

# MEMORANDUM

Agenda Item No. 9(A)(1)

**TO:** Honorable Chairwoman Audrey M. Edmonson  
and Members, Board of County Commissioners

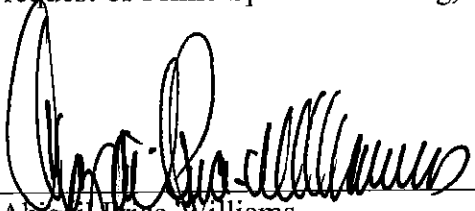
**DATE:** October 3, 2019

**FROM:** Abigail Price-Williams  
County Attorney

**SUBJECT:** Resolution retroactively authorizing the County Mayor's action in applying for \$3,323,219.00 in Early Head Start Grant funds from the United States Department of Health and Human Services, accepting and expending such grant funds, and executing subgrant agreements; authorizing the County Mayor to execute additional subgrant agreements and other required agreements and documents, as well as amendments, extensions, and renewals of such agreements and documents as are necessary for the Early Head Start Child Care Partnership Program, and to exercise termination, waiver, and other provisions set forth therein; and authorizing the County Mayor to apply for, receive, and expend future grant funding for the Head Start and Early Head Start Program; and waiving requirements of Resolution No. R-130-06

Resolution No. R-1070-19

The accompanying resolution was prepared by the Community Action and Human Services Department and placed on the agenda at the request of Prime Sponsor Housing, Social Services and Economic Development Committee.

  
Abigail Price-Williams  
County Attorney

APW/uw

# Memorandum



**Date:** October 3, 2019

**To:** Honorable Chairwoman Audrey M. Edmonson  
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez  
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez". The signature is written in a cursive, flowing style and is positioned to the right of the printed name.

**Subject:** Resolution Retroactively Authorizing the Application For, Acceptance of Award, and Expenditure of Grant Funds in the Amount of \$3,323,219.00 from the United States Department of Health and Human Services for the Continuation of the County's Early Head Start Child Care Partnership Program, and Authorizing Sub Grant Agreements and Future Grant Applications

## **Recommendation**

It is recommended that the Board of County Commissioners ("Board") retroactively authorize the County Mayor or County Mayor's designee's action in: applying for and accepting a renewed grant award agreement with the United States Department of Health and Human Services ("HHS") in the amount of \$3,323,219.00 for the continuation of the Miami-Dade County Community Action and Human Services Department ("CAHSD" or "Department") Early Head Start Child Care Partnership Program ("Program"); expending the grant funds; and renewing subgrant agreements with the agencies listed below:

1. Crystal Learning Center, Inc.;
2. Decroly Child Care Center, Inc.;
3. Early Childhood Professional Services, Inc. d/b/a Bethany Child Development Center;
4. Memorial Temple Missionary Baptist Church Inc. d/b/a Memorial Temple Early Childhood Education Center;
5. Play & Read Academy Corp.;
6. Shining Light Childcare Development Center, Inc.;
7. Cambridge Academy; and
8. Rising Star Academy.

As permitted by the Program and grant funding, or in the event any of the above listed subgrantees fail to meet one or more of the requirements of the grant or fail to demonstrate the ability to implement the requirements of the grant, it is also recommended that the Board authorize the County Mayor or County Mayor's designee to select new subgrantees to provide Early Head Start services in the community, subject to final approval from HHS. It is recommended that the Board authorize the County Mayor or the County Mayor's designee to execute other required agreements and documents necessary for the Program and to exercise termination and modification clauses of all such agreements, after review by the County Attorney's Office for form and legal sufficiency.

It is further recommended that the Board authorize the County Mayor or the County Mayor's Designee to apply for and receive additional future funds that may become available for this

Program; to execute such contracts, agreements, and amendments as may be required by the County with respect to such future available funds, after review by the County Attorney's Office for form and legal sufficiency. Also, to the extent such contracts and agreements are required by Program guidelines, waives the provisions of Resolution No. R-130-06.

### **Scope**

The Department proposes to continue the Program in designated and approved private childcare centers in targeted low income zip codes throughout Miami-Dade County. A total of 240 infants will continue to be served in the geographical areas specified in the grant application. The federal Notice of Award of grant funding to the County is attached hereto as Exhibit A. Subgrantees have or will execute subgrant agreements with the County in substantially the same form attached hereto as Exhibit B.

### **Fiscal Impact/Funding Source**

There is no anticipated fiscal impact to the Miami- Dade County general fund for the provision of these services. The Early Head Start Expansion and Child Care Partnership grant, however, requires a non-federal match ("Non-Federal Share") of 20 percent of the total cost of the program, and limits development and administrative costs to a maximum of 15 percent of the total cost of the program, including the non-federal share. The Non-Federal Share of \$830,805.00 will be proportionately divided among the subgrantees, and the Department will provide a portion of this amount through in-kind cost allocated salaries.

### **Track Record/Monitor**

The Department's Assistant Director, Dr. Maria T. Riestra-Quintero, will be responsible for the administering and monitoring of the Program.

### **Background**

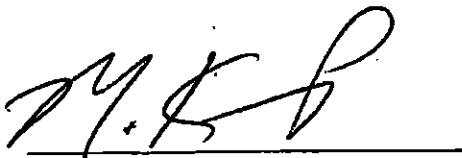
Since 1965, the Miami-Dade County Community Action and Human Services Department, or a successor agency, has been providing comprehensive child development services through the Head Start Program to low income preschool children three (3) to five (5) years of age. In 1990, the Department received additional funds to administer the Early Head Start Program for pregnant women and children up to the age of three (3) years old. Currently, the Head Start/Early Head Start Program is funded to serve 6,310 preschool and 446 infant and toddler children and their families countywide through contracts with 17 existing delegate agencies.

In 2014, the Department was awarded the Early Head Start Childcare Partnership grant to serve an additional 240 infants and toddlers and their families, countywide through contracts with 11 providers. On June 2, 2015, the Board adopted Resolution No. R-497-15, which ratified the County's application for \$4,106,554.00 in Early Head Start Grant funds from HHS. The Grant required that Early Head Start Programs partner with community-based early childcare centers to improve the quality of such centers. Since that time, the grant funds have been used to enhance the quality of early childcare in the community. On June 28, 2019, the Department received a Notice of Award to renew the Grant from August 1, 2019 through July 31, 2024. Contracts with three of the original subgrantees were terminated because the subgrantees failed to meet contractual obligations or health and safety requirements of the Grant. The renewed funding will be used to continue services with eight of the original

Honorable Chairwoman Audrey M. Edmonson  
and Members, Board of County Commissioners  
Page No. 3

subgrantees and, if permitted, additional subgrantees will be selected in accordance with Grant, federal, and state requirements and will receive final approval from HHS.

The Early Head Start grant requires the program to operate for 48 weeks providing a full-day, full-year program. Given the need for Program services to continue without disruption and the impending start of the school year, it is in the best interest of the County to waive provisions of Resolution No. R-130-06 which requires legislation seeking approval of a contract and authority to execute same and be completely negotiated and executed by all non-County parties prior to placement on an agenda of the Board or a committee.



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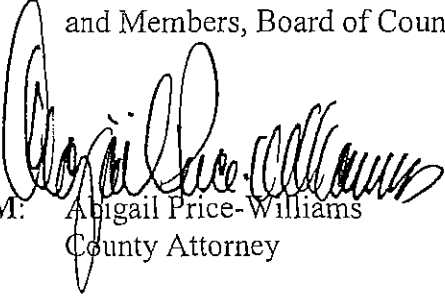
Maurice L Kemp  
Deputy Mayor



**MEMORANDUM**  
(Revised)

**TO:** Honorable Chairwoman Audrey M. Edmonson  
and Members, Board of County Commissioners

**DATE:** October 3, 2019

**FROM:**   
Abigail Price-Williams  
County Attorney

**SUBJECT:** Agenda Item No. 9(A)(1)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present \_\_\_\_, 2/3 membership \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) \_\_\_\_) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 9(A)(1)  
10-3-19

RESOLUTION NO. R-1070-19

RESOLUTION RETROACTIVELY AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE'S ACTION IN APPLYING FOR \$3,323,219.00 IN EARLY HEAD START GRANT FUNDS FROM THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, ACCEPTING AND EXPENDING SUCH GRANT FUNDS, AND EXECUTING SUBGRANT AGREEMENTS; AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXECUTE ADDITIONAL SUBGRANT AGREEMENTS AND OTHER REQUIRED AGREEMENTS AND DOCUMENTS, AS WELL AS AMENDMENTS, EXTENSIONS, AND RENEWALS OF SUCH AGREEMENTS AND DOCUMENTS AS ARE NECESSARY FOR THE EARLY HEAD START CHILD CARE PARTNERSHIP PROGRAM, AND TO EXERCISE TERMINATION, WAIVER, AND OTHER PROVISIONS SET FORTH THEREIN; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO APPLY FOR, RECEIVE, AND EXPEND FUTURE GRANT FUNDING FOR THE HEAD START AND EARLY HEAD START PROGRAM; AND WAIVING REQUIREMENTS OF RESOLUTION NO. R-130-06

**WHEREAS**, this Board desires to accomplish the purpose outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that this Board:

**Section 1.** Retroactively authorizes the County Mayor or the County Mayor's designee's action in applying for \$3,323,219.00 in Early Head Start Grant funds from the United States Department of Health and Human Services ("HHS"), and accepting and expending such grant funds. The HHS Notice of Award of grant funding is attached hereto and incorporated herein by reference as Exhibit A.

**Section 2.** Retroactively authorizes the County Mayor or the County Mayor's designee's execution of renewed subgrant agreements, in substantially the form attached hereto as Exhibit B, with the following subcontractors: Crystal Learning Center, Inc.; Decroly Child Care Center, Inc.; Early Childhood Professional Services, Inc. d/b/a Bethany Child Development Center; Memorial Temple Missionary Baptist Church Inc. d/b/a Memorial Temple Early Childhood Education Center; Play & Read Academy Corp.; Shining Light Childcare Development Center, Inc.; Cambridge Academy; and Rising Star Academy. This Board also authorizes the County Mayor or the County Mayor's designee to execute additional subgrant agreements to effectuate the purposes of this resolution, in substantially the form attached hereto as Exhibit B, with subgrantees that may be selected during the grant period as permitted by the Program and grant. Such additional subgrantees must be selected in accordance with HSS' selection process and must receive final approval from HHS prior to the execution of said subgrant agreements.

**Section 3.** This Board authorizes the County Mayor or the County Mayor's designee to execute other agreements and documents necessary for the Program and grant and to exercise amendments, extensions, renewals, termination, waiver, and other provisions set forth in all such agreements and documents and as are necessary to further the purposes of the Head Start and Early Head Start Programs, following approval for legal form and sufficiency by the Miami-Dade County Attorney's Office.

**Section 4.** Authorizes the County Mayor or the County Mayor's designee to apply for, receive, and expend future grant funding for the Head Start and Early Head Start Programs in accordance with applicable regulations and program guidelines, and to execute any contracts, agreements, or amendments that may be necessary for the receipt of additional available funds for this Program, subject to approval for form and legal sufficiency by the County Attorney's Office.

**Section 5.** Waives the requirements of Resolution No. R-130-06, which requires all legislation seeking approval of a contract and authority to execute same be completely negotiated and executed by all non-County parties prior to placement on an agenda of this Board or a committee, for the reasons stated in the County Mayor’s memorandum.

The foregoing resolution was offered by Commissioner **Esteban L. Bovo, Jr.**, who moved its adoption. The motion was seconded by Commissioner **Rebeca Sosa** and upon being put to a vote, the vote was as follows:

	Audrey M. Edmonson, Chairwoman	<b>aye</b>	
	Rebeca Sosa, Vice Chairwoman	<b>aye</b>	
Esteban L. Bovo, Jr.	<b>aye</b>	Daniella Levine Cava	<b>aye</b>
Jose “Pepe” Diaz	<b>aye</b>	Sally A. Heyman	<b>aye</b>
Eileen Higgins	<b>aye</b>	Barbara J. Jordan	<b>aye</b>
Joe A. Martinez	<b>aye</b>	Jean Monestime	<b>aye</b>
Dennis C. Moss	<b>aye</b>	Sen. Javier D. Souto	<b>aye</b>
Xavier L. Suarez	<b>aye</b>		

The Chairperson thereupon declared this resolution duly passed and adopted this 3<sup>rd</sup> day of October, 2019. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

**Linda L. Cave**

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.

LCK

Leigh C. Kobrinski

**EXHIBIT A**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES  
ADMINISTRATION FOR CHILDREN AND FAMILIES  
NOTICE OF AWARD**

SAI NUMBER:

PMS DOCUMENT NUMBER:

<b>1. AWARDING OFFICE:</b> Office of Head Start	<b>2. ASSISTANCE TYPE:</b> Discretionary Grant	<b>3. AWARD NO.:</b> 04HP000219-01-00	<b>3a. AMEND. NO.:</b> 0
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**4. FAIN:** 04HP000219

<b>5. TYPE OF AWARD:</b> Service	<b>6. TYPE OF ACTION:</b> New	<b>7. AWARD AUTHORITY:</b> 42 USC 9801 ET SEQ
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<b>8. BUDGET PERIOD:</b> 08/01/2019 THRU 07/31/2020	<b>9. PROJECT PERIOD:</b> 08/01/2019 THRU 07/31/2024	<b>10. CFDA NO.:</b> 93.600 - Head Start
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<b>11. RECIPIENT ORGANIZATION:</b> MIAMI-DADE, COUNTY OF 111 NW 1st St Ste 2810 Miami, FL 33128-1930 Grantee Authorizing Official: Esteban Bovo , Chairman of the Board Miami Dade	<b>12. PROJECT / PROGRAM TITLE:</b> Early Head Start
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<b>13. COUNTY:</b> Miami-Dade	<b>14. CONGR. DIST.:</b> 24	<b>15. PRINCIPAL INVESTIGATOR OR PROGRAM DIRECTOR:</b> Maria Rlestra Ed.D Chief of School Readiness and Early
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16. APPROVED BUDGET:		17. AWARD COMPUTATION:	
Personnel.....	\$ 684,297.00	A. NON-FEDERAL SHARE.....	\$ 830,805.00 20%
Fringe Benefits.....	\$ 326,159.00	B. FEDERAL SHARE.....	\$ 3,323,219.00 80%
Travel.....	\$ 26,743.00	<b>18. FEDERAL SHARE COMPUTATION:</b>	
Equipment.....	\$ 0.00	A. TOTAL FEDERAL SHARE.....	\$ 3,323,219.00
Supplies.....	\$ 0.00	B. UNOBLIGATED BALANCE FEDERAL SHARE.....	\$ 0.00
Contractual.....	\$ 2,251,585.00	C. FED. SHARE AWARDED THIS BUDGET PERIOD...\$	0.00
Facilities/Construction.....	\$ 0.00	<b>19. AMOUNT AWARDED THIS ACTION:</b>	
Other.....	\$ 34,435.00	\$ 3,323,219.00	
Direct Costs.....	\$ 3,323,219.00	<b>20. FEDERAL \$ AWARDED THIS PROJECT PERIOD:</b>	
Indirect Costs.....	\$ 0.00	\$ 3,323,219.00	
In Kind Contributions.....	\$ 0.00	<b>21. AUTHORIZED TREATMENT OF PROGRAM INCOME:</b>	
Total Approved Budget.....	\$ 3,323,219.00	Additional Costs	
		<b>22. APPLICANT EIN:</b>	<b>23. PAYEE EIN:</b>
		596000573	1596000573A6
		<b>24. OBJECT CLASS:</b>	
		41.51	

25. FINANCIAL INFORMATION:					DUNS	131910254
ORGN	DOCUMENT NO.	APPROPRIATION	CAN NO.	NEW AMT.	UNOBLIG.	NONFED %
	04HP00021901	75-1920-1536	9-G049128	\$3,247,594.00		
	04HP00021901	75-1920-1536	9-G049121	\$75,625.00		

**26. REMARKS:** (Continued on separate sheets)

<b>27. SIGNATURE - ACF GRANTS OFFICER</b> Mr. Derrick Lee 61 Forsyth St. Suite 4M60 Atlanta, GA 30303 Phone: N/A	<b>ISSUE DATE:</b> 06/28/2019	<b>28. SIGNATURE(S) CERTIFYING FUND AVAILABILITY</b> Mr. Omar Barrett 06/27/2019
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<b>29. SIGNATURE AND TITLE - PROGRAM OFFICIAL(S)</b> Ms. Terese Jones - Project Officer	<b>DATE:</b> 06/28/2019
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**DEPARTMENT OF HEALTH AND HUMAN SERVICES  
ADMINISTRATION FOR CHILDREN AND FAMILIES  
NOTICE OF AWARD**

SAI NUMBER:

PMS DOCUMENT NUMBER:

<b>1. AWARDING OFFICE:</b> Office of Head Start		<b>2. ASSISTANCE TYPE:</b> Discretionary Grant	<b>3. AWARD NO.:</b> 04HP000219-01-00	<b>3a. AMEND. NO.:</b> 0
<b>4. FAIN:</b> 04HP000219				
<b>5. TYPE OF AWARD:</b> Service		<b>6. TYPE OF ACTION:</b> New		<b>7. AWARD AUTHORITY:</b> 42 USC 9801 ET SEQ
<b>8. BUDGET PERIOD:</b> 08/01/2019 THRU 07/31/2020	<b>9. PROJECT PERIOD:</b> 08/01/2019 THRU 07/31/2024	<b>10. CFDA NO.:</b> 93.600 - Head Start		
<b>11. RECIPIENT ORGANIZATION:</b> MIAMI-DADE, COUNTY OF				

**STANDARD TERMS**

1. Paid by DHHS Payment Management System (PMS), see attached for payment information. This award is subject to the requirements of the HHS Grants Policy Statement (HHS GPS) that are applicable to you based on your recipient type and the purpose of this award.

This includes requirements in Parts I and II (available at <http://www.hhs.gov/grants/grants/policies-regulations/index.html>) of the HHS GPS. Although consistent with the HHS GPS, any applicable statutory or regulatory requirements, including 45 CFR Part 75, directly apply to this award apart from any coverage in the HHS GPS. This award is subject to requirements or limitations in any applicable Appropriations Act. This award is subject to the requirements of Section 106 (g) of the trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7104). For the full text of the award term, go to <http://www.acf.hhs.gov/discretionary-post-award-requirements>  
This award is subject to the Federal Financial Accountability and Transparency Act (FFATA or Transparency) of 2006 subaward and executive compensation reporting requirements. For the full text of the award term, go to <http://www.acf.hhs.gov/discretionary-post-award-requirements>. This award is subject to requirements as set forth in 2 CFR 25.110 Central Contractor Registration (CCR) and DATA Universal Number System (DUNS). For full text go to <http://www.acf.hhs.gov/discretionary-post-award-requirements>

Consistent with 45 CFR 75.113, applicants and recipients must disclose in a timely manner, in writing to the HHS awarding agency, with a copy to the HHS Office of Inspector General (OIG), all information related to violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. Subrecipients must disclose, in a timely manner, in writing to the prime recipient (pass through entity) and the HHS OIG, all information related to violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. Disclosures must be sent in writing to the awarding agency and to the HHS OIG at the following addresses:

The Administration for Children and Families U.S. Department of Health and Human Services Office of Grants Management ATTN: Grants Management Specialist 330 C Street, SW., Switzer Building Corridor 3200 Washington, DC 20201 AND  
U.S. Department of Health and Human Services Office of Inspector General ATTN: Mandatory Grant Disclosures, Intake Coordinator 330 Independence Avenue, SW, Cohen Building Room 5527 Washington, DC 20201 Fax: (202) 205-0604 (Include "Mandatory Grant Disclosures" in subject line) or Email: [MandatoryGranteeDisclosures@oig.hhs.gov](mailto:MandatoryGranteeDisclosures@oig.hhs.gov)  
Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 Remedies for noncompliance, including suspension or debarment (See 2 CFR parts 180 & 376 and 31 U.S.C. 3321).

This award is subject to the requirements as set forth in 45 CFR Part 87. This award is subject to HHS regulations codified at 45 CFR Chapter XIII, Parts 1301, 1302, 1303, 1304 and 1305. Attached are terms and conditions, reporting requirements, and payment instructions. Initial expenditure of funds by the grantee constitutes acceptance of this award.

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**EXHIBIT B**

**Early Head Start Childcare Partnership Sub-Grant Agreement**

THIS AGREEMENT is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_ by and between \_\_\_\_\_ having its principal office at \_\_\_\_\_ (herein referred to as the "Contractor" or "Sub-Grantee"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

**WITNESSETH:**

WHEREAS, the Contractor has offered to provide Early Head Start Childcare Partnership Program Services, on a non-exclusive basis, that shall conform to the Scope of Services (Appendix A); the County's federal grant application and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the County desires to enter into this Agreement for Contractor to provide Early Head Start Childcare Partnership Program Services for the County, in accordance with the terms and conditions of this Agreement and of the United States of Health and Human Services Early Head Child Care Partnership Program,

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

**ARTICLE 1. DEFINITIONS**

The recitals above are incorporated as if fully set forth herein.

County and Contractor expressly understand and agree that this Agreement is conditioned upon receipt of funding by the County and approval for this Agreement from the United States Department of Health and Human Services.

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended.

- a) The words "Contract" or "Contract Documents" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), the Budget Forms (Appendix B), the Business Associate Addendum (Appendix C), Memorandum of Understanding (Appendix D) and all other attachments and amendments issued hereto.
- b) The words "Contract Date" to mean the date on which this Agreement is effective.
- c) The words "Contract Manager" to mean Miami-Dade County's Director, Internal Services Department or the duly authorized representative designated to manage the Contract.
- d) The word "Contractor" to mean \_\_\_\_\_ and its permitted successors and assigns.
- e) The word "Days" to mean Calendar Days.

- f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.
- g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import, to mean, respectively, the direction, requirement, permission, order, designation, selection, or prescription of the County's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import, to mean respectively, approved by, acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.
- h) The words "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.
- i) The words "Project Manager" to mean the County Mayor or the duly authorized representative designated to manage the Project.
- j) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- k) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
- l) The words "Work", "Services," "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

## **ARTICLE 2. ORDER OF PRECEDENCE**

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions; 2) Appendices A, B, and C to these terms and conditions (the Scope of Services, Budget Forms, and Business Associate Addendum); 3) the memorandum of understanding executed by the Contractor attached hereto and incorporated herein by reference as Appendix D.

## **ARTICLE 3. RULES OF INTERPRETATION**

- a) References to a specified Article, section, or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.

- c) The terms "hereof," "herein," "hereinafter," "hereby," "herewith," and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in these terms and conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

**ARTICLE 4. NATURE OF THE AGREEMENT**

- a) This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered, or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.
- b) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- c) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- d) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.
- e) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

**ARTICLE 5. CONTRACT TERM**

The Contract shall become effective on the date set forth on the front page and shall continue through \_\_\_\_\_. The County, at its sole discretion, reserves the right to exercise the option to renew this Contract for four, one-year periods through July 31, 2024, subject to receipt of grant funds. The County reserves the right to exercise its option to extend this Contract for additional Program

Years beyond the current Contract period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

**ARTICLE 6. NOTICE REQUIREMENTS**

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

**(1) To the County**

- a) to the Project Manager:  
 Miami-Dade County  
 Community Action and Human Services Department  
 701 N. W. 1st Court  
 OTV 9-104  
 Miami, FL 33136  
 Attention: Chief of School Readiness and Early Childhood Programs  
 Phone: 786-469-4622  
 Fax: 786-469-4756

and,

- b) to the Contract Manager:  
 Miami-Dade County  
 Internal Services Department  
 Procurement Management  
 111 N.W. 1st Street, Suite 1375  
 Miami, FL 33128-1974  
 Attention: Assistant Director  
 Phone: (305) 375-5548  
 Fax: (305) 375-2316

**(2) To the Contractor**

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Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

**ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED**

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the budget requirements to provide the Work and Services to be performed under this Agreement. The

compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, are subject to available funds, with availability determined in the sole discretion of the County, and shall not exceed the amount specified in the Scope of Services (Appendix A) for the maximum per child cost and shall be in accordance with the Budget Forms (Appendix B). Prior to the commencement of each Program Year, the County will supplement this Agreement with an individual Notice to Proceed (NTP) which will include the number of children to be served, services to be provided (i.e., Head Start/Early Head Start) and target geographic area where Services are provided by Contractor and where Contractor agrees to serve the number of children listed in the NTP by the County.

Should available County funding be reduced, the amount payable under this Contract may be proportionately reduced at the option of the County. If additional funds become available to the County from the Department of Health and Human Services (DHHS), the County may pay the amount to the Contractor that is allocated to the Contractor in the budget that the County submitted to DHHS, subject to any necessary approval by DHHS. Such funds may be paid to the Contractor in one payment. Such funds may be paid to the Contractor for purposes that include, but are not limited to, funding cost of living adjustments, paying the balance of funds available to the Contractor, start-up costs, and program improvements. The County shall have no obligation to pay the Contractor any additional sum in excess of this amount, except for a change and/or modification to the Contract, which is approved and executed in writing by the County and the Contractor.

All Services undertaken by the Contractor before County's approval of this Contract shall be at the Contractor's risk and expense.

The Contractor agrees to provide non-federal resources in an amount equivalent to twenty-five percent (25%) of the total federal allocation. The non-federal resources may be in cash and/or in-kind donations, but may not be from other federal resources unless there is a specific statutory language allowing this use. Lump sum in-kind allocations may be allotted throughout the Program year and shall be applied in monthly increments until the in-kind contributions have been exhausted. The Contractor agrees to submit proof of the required twenty-five (25%) of the non-federal resources monthly included with its invoices. If the Contractor fails to provide proof of non-federal resources, the County shall reduce the monthly reimbursement in accordance with the shortage. The Contractor may recapture funds that were deducted as a result of a shortage in the non-federal resources requirement at the end of the Agreement by providing the requisite documentation/proof in the Closeout Report as listed in the Scope of Services (Appendix A).

With respect to travel costs and travel related expenses, the Contractor agrees to adhere to Section 112.061 of the Florida Statutes as they pertain to out of pocket expenses including employee lodging, transportation, per diem, and all miscellaneous costs and fees. The County shall not be liable for any such expenses that have not been approved in advance, in writing, by the County.

In no event shall County funds be advanced directly to any Subcontractor hereunder.

The County agrees to pay all budgeted costs incurred by the Contractor which are allowable under the DHHS and County rules and guidelines, in accordance with the Budget Forms (Appendix B). Upon submission of satisfactory required monthly report, the County shall process payment.

**ARTICLE 8. BUDGET**

Refer to Scope of Services (Appendix A) for the maximum per child cost. The approved budget for Program is attached hereto as Appendix B. If the County adjusts the number of slots for the Program, the Contractor shall submit a revised budget for County approval. Each Program Year thereafter, Contractor shall submit a budget for the approved slots prior to the start of each EHS Program year for County approval. The County may also require a revised budget at any time to account for enrollment/registration confirmation. The approved budgets by the County are incorporated herein by reference.

The County will notify Contractor of any increase or decrease to funding. The Contractor may offer incentive discounts to the County at any time during the Contract term, including any renewal or extension thereof.

**ARTICLE 9. METHOD AND TIMES OF PAYMENT**

The Contractor agrees that under the provisions of this Agreement, as reimbursement for those actual, reasonable, and necessary costs incurred by the Contractor, which are directly attributable or properly allocable to the Services, the Contractor shall invoice the County for these Services on a monthly basis, using invoices certified by the Contractor pursuant to Appendix B – Budget Forms, on or before the tenth (10th) day of each month following the month in which the service was rendered, unless the County grants an extension in writing. All invoices shall be furnished with a detailed monthly line-item budget summary which shall be segregated by all Program and administrative costs; current month's expenses; year-to-date expenses and available balance; and a statement detailing monthly expenditures made and the in-kind match provided by the Contractor.

Payment requests shall be accompanied by the reimbursement package, including payroll taxes, insurances, any backup documentation to support reimbursement, copies of cancelled checks and any other such documentation as requested by the County. Requests for reimbursement shall be based on a line item budget and taken from the books of account kept by the Contractor; supported by copies of payroll distribution, receipt bills, or other documents reasonably required by the County; show the County's contract number; and have a unique invoice number assigned by the Contractor. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments are made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five (45) days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. The time at which payment shall be due to Early Head Start Child Care Partnership providers shall be fifteen (15) days from receipt of a proper invoice. Whether an invoice was properly submitted shall be determined at the sole discretion of the County. All payments due from the County or the Public Health Trust and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Mayor, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

The Contractor may shift funds between line items not to exceed ten percent (10%) of the total budget

upon submission of a Budget Modification Request to the County for subsequent approval. Variances greater than ten percent (10%) in any line item require prior approval and a budget modification approved by the Contractor's authorized representative and the County. The Contractor shall not amend their budget more than twice during the Program year; once by December 31st and once by May 15th.

The Contractor has thirty (30) business days from the execution of the contract to request to be enrolled to receive monthly advance payments. The request should include the amount requested and the justification(s) for that amount. The County limits the monthly advance payments to the equivalent of the Contractor's approved annual budget divided by the total school days in the Program Year which is then multiplied by the number of school days in the month for which an advance payment is requested. All monthly advance payments requests will be due to the County within seven (7) business days prior to the beginning of the month for which the Contractor shall provide services. Upon receipt by the County, the Contractor's monthly request for reimbursement for the service month for which a monthly advance payment was received by the Contractor, the County shall apply the amount of the advance payment toward the amount due to the Contractor and remit the net difference to the Contractor. Under no circumstance will a monthly advance payment be provided to the Contractor in the final month of this or any subsequent Program Year. Prior to the disbursement of any funds, the Contractor must submit to the County a completed authorized signature form, denoting the names and signatures of all persons authorized to sign monthly advances, checks and contracts.

The Contractor agrees to furnish the County a detailed monthly line-item federal funds and non-federal funds budget summary which shall be segregated by all Program and administrative costs; current month's expenses; year-to-date expenses and available balance; and a statement for the previous month detailing the expenditures and match made by the Contractor as required herein.

1. Each package must include copies of payroll registers, paid payroll taxes, insurances, any backup documentation to support reimbursement requests or additional requests made by the County, and copies of cancelled checks from the previous month, and documentation supporting the reported match.
2. All reimbursement packages shall be submitted within ten (10) working days after the end of the month.
3. The Contractor shall provide the County with copies of all contracts and agreements for the current Program year prior to any requests for reimbursement. Such contracts and agreements shall include, but are not limited to, leases for real and personal property.
4. Invoices in excess of sixty (60) calendar days will not be reimbursed.
5. Reimbursement for retroactive payment of staff positions in excess of sixty (60) days after the County's approval of qualification of staff will be disallowed.
6. The Contractor shall provide documentation of compliance with the Davis-Bacon Act for construction/renovation projects in excess of \$2,000.00.
7. Reimbursement of credit card purchases requires proof that the statement of the credit

- card which reimbursement is requested has a zero balance.
8. Reimbursement for administrative costs shall not exceed ten percent (10%) of the combined contracted amount and matched amount for the Head Start budget.
  9. Reimbursement for a lump sum payment of accrued leave will be disallowed.
  10. None of the funds provided by the County shall be used to pay the compensation of an individual, either as a direct cost or prorated as an indirect cost at a rate in excess of Executive Level II. The rate for an Executive Level II employee cannot exceed \$192,300.00 per year.
  11. The County will not approve payments for volunteer services provided to the Contractor in support of the services detailed in this Contract.
  12. The Contractor further agrees to maintain originals of cancelled checks, invoices, receipts, and other evidence of indebtedness as proof of expenditure. When original documents cannot be produced, the Contractor must adequately justify their absence in writing and furnish copies as proof of expenditure. These documents shall be maintained by the Contractor for a period of no less than five (5) years and shall be made available for County staff inspection at any time.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as follows:

Miami-Dade County  
Community Action and Human Services Department  
Head Start Program  
701 N. W. 1<sup>st</sup> Court  
OTV 10-177  
Miami, FL 33136  
Attention: Fiscal Director  
Phone: 786-469-4863

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

**ARTICLE 10. INDEMNIFICATION AND INSURANCE**

The Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals, or Subcontractors. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs,

judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided. For governmental entities, this indemnification is subject to the provisions of Florida Statutes, Section 768.28.

Upon County's notification, the Contractor shall furnish to the Internal Services Department, Certificates of Insurance that indicate that insurance coverage has been obtained which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statutes, Section 440.
2. Commercial General Liability Insurance on a comprehensive basis in an amount not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage. Miami-Dade County must be shown as an additional insured with respect to this coverage. The mailing address of Miami-Dade County 111 N.W. 1st Street, Suite 1300, Miami, Florida 33128-1974, as the certificate holder, must appear on the certificate of insurance.
3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than \$300,000.00 combined single limit per occurrence for bodily injury and property damage. For a Contractor utilizing vans and/or mini-vans with seating capabilities of fifteen (15) passengers or more, the limit of liability required for Automobile Liability Insurance is \$500,000.00.
4. Insurance requirements under 45 CFR, Part 1303.12, including student accident insurance, liability insurance for accidents on Contractor premises, and transportation liability insurance. Coverage will be provided with a minimum limit of \$2,000.00 per child.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

**Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day**

written advance notice to the certificate holder. In addition, the Sub-grantee hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the County.

**NOTE: MIAMI-DADE COUNTY CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.**

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within ten (10) business days after notification by the County. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall have an additional five (5) business days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within fifteen (15) business days, the Contractor shall be in default of the contractual terms and conditions and award of the Contract may be rescinded, unless such timeframe for submission has been extended by the County.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the Contract until such time as the new or renewed certificates are received by the County in the manner prescribed herein, provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract.

**ARTICLE 11. MANNER OF PERFORMANCE**

- a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County, the Sub-grantee shall promptly remove from the project any Contractor's employee, Subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.
  
- b) The Contractor agrees to defend, hold harmless, and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages, and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from, or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.

- c) The Contractor agrees that at all times it will employ, maintain, and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.
- d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- f) The Contractor shall comply with all provisions of all federal, state, and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

#### **ARTICLE 12. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR**

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. Miami-Dade County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment is not in the best interest of the County. Each employee shall have and wear proper identification.

#### **ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP**

The Contractor is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

The Contractor does not have the power or authority to bind the County in any promise, agreement, or representation other than specifically provided for in this Agreement.

#### **ARTICLE 14. AUTHORITY OF THE COUNTY'S PROJECT MANAGER**

- a) The Contractor hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation

before or subsequent to acceptance of the Contractor's Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.

- b) The Contractor shall be bound by all determinations or orders of the Project Manager and shall promptly obey and follow every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.
- c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.
- d) In the event of such dispute, the parties to this Agreement authorize the County Mayor or County Mayor's designee ( who may not be the Project Manager or anyone associated with this Project), acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement, including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof. The decision of the County Mayor or County Mayor's designee shall be conclusive, final, and binding on parties. Any such dispute shall be brought, if at all, before the County Mayor or County Mayor's designee within 10 days of the occurrence, event or act out of which the dispute arises.
- e) The County Mayor or County Mayor's designee may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Mayor or County Mayor's designee participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the County Mayor or County Mayor's designee for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Mayor or County Mayor's designee is entitled to exercise discretion or judgment or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Mayor or County Mayor's designee, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

**ARTICLE 15. MUTUAL OBLIGATIONS**

- a) This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous

communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.

- b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.
- c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may, at its own expense, defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Sub-grantee.

#### **ARTICLE 16. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING**

The Contractor shall maintain, and shall require that its Subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope of Services. The Contractor and its Subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of five (5) years from the expiration date of this Agreement and any extension thereof.

#### **ARTICLE 17. AUDITS**

The County, or its duly authorized representatives or governmental agencies shall, until the expiration of five (5) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers, and records and of its Subcontractors and suppliers which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement.

Pursuant to County Ordinance No. 03-2, the Contractor will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

#### **ARTICLE 18. SUBSTITUTION OF PERSONNEL**

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Application, the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

#### **ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT**

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County.

**ARTICLE 20. SUBCONTRACTUAL RELATIONS**

- a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.
- b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.
- c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.
- d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.
- e) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County permitting the County to request completion of performance by the Subcontractors of its obligations under the subcontract, in the event the County finds the Contractor in breach of its obligations, and the option to pay the Subcontractors directly for the performance by such Subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any Subcontractor hereunder as more fully described herein.

**ARTICLE 21. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS**

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall

not be responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

**ARTICLE 22. SEVERABILITY**

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

**ARTICLE 23. TERMINATION AND SUSPENSION OF WORK**

- a) The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation, or material misstatement.
- b) The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.
- c) The foregoing notwithstanding, any individual, corporation, or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation, or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor and in such event:

- d) The Contractor shall, upon receipt of such notice, unless otherwise directed by the County:
  - i. Stop work on the date specified in the notice ("the Effective Termination Date");
  - ii. Take such action as may be necessary for the protection and preservation of the County's materials and property;
  - iii. Cancel all pending and/or unfulfilled orders;
  - iv. Assign to the County and deliver to any location designated by the County, any non-cancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and that have been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;
  - v. Take no action which will increase the amounts payable by the County under this Agreement; and

- vi. Comply with Article 28 pertaining to the transfer of public records to the County.
- e) In the event that the County exercises its right to terminate this Agreement pursuant to this Article the Contractor will be compensated as stated in the payment Articles, herein, for the:
  - i. Portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and
  - ii. Noncancelable Deliverables that are not capable of use except in the performance of this Agreement and that have been specifically developed for the sole purpose of this Agreement but not incorporated in the Services.
- f) All compensation pursuant to this Article is subject to audit.

**ARTICLE 24. EVENT OF DEFAULT**

- a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default shall include the following:
  - i. the Contractor has not delivered Deliverables on a timely basis;
  - ii. the Contractor has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled staff personnel;
  - iii. the Contractor has failed to make prompt payment to Subcontractors or suppliers for any Services;
  - iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor affairs have been put in the hands of a receiver;
  - v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
  - vi. the Contractor has failed to provide "adequate assurances" as required under subsection "b" below;
  - vii. the Contractor has failed in the representation of any warranties stated herein;
  - viii. the Contractor has failed to comply with federal, state or local laws, regulations or guidelines applicable to the Head Start/Early Head Start Program.
- b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the timeframe set forth in the County's request, provide adequate

assurances to the County, in writing, of the Contractor's ability to perform in accordance with terms of this Agreement. Until the County receives such assurances the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed time frame, the County may:

- i. treat such failure as a repudiation of this Agreement;
  - ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.
- c) In the event the County shall terminate this Agreement for default, the County or its designated representatives may immediately take possession of all applicable equipment, materials, products documentation, reports and data.

#### **ARTICLE 25. NOTICE OF DEFAULT- OPPORTUNITY TO CURE**

If an Event of Default occurs, in the determination of the County, the County may so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement with the County may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

#### **ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT**

If an Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, including but not limited to:

- a) lost revenues;
- b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for re-procurement of Services, including procurement and administrative costs; and,
- c) such other direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default. The County may also bring any suit or proceeding for specific performance or for an injunction.

#### **ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION**

- a) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any patent, copyrights, service marks,

trade secret, or any other third party proprietary rights.

- b) The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor, at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, and cause of action, debt, or liability.
- c) In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation, at the County's option, to (i) modify, or require that the applicable Subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).
- d) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or Subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and Subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.
- e) The Contractor shall not infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the Work.

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**ARTICLE 28. PUBLIC RECORDS**

The Contractor shall comply with any and all applicable laws regarding public records and confidentiality of information pursuant to this agreement.

Pursuant to Section 119.0701 of the Florida Statutes, if the Contractor meets the definition of "Contractor" as defined in Section 119.0701(1)(a), the Contractor shall:

- a) Keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the service;
- b) Upon request from the County's custodian of public records identified herein, provide the County with a copy of the requested records or allow the public access to the public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in the Florida Public Records Act, Miami-Dade County Administrative Order No. 4-48, or as otherwise provided by law;
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement's terms and following completion of the services under this Agreement if the Contractor does not transfer the records to the County; and
- d) Meet all requirements for retaining public records and transfer to the County, at no County cost, all public records created, received, maintained and/or directly related to the performance of this Agreement that are in possession of the Contractor upon termination of this Agreement. Upon termination of this Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County.

For purposes of this Article, the term "public records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material regardless of the physical form, characteristics, or mean of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the County.

Contractor's failure to comply with the public records disclosure requirement set forth in Section 119.0701 of the Florida Statutes shall be a breach of this Agreement.

In the event the Contractor does not comply with the public records disclosure requirement set forth in Section 119.0701 of the Florida Statutes, the County may, at the County's sole discretion, avail itself of the remedies set forth under this Agreement and available at law.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT,**

**CONTACT THE COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT:**

Miami-Dade County  
Community Action and Human Services Department  
701 NW 1st Court, Suite 900  
Miami, Florida 33136  
Attention: Head Start/Early Head Start Director  
Email: Riestra@miamidade.gov

**ARTICLE 29. CONFIDENTIALITY**

- a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered confidential information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.
- b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.
- c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

**ARTICLE 30. PROPRIETARY INFORMATION**

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledges that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

During the term of the contract, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County (hereinafter "Computer Software"). All third-party license agreements must also be honored by the Contractor and their employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the Contractor's employees with the approval of the lessor or Contractor's thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure, or removal from the County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure, or removal.

**ARTICLE 31. PROPRIETARY RIGHTS**

- a) The Contractor hereby acknowledges and agrees that the County retains all rights, title, and interests in and to all materials, data, documentation, and copies thereof furnished by the County to the Contractor hereunder or furnished by the Contractor to the County and/or created by the Contractor for delivery to the County, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, Subcontractors and suppliers may use only in connection of the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, Subcontractors, or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.
- b) All rights, title, and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its Subcontractors specifically for the County, hereinafter referred to as "Developed Works" shall become the property of the County.
- c) Accordingly, neither the Contractor nor its employees, agents, Subcontractors, or suppliers shall

have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced, or distributed by or on behalf of the Contractor, or any employee, agent, Subcontractors or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.

- d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its Subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its Subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable, and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

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**ARTICLE 32. VENDOR REGISTRATION AND FORMS/CONFLICT OF INTEREST**

## a) Vendor Registration:

The Contractor shall be a registered vendor with the County – Internal Services Department, for the duration of this Agreement. In becoming a Registered Vendor with Miami-Dade County, the Contractor confirms its knowledge of and commitment to comply with the following, as applicable:

1. *Miami-Dade County Ownership Disclosure Affidavit (Section 2-8.1 of the County Code)*
2. *Miami-Dade County Employment Disclosure Affidavit (Section 2-8-1(d) (2) of the County Code)*
3. *Miami-Dade Employment Drug-free Workplace Certification (Section 2-8.1.2(b) of the County Code)*
4. *Miami-Dade Disability and Nondiscrimination Affidavit (Section 2-8.1.5 of the County Code)*
5. *Miami-Dade County Debarment Disclosure Affidavit (Section 10.38 of the County Code)*
6. *Miami-Dade County Vendor Obligation to County Affidavit (Section 2-8.1 of the County Code)*
7. *Miami-Dade County Code of Business Ethics Affidavit (Section 2-8.1(i) and 2-11(b) (1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code)*
8. *Miami-Dade County Family Leave Affidavit (Article V of Chapter 11 of the County Code)*
9. *Miami-Dade County Living Wage Affidavit (Section 2 8.9 of the County Code)*
10. *Miami-Dade County Domestic Leave and Reporting Affidavit (Article 8, Section 11A-60 11A-67 of the County Code)*
11. *Subcontracting Practices (Ordinance 97-35)*
12. *Sub-Sub-grantee /Supplier Listing (Section 2-8.8 of the County Code)*
13. *Environmentally Acceptable Packaging (Resolution R 738-92)*
14. *W-9 and 8109 Forms (as required by the Internal Revenue Service)*
15. *FEIN Number or Social Security Number*  
In order to establish a file, the Sub-grantee's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Sub-grantee's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:  
-Identification of individual account records  
-To make payments to individual/Sub-grantee for goods and services provided to Miami-Dade County  
-Tax reporting purposes  
-To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records
16. *Office of the Inspector General (Section 2-1076 of the County Code)*
17. *Small Business Enterprises*  
The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.2, 2-8.2.3 and 2-8.2.4 of the County Code and Title 49 of the Code of Federal Regulations.
18. *Antitrust Laws*  
By acceptance of any contract, the Sub-grantee agrees to comply with all antitrust laws of the United States and the State of Florida.

b) Conflict of Interest

Section 2-11.1(d) of Miami-Dade County Code requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

**ARTICLE 33. INSPECTOR GENERAL REVIEWS**

**Independent Private Sector Inspector General Reviews**

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees, Subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

**Miami-Dade County Inspector General Review**

According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts.

The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget, and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspector general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected

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officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody, or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements relating to successful and unsuccessful Subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

**ARTICLE 34. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS**

Contractor agrees to comply with the provisions of any and all applicable Federal, State, and County laws, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including but not limited to:

- a) Equal Employment Opportunity, in compliance with Executive Order 11246 as amended and applicable to this Contract.
- b) Environmental Protection Agency, as applicable to this Contract.
- c) Miami-Dade County Code, Chapter 11A, as amended. All Contractor and Subcontractors performing work in connection with this Contract shall provide equal opportunity for employment and shall not discriminate because of race, religion, color, ancestry, age, sex, national origin, pregnancy, familial status, gender identity, gender expression, sexual orientation, or actual or perceived status as a victim of domestic violence, dating violence or stalking, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.
- d) "Conflicts of Interest" Section 2-11.1 of the Miami-Dade County Code.
- e) Miami-Dade County Code Section 10-38 "Debarment."
- f) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.
- g) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

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- h) The Head Start Act, Head Start/Early Head Start regulations, and formal and informal guidance provided by the United States Department of Health and Human Services as may be applicable to or relate to this Agreement.

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

**ARTICLE 35. NONDISCRIMINATION**

During the performance of this Contract, Contractor agrees to not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

**ARTICLE 36. CONFLICT OF INTEREST**

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.
- b) There are no undisclosed persons or entities interested which the Contractor intends to benefit through this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
  - i. is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services,

- supplies or work, to which this Agreement relates or in any portion of the revenues; or
- ii. is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any Subcontractor or supplier to the Contractor.
  - c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship after receiving an opinion to that effect from the Miami-Dade County Commission on Ethics, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
  - d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
  - e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation. The County, at its sole discretion, may further refer investigation to the Commission on Ethics.

**ARTICLE 37. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION**

Under no circumstances shall the Contractor without the express written consent of the County:

- a) Issue or permit to be issued any press release, advertisement, or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any Contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and
- c) Except as may be required by law, the Contractor and its employees, agents, Subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

**ARTICLE 38. BANKRUPTCY**

The County reserves the right to terminate this contract, if, during the term of any contract the

Contractor has with the County, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

**ARTICLE 39. GOVERNING LAW**

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida. Venue shall be Miami-Dade County.

**ARTICLE 40. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION**

Any person or entity that performs or assists Miami-Dade County with a function or activity involving the use or disclosure of Individually Identifiable Health Information (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Miami-Dade County Privacy Standards Administrative Order. HIPAA mandates for privacy, security and electronic transfer standards include, but are not limited to:

1. Use of information only for performing services required by the contract or as required by law;
2. Use of appropriate safeguards to prevent non-permitted disclosures;
3. Reporting to Miami-Dade County of any non-permitted use or disclosure;
4. Assurances that any agents and Subcontractors agree to the same restrictions and conditions that apply to the Contractor and reasonable assurances that IIHI/PHI will be held confidential;
5. Making PHI available to the customer;
6. Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer as may be required by law;
7. Making PHI available to Miami-Dade County for an accounting of disclosures; and
8. Making internal practices, books and records related to PHI available to Miami-Dade County for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Contractor must give its customers written notice of its privacy information practices including, specifically, a description of the types of uses and disclosures that would be made with protected health information.

**ARTICLE 41. SURVIVAL**

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Sub-grantee and the County under this Agreement, which by nature would continue beyond the termination, cancellation, or expiration thereof, shall survive termination, cancellation, or expiration hereof.

**ARTICLE 42. THIRD PARTY BENEFICIARIES**

The parties expressly agree this Agreement has no intended third party beneficiaries.

**ARTICLE 43. TOTALITY OF AGREEMENT**

This Agreement and Appendices, with its recitals on the first page of the Agreement and with its attachments as referenced below contain all the terms and conditions agreed upon by the parties:

- Appendix A: Scope of Services
- Appendix B: Budget Forms as approved per Program Year
- Appendix C: Business Associate Addendum

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

Contractor

Miami-Dade County

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Corporate Secretary/Notary Public

Clerk of the Board

Approved as to form  
and legal sufficiency

\_\_\_\_\_  
Assistant County Attorney

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