not had an official, agent, or employee of you who committed bribery or attempted bribery on your behalf or pursuant to the direction or authorization of a responsible official of you, 30 ILCS 500/50-5.
- B. Bid Rigging and Other Activity.** You certify that you, or an officer or employee of you, have not been barred from contracting with a unit of state or local government as a result of violation of the bid-rigging or bid-rotating provisions of Sections 33E-3, 33E-4, and 33E-11 of the Criminal Code of 1961, 720 ILCS 5/33E-3, 5/33E-4, 5/33E-11. You have not paid any money or valuable thing to induce any person to refrain from bidding on a State contract, nor have you accepted any money or other valuable thing, or acted upon the promise of same, for not bidding on a State contract (30 ILCS 500-50-25). You are not in violation of the "Revolving Door" section of the Illinois Procurement Code (30 ILCS 500/50-30). You will report to the Illinois Attorney General and the Chief

- C. **Educational Loan.** You are not barred from receiving State agreements as a result of default on an educational loan. (5 ILCS 385/1 et seq.).
- D. **Dues and Fees.** You certify under the Discriminatory Club Act that you are not prohibited from selling goods or services to the State of Illinois because you pay dues or fees on behalf of your employees or reimburses them, for payment of their dues or fees to any club that unlawfully discriminates, 775 ILCS 25/1 et seq.
- E. **Grant for the Construction of Fixed Works.** All projects for the construction of fixed works which are financed in whole or in part with funds provided by DHS and/or DCFS shall be subject to the Prevailing Wage Act (820 ILCS 130/0.01 et seq.) unless the provisions of that Act exempt its application.
- F. **Sarbanes-Oxley Act.** You certify in accordance with 30 ILCS 500/50-10.5 that no officer, director, partner or other managerial agent of the contracting business has been convicted of a felony under the Sarbanes-Oxley Act of 2002 or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953, or that at least 5 years have passed since the date of the conviction. You further certify that you are not barred from being awarded a contract under 30 ILCS 500/50-10.5, and acknowledge that the contracting State agency shall declare the contract void if this certification is false (30 ILCS 500/50-10.5).
- G. **Forced Labor Act.** You comply with the State Prohibition of Goods from forced Labor Act, and certify in accordance with Public Act 93-0307 that no foreign-made equipment, materials, or supplies furnished to the State of Illinois under the grant have been or will be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction.
- H. **Environmental Protection Act Violations.** You certify that you have not committed a willful or knowing violation of the Environmental Protection Act (relating to Civil Penalties under the Environmental Protection Act) within the last five years, and are therefore not barred from being awarded a contract under Section 50-14 of the Illinois Procurement Code (30 ILCS 500/50-14). You acknowledge that the DHS and/or DCFS may declare the contract void if this certification is false.
- I. **Propaganda.** You certify that no funds provided pursuant to this Agreement will be used for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before Congress or the Illinois General Assembly; and further certifies that no funds provided pursuant to this Agreement shall be used to pay the salary or expenses of any person which salary or expenses are related to any activity designed to influence legislation or appropriations pending before Congress or the Illinois General Assembly.
- J. **Former DHS or DCFS Employees.** You certify that you have informed DHS or DCFS, as applicable, in writing if an officer or employee of you was formerly employed by DHS or DCFS and the officer or employee has received an early retirement incentive under Section 14-108.3 or 16-

- K. **Discrimination.** You certify that you meet the requirements of Section 2-105 of the Illinois Human Rights Act, 775 ILCS 5/2-105, and that you refrain from unlawful discrimination based on citizenship status in employment and undertake affirmative action to assure equality of employment opportunity, and have written sexual harassment policies.
- L. **Felony Conviction.** You certify compliance with Section 50-10 of the Illinois Procurement Code, that no person or business convicted of a felony shall do business with the State of Illinois from the date of conviction until five years after the date of completion of the sentence for that felony, unless no person held responsible by a prosecutorial office for the facts upon which the conviction was based continues to have any involvement with the business. You certify that neither you nor any employee assigned to work in the premises of DHS or DCFS have a felony conviction. If any of your employees are assigned to work in the premises of DHS or DCFS, additional disclosure and background checks will be required, and you agree to hold harmless and indemnify the City, DHS and DCFS, as applicable, and their respective agents and employees for any liability accruing from these background checks.
- M. **Grant Funds Recovery Act.** You acknowledge that any funds which are not used or expended in accordance with the terms and conditions of this Agreement may be subject to recovery by the City, the Illinois Department of Human Services or the Illinois Attorney General through any of the methods specified in the provisions of the Grant Funds Recovery Act. (30 ILCS 705/5 - 705/9). The provisions of 89 Ill Adm Code 511 shall apply to any funds awarded that are subject to the Grant Funds Recovery Act.
- N. **Immigration Reform and Control Act.** You certify that, to the extent applicable to this Agreement, you have complied with the provisions and requirements of the Immigration Reform and Control Act of 1986 (Public Law 99-603).
- O. **Abuse of Adults with Disabilities Intervention Act.** You certify that you are in compliance with the Abuse of Adults with Disabilities Intervention Act to protect people with disabilities who are abused, neglected or financially exploited and who, because of their disability, cannot seek assistance on their own behalf. Anyone who believes a person with a disability living in a domestic setting is being abused, neglected or financially exploited must file a complaint with the Office of Inspector General, Department of Human Services. You have an obligation to report suspected fraud or irregularities committed by individuals or other entities with which they interact on behalf of and should make a report to the appropriate program office (20 ILCS 2435).
- P. **Corporate Accountability for Tax Expenditure Act.** You certify that this Agreement is in compliance with the requirements of the Corporate Accountability for Tax Expenditure Act (PA 93-0552).
- Q. **Procurement Lobbying.** You warrant and certify that you and, to the best of your knowledge, your subcontractors have and will comply with Executive Order No. 1 (2007). The Order generally

- authority at any time during the one-year period preceding the procurement lobbying activity. You acknowledge that DHS or DCFS may declare this Agreement void if this certification is false.
- R. **Clean Air Act and Clean Water Act** - You certify that you are in compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S. C. 7401 et seq.) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.).
- S. **Debt To State** - You certify that you, or your affiliate, are not barred from being awarded a contract because you, or your affiliate, is delinquent in the payment of any debt to the State, unless you, or your affiliate, has entered into a deferred payment plan to pay off the debt, and you acknowledge DHS or DCFS may declare the contract void if the certification is false (30 ILCS 500/50-11).
- T. **Goods From Child Labor Acts** - You certify that no foreign-made equipment, materials, or supplies furnished to the State under this contract have been produced in whole or in part by the labor of any child under the age of 12 (PA94-0264).
- U. **Gifts and Incentives** - You are prohibited from giving gifts to employees of DCFS and/or DHS (5 ILCS 430/10-10). You shall provide the City, DCFS and DHS with advance notice of your providing gifts, excluding charitable donations, given as incentives to community-based organizations in Illinois and clients in Illinois to assist you in carrying out your responsibilities under this Agreement.
- V. **Lead Poisoning Prevention Act** - You certify that you are not in violation of Section 50-14.5 of the Illinois Procurement Code (30 ILCS 500/50-14.5) that states: "Owners of residential buildings who have committed a willful or knowing violation of the Lead Poisoning Prevention Act (410 ILCS 45) are prohibited from doing business with the State until the violation is mitigated."

#### **A-1.10 ADDITIONAL CERTIFICATION REGARDING CONFLICTS OF INTEREST**

The Illinois Procurement Code (30 ILCS 500/50-13) prohibits a person from acquiring an Agreement with the State if that person is elected to, appointed to, or employed in any office of State government and who receives compensation from such in excess of 60% of the salary of the Governor of the State of Illinois, or is an officer or employee of the Capital Development Board or the Illinois Toll Highway Authority, or is the spouse or minor child of any such person.

If any person as described above is entitled to receive more than 7.5% of the distributable income of a firm, partnership, association or corporation, or an amount in excess of the salary of the Governor of the State of Illinois, or if, in the aggregate, any such person together with spouse and minor children are entitled to receive more than 15% of the distributable income, or an amount in excess of two times the salary of the Governor of the State of Illinois, then that firm, partnership, association or corporation cannot enter into this Agreement and any such Agreement is void.

You must comply with the other provisions in the Illinois Procurement Code (30 ILCS 500/50), regarding participation in agreement negotiations by a State of Illinois employee who has an agreement of

State of Illinois with compensation annually in excess of \$90,000 as provided in the Illinois Procurement Code.

You will create and adopt a Conflict of Interest Policy that reflects the specifications outlined in DCFS Rule 437, Conflict of Interest.

#### **A-1.11 FISCAL RESPONSIBILITY**

- A. DHS and/or DCFS may use the Comptroller's Offset System to determine if any State is attempting to collect debt from you according to Section 5 of the Illinois State Collection Act of 1986, 30 ILCS 210/5.
- B. You certify that you, or any affiliate, are not barred from being awarded a contract or grant under 30 ILCS 500. Section 50-11 prohibits a person from entering into a contract or grant with a State agency if it knows or should know that it, or any affiliate, is delinquent in the payment of any debt to the State as defined by the Debt Collection Board. Section 50-12 prohibits a Person from entering into a contract or grant with a State agency if it, or any affiliate, has failed to collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with the provisions of the Illinois Use Tax Act. You further acknowledge that the contracting State agency may declare the grant void if this certification is false or if you, or any affiliate, are determined to be delinquent in the payment of any debt to the State during the term of the grant.

#### **A-1.12 CHILD CARE COMPENSATION**

Your compensation will be based upon a per diem rate of reimbursement for children served under this Agreement. Subject to the availability and appropriation of funds, and to your compliance with the terms of this Agreement, you will be reimbursed for not more than **248 days of care per child served under this Agreement per fiscal year.**

All monthly requisitions for reimbursement will be submitted by child care agencies on the 15th working day of each month. All monthly requisitions for reimbursement and supporting documents will be sent to the Department's Mailing Address as noted in this Agreement's Preamble.

#### **A-1.13 CHILD CARE FEE SCHEDULE**

You must comply with the Child Care Fee Schedule issued by DHS and the Guidelines and Procedures for the assessment and collection of fees as stated therein. Every reasonable effort must be made to collect fees. The fees must be assessed at the time service commences and all fees collected must be deducted from the billings you submit to the City.

No other mandatory services fees, special fees or additional charges for any type of Child Care Services



collected in a consistent, equal manner from all parents and guardians choosing the optional services. Receipts for these optional services must be provided to parents and guardians. The written price listing of optional services approved by the Child Care Board must be submitted to the City by the beginning of this contract period.

#### **A-1.14 ESCALATOR / DE-ESCALATOR**

You acknowledge that inasmuch as the State of Illinois and the City of Chicago desire to maximize Child Care Services and the use of resources to provide Child Care Services in the City, the City will, after periodic reviews of levels of performance, license capacity of the facilities and the overall availability of financial resources, have the right upon written notice to you to increase or to decrease the anticipated child care service days and/or the number of child care slots and thereby increase or decrease the maximum amount payable hereunder. Such increase or decrease in the maximum amount payable will take effect only upon official notification by the City in writing to you. This communication will detail any and all adjustments therefrom in the terms of the Agreement, including maximum amount payable, period of adjustment, and any other official directives.

You also acknowledge that the per diem rate is established by directive of DHS. In the event that DHS approves an increase or a decrease in funding for the City and an increase or a decrease in the per diem rate and maximum amount payable for Child Care Services contractors, such increases or decreases will supersede the maximum amount payable and the per diem rate defined in this Agreement.

Any increase or reduction in the maximum amount payable will be computed based upon the adjusted per diem rate times the number of contract child care service days, less parent fees.

You acknowledge that you must implement the Escalator / De-Escalator Clause upon written notification by the City.

#### **A-1.15 ELIGIBILITY FOR SERVICES**

You must comply with the eligibility requirements and procedures detailed in the regulations of the Title XX Block Grant Pre-Expenditure Report, The Handbook for Subsidized Child Care Programs and supplemental directives and guidelines issued by DHS and by the City.

In the event of deferments or disallowances by DHS, the City will not be liable to reimburse any amount to you in lieu of State of Illinois reimbursement.

#### **A-1.16 SERVICE APPEAL**

You must abide by the decisions made as a result of appeal hearing under DHS (Rule 309, Review and Appeals Process), grievance procedures. You will have the right to notice, the right to be present, and appeal the right to present evidence at a service hearing. No service appeal hearing will be held until you

You certify that the services to be provided under this Agreement are not already available without cost to persons eligible for social services under the public assistance titles of the Social Security Act or the Child Care Development Block Grant. You further certify that the addition of Federal social services funds will result in a commensurate, significant program expansion to persons eligible for social services under the public assistance titles of the Social Security Act or the Child Care Development Block Grant.

#### **A-1.18 ADDITIONAL PROVISIONS RELATED TO ILLINOIS DEPARTMENT OF CHILDREN AND FAMILY SERVICES FUNDS**

You acknowledge that the Office of the Inspector General ("OIG") of the Illinois Department of Children and Family Services has the authority to impound and have access to records and facilities without advance notice. You must cooperate with the OIG.

You understand and agree that when adoptive parents request the names of attorneys, you will refer adoptive parents to the Statewide Adoption Attorney Panel (SAAP) list that may be obtained by calling the DCFS Advocacy Office for Children and Families or by checking on the DCFS Website at [www.state.il.us/dcfs](http://www.state.il.us/dcfs). You shall inform the adoptive parents that if they choose an attorney not on the SAAP, he or she will be responsible for payment of the legal fees, however the adoptive parent may be eligible for reimbursement.

#### **A-1.19 CHILD ABUSE AND NEGLECT POLICY**

You certify that you have written child abuse and neglect policies at each site addressing the requirements and procedures mandated by Federal rules and regulations, including (a) a written personnel policy governing recruitment and selection of Head Start / Early Head Start staff that require screening through the "Child Abuse and Neglect Tracking System (CANTS)" and a State criminal records check; (b) a written plan for responding to suspected or known child abuse or neglect; and (c) the provision for staff and parent orientation and training on child abuse, neglect identification and reporting.

#### **A-1.20 DRUG FREE WORKPLACE**

You will or will continue to provide a drug free workplace by provision and enforcement of the following:

- a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in your workplace and specifying the actions that will be taken against employees for violation of such prohibition.
- b. Establishing an ongoing drug free awareness program to inform employees about:
  1. The dangers of drug abuse in the workplace;
  2. Your policy of maintaining a drug free workplace;
  3. Any available drug counseling, rehabilitation and employee assistance programs; and

- c. Making it a requirement that each employee to be engaged in the performance of this agreement be given a copy of the statement required by paragraph (a).
- d. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under this agreement, the employee will:
  - 1. Abide by the terms of the statement, and
  - 2. Notify the employer in writing of his or her conviction of a criminal drug statute for a violation occurring in the workplace no later than five [5] calendar days after such conviction.
- e. Notifying CYS in writing within ten [10] calendar days after receiving notice under sub-paragraph (d) (2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless HHS has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant.
- f. Taking one of the following actions, within thirty [30] calendar days of receiving notice under sub-paragraph (d) (2), with respect to any employee who is so convicted:
  - 1. Taking appropriate personnel action against such an employee, up to and including termination consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
  - 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement or other appropriate agency.
- g. Making a good faith effort to continue to maintain a drug free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

**A-1.21** In accordance with Section 3.13, all publication material, including but not limited to, publications, journal articles and pamphlets, paid for, in whole in part, with DHS or DCFS funds, shall specify within such printed materials the following disclaimer: "Funding for this material was provided through the [Illinois Department of Human Services ("DHS")][Illinois Department of Children and Family Services ("DCFS")]. The views and statements expressed herein do not necessarily reflect the views and opinions of [DHS][DCFS]."

**A-1.22** To the greatest extent practicable, all equipment and products purchased with funds received from the City pursuant to this Agreement should be American-made.

**A-1.23** In accordance with Section 3.13, all publication material, including but not limited to, publications, journal articles and pamphlets, paid for, in whole in part, with HHS funds, must bear an

**EXHIBIT B**

**SCOPE OF SERVICES**

**This Form Is To Be Used Only For Delegate Agency Grant Agreements for Head Start and Early Head Start Programs, Child Care Collaboration Program, and Child Care Services Program (Non-Construction)(Rev 10/08).**

**EXHIBIT C**  
**BUDGET SUMMARY**

**This Form Is To Be Used Only For Delegate Agency Grant Agreements for Head Start and Early Head Start Programs, Child Care Collaboration Program, and Child Care Services Program (Non-Construction)(Rev 10/08).**

**EXHIBIT D**

**ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT**

**This Form Is To Be Used Only For Delegate Agency Grant Agreements for Head Start and Early Head Start Programs, Child Care Collaboration Program, and Child Care Services Program (Non-Construction)(Rev 10/08).**

## **EXHIBIT E**

### **INSURANCE REQUIREMENTS AND INSURANCE CERTIFICATE**

A. The kinds and amounts of insurance required are as follows:

1) **Workers Compensation and Employers Liability**

Workers Compensation as prescribed by applicable law covering all employees who are to provide a service under this Agreement and Employers Liability coverage with limits of not less than \$100,000 each accident or illness.

2) **Commercial General Liability (Primary and Umbrella)**

Commercial General Liability Insurance or equivalent with limits of not less than \$500,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work or Services.

3) **Automobile Liability (Primary and Umbrella)**

When any motor vehicles (owned, non-owned and hired) are used in connection with work or Services to be performed, you must provide Automobile Liability Insurance with limits of not less than \$300,000 per occurrence for bodily injury and property damage.

4) **Professional Liability**

When any professional consultants perform work or Services in connection with this Agreement, Professional Liability Insurance covering errors, omissions, or negligent acts, must be maintained with limits of not less than \$500,000. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work or Services on this Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of 2 years.

5) **Medical/Professional Liability**

When any medical Services are performed in connection with this Agreement, Medical/Professional Liability Insurance must be provided to include coverage for errors, omissions and negligent acts related to the rendering or failure to render professional, medical or health Services with limits of not less than \$500,000. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work or Services on this Agreement. A claims made policy which is not renewed or replaced must have an extended reporting period of 2 years.

6) **Builders Risk**

**B. Related Requirements**

If the coverages have an expiration or renewal date occurring during the term of this Agreement, you must furnish renewal certificates to the Federal Funds Insurance Unit at the address listed in Section 3.5 of this Agreement. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other insurance evidence from you is not a waiver by the City of any requirements for you to obtain and maintain the specified coverages. You must advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve you of your obligation to provide insurance as specified here. Nonfulfillment of the insurance conditions may constitute a violation of this Agreement, and the City retains the right to stop work or Services or terminate this Agreement until proper evidence of insurance is provided.

The insurance must provide for 30 days prior written notice to be given to the City in the event coverage is substantially changed, canceled or non-renewed.

All deductibles or self insured retentions on referenced insurance coverages must be borne by you.

You agree that insurers waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents or representatives.

The coverages and limits furnished by you in no way limit your liabilities and responsibilities specified within this Agreement or by law.

Any insurance or self insurance programs maintained by the City of Chicago do not contribute with insurance provided by you under this Agreement.

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

You must require all subcontractors to provide the insurance required in this Agreement or you may provide the coverages for subcontractors. All subcontractors are subject to the same insurance requirements of you unless otherwise specified in this Agreement.

If you or subcontractors desire additional coverages, the party desiring additional coverages is responsible for the acquisition and cost of such additional protection.

Notwithstanding any provision in this Agreement to the contrary, the City of Chicago's Risk Management Division maintains the right to modify, delete, alter or change these requirements.

C. If you need additional information related to insurance, please call the office of the City Comptroller.



## EXHIBIT F

### HIPAA REQUIREMENTS

#### COMPLIANCE WITH HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

- 1 You must not use or further disclose Protected Health Information ("PHI") other than as permitted
- 2 or required by this Agreement or as Required by Law (<http://www.hhs.gov/ohrt/hipaa/>).
- 3 You must use appropriate safeguards to prevent the use or disclosure of PHI other than as
- 4 provided for in this Agreement.
- 5 You must mitigate to the extent practicable any harmful effect that is known to you or cause or
- 6 disclosure of PHI by you in violation of the requirements of this Agreement.
- 7 You must report any use or disclosure of the PHI not provided for by this Agreement to the City.
- 8 You must ensure that any agent, including a subcontractor, to whom you provide PHI received
- 9 from or created or received by you on behalf of the City, agrees to the same restrictions and
- 10 conditions that apply through this Agreement to you with respect to such information.
- 11 If you have PHI in a Designated Record Set then you must provide access, at the request of the
- 12 City, and in the time and manner designated by the City, to PHI in a Designated Record Set to City
- 13 or as directed by City to an Individual in order to meet the requirements under 45 CFR 164.524.
- 14 If you have PHI in a Designated Record Set then you must make any amendments to PHI in a
- 15 Designated Record Set that the City directs or agrees to pursuant to 45 CFR 164.526 at the
- 16 request of City or an Individual, and in the time and manner designated by City.
- 17 You must make internal practices, books and records relating to the use and disclosure of PHI
- 18 received from or created or received by you on behalf of City, available to the City, or at the
- 19 request of the City to the Secretary, in a time and manner designated by the City or the Secretary,
- 20 for purposes of the Secretary determining City's compliance with the Privacy Rule.
- 21 You must document the disclosure of PHI and information relating to such disclosures as would
- 22 be required for City to respond to a request by an Individual for an accounting of disclosures of PHI
- 23 in accordance with 45 CFR 164.528.
- 24 You must provide to City or an Individual, in time and manner designated by City, information
- 25 collected which relates to the disclosure of PHI, to permit City to respond to a request by an
- 26 Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.
- 27 You must either return all PHI to the City or destroy it, at the City's option, upon termination or
- 28 expiration of this Agreement.
- 29 You must implement administrative, physical, and technical safeguards that reasonably and
- 30 appropriately protect the confidentiality, integrity, and availability of the electronic health information
- 31 that you create, receive, maintain, or transmit on behalf of the City as required by 45 CFR part 164.
- 32 You must ensure that any agent, including a subcontractor, to whom you provide such information
- 33 agrees to implement reasonable and appropriate safeguards to protect it.
- 34 You must report to the City any security incident of which you become aware.

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