

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT (the "Agreement") is made by and among XXX, a XXX nonprofit corporation ("Provider") and XXX ("Recipient"). This Agreement is effective as of XXX (the "Effective Date").

INTRODUCTION

I. Provider runs a group of child care centers in the XXX area that have joined together to share managerial, financial, technological and related support services and gain discounts. Recipient's childcare center ("Recipient's Center") will soon join or become a "chapter" of Provider's group of child care centers for the purpose of accessing Provider's shared services and discounts.

II. Because most or all of the students attending Recipient's Center are low-income, their tuition is paid through a contract with the City of XXX (the "Contract"). In connection with Recipient's Center becoming a "chapter" of Provider, the Contract will be assigned from Recipient to Provider, and Recipient's Center will be re-licensed to Provider (the "Assignment and Re-License"). However, the Assignment and Relicense will not be completed before the beginning of the 2010 school year.

III. Because the parties would like Provider to take over daily operations of Recipient's Center before the beginning of the 2010 school year, the parties wish to enter into a temporary arrangement whereby Provider provides Recipient with certain management, administrative and other services, in exchange for a fee, until the Assignment and Re-License occurs.

IV. The purpose of this agreement is to set forth the terms and conditions upon which Provider will assist Recipient in its day-to-day operations and provide to Recipient certain management, administrative and other services (including hiring of staff, recruiting and enrolling students, providing educational and family support services, and submitting reports to funders, among other services) upon the terms and on conditions set forth below.

THEREFORE, the parties hereby agree as follows:

I. PROVISION OF SERVICES; PAYMENT OF SERVICES

1.1 Upon the terms and subject to the conditions of this Agreement and Attachment A hereto, Provider agrees to provide certain services described in Attachment A (the "Services") to Recipient. In its sole discretion, Provider has the right to cause third party subcontractors to perform any of the Services except for basic instruction required of it hereunder, provided that any such delegation by Provider will not relieve it of its obligations hereunder.

1.2 Provider agrees that it will at all times use its commercially reasonable efforts to provide Services to the reasonable satisfaction of Recipient and will at all times retain and utilize a sufficient number of qualified personnel to perform all of such Services.

1.3 Provider shall invoice Recipient for the applicable fees and costs set forth under this agreement on a periodic basis, not less than twice monthly. Payments are due within 15 days after the date of the applicable invoice, or as agreed upon from time to time as Services are requested. For the purposes hereof, a "fiscal year" ends on August 31.

1.3.1 Where the terms of this Agreement or Attachment A require the application of accounting principles, United States Generally Accepted Accounting Principles (“U.S. GAAP”) will apply.

1.3.2 Upon mutual agreement of the parties, or if the contract extends past May 31, 2011, Services may be billed on a “true-up” basis, whereby Provider bills Recipient on a periodic basis, based on the estimated or projected costs and fees to be incurred for providing Services during the period. Then, upon completion of the fiscal year, Provider will prepare a schedule of actual costs and fees incurred for the fiscal year, less any applicable periodic invoices issued to date, and invoice Recipient for any remaining amounts due. Estimated or projected costs and fees may be calculated by referencing costs and fees incurred in the previous year for the same or similar services, or by referencing amounts previously budgeted by Provider for the Services.

1.4 Services will be priced in accordance with the pricing principles set forth in Attachment A.

1.5 From time to time, upon written consent by both parties, the parties may establish one or more Policies and Procedures document(s) that set forth in further detail the agreed upon services and/or accounting and billing principals and procedures otherwise provided under this Agreement and Attachment A.

1.6 Except as otherwise provided in this Agreement or Attachment A, the parties shall not have, nor represent themselves as having, any authority under the terms of this Agreement to make agreements of any kind in the name of, or binding upon, the other parties, to pledge the other parties’ credit, or to extend credit on the other parties’ behalf.

II. TAXES AND EXPENSES. With respect to the Services:

2.1 The parties intend that Provider (and any third party subcontractor performing Services on behalf of Provider) act for, and on behalf of, Recipient in accordance with the terms of XXX or such applicable law of similar effect.

2.2 The parties shall keep books and records showing that the transactions made pursuant to this Agreement were made in the names of, and for the accounts of, the Recipient.

2.3 The parties shall keep books and records showing the amount of incidental income, if any, that Recipient pays to Provider for the provision of Services pursuant to this Agreement.

2.4 Provider has authority to pay any and all expenses with respect to the Services (“Expenses”) performed on behalf of Recipient under this Agreement. Recipient is ultimately liable for payment of its own Expenses associated with serving children enrolled at the Recipient’s center. Provider shall maintain internal accounts detailing all Expenses paid for any other party, and shall provide a monthly summary to the other party, detailing all Expenses paid on the other party’s behalf during the preceding month.

III. CONFIDENTIAL INFORMATION. The parties understand and acknowledge that each of them (and their respective employees, consultants and subcontractors) may have disclosed to one another, in connection with the rendition of Services and performance of their obligations of this Agreement, confidential and/or proprietary information. Each of the parties agrees to maintain such information as confidential and proprietary information. The parties agree that the terms and conditions of this

Agreement, including its attachments, will be deemed to constitute, and be treated as, confidential information pursuant to this Section III.

IV. LIMITATION OF LIABILITY AND INDEMNIFICATION.

4.1 Provider, its subcontractors (if any), and all of such parties' respective officers, directors, agents or designees (together, the "Performing Parties" and individually, a "Performing Party"), will not be liable for any loss incurred through acts performed (or not performed) by them, or advice or assistance given by them, in good faith in the performance of their duties hereunder, and in any event will be liable only for willful wrongdoing or gross negligence and not for honest errors of judgment; provided, however, that in no event will the Performing Parties be held liable for any consequential damages or for any loss of profits suffered by Recipient or by any additional party, and provided further that the amount of permitted damages claimed in respect of all breaches of contract by any Performing Party that occur during one fiscal year must not exceed the amount of compensation that Recipient owes and/or has paid (directly or indirectly) to the Performing Party for the fiscal year during which the breach of contract has occurred.

4.2 Recipient agrees to indemnify and hold harmless each Performing Party, respectively, from and against all costs, damages, judgments, attorneys' fees, expenses, obligations and liabilities of every kind and nature that the Performing Party may incur, sustain or be required to pay in connection with, or arising out of, the Performing Party's performance of its obligations to the Recipient hereunder (unless such costs, damages, judgments, fees, expenses, obligations or liabilities are incurred in connection with, or arise out of, willful wrongdoing or gross negligence).

4.3 Subject to Section 4.1, Provider agrees to indemnify and hold harmless Recipient and its respective officers, directors, agents or designees (together, the "Recipient Parties" and individually, a "Recipient Party"), respectively, from and against all costs, damages, judgments, attorneys' fees, expenses, obligations and liabilities of every kind and nature that the Recipient Party may incur, sustain or be required to pay in connection with, or arising out of, the Performing Party's performance of its obligations hereunder (unless such costs, damages, judgments, fees, expenses, obligations or liabilities are incurred in connection with, or arise out of, willful wrongdoing or gross negligence).

4.4 This Section IV shall survive the termination of this Agreement.

V. TERM

5.1 This Agreement is effective for each party as of the Effective Date. The Agreement remains in effect with respect to each party until terminated pursuant to Section 5.2 below.

5.2 Either party may terminate this Agreement at any time by giving written notice of termination to the other party at least 30 days in advance of the effective date of such termination.

VI. GENERAL PROVISIONS

6.1 Organization. Each of the parties represents and warrants that: (i) it is duly organized and validly existing under the laws of the jurisdiction in which it is established; and (ii) it has the authority to enter into this Agreement and perform its obligations hereunder.

6.2 Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes and terminates any and all prior agreements or contracts, oral or written, entered into between the parties relating to the subject matter hereof. Each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, manner or description whatsoever by any party to the other with respect to the subject matter hereof except as expressly set forth herein.

6.3 Amendments. Subject to Section 6.2, this Agreement shall not be amended or otherwise modified except by a written agreement dated subsequent to the date of this Agreement and signed by both parties.

6.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of XXX (without regard to its conflict of laws provisions).

6.5 Assignment. Either party may assign this Agreement only with the prior written consent of the other party hereto; any assignment made without such consent shall be null and void and of no effect.

6.6 Notices. All notices in connection with this Agreement will be deemed given as of the day they are sent by electronic transmission or facsimile, or deposited with a commercial courier for delivery to other parties at the applicable address set forth on the signature pages hereto, or to such other address and/or telex and facsimile number as the party to receive the notice or request so designates by written notice to the other parties.

6.7 No Waiver. No waiver of any breach of any provision of this Agreement will constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver will be effective unless made in writing and signed by an authorized representative of the waiving party or parties.

6.8 Savings Clause. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect. In such event, the parties will in good faith negotiate a substitute clause for any provision declared invalid or unenforceable, which will most nearly approximate the intent of the parties in entering this Agreement.

6.9 Further Assurances. All parties agree to take such further action and execute, deliver and/or file such documents or instruments as are necessary to carry out the terms and purposes of this Agreement.

6.10 Headings. The section headings used in this Agreement are intended for convenience only and shall not be deemed to supersede or modify any provisions.

6.11 Relationship of Parties. This Agreement is intended solely as a master services agreement, and no partnership, joint venture, employment, agency, franchise, or other form of agreement or relationship is intended. All parties agree to be responsible for all of their federal and state taxes,

withholding, social security, insurance, and other benefits, and all salaries, benefits, and other costs of their employees, except as otherwise specifically contemplated by the provisions of this Agreement (e.g., where a party has agreed to reimburse another party for its costs). From time to time, in connection with the services referred to in Attachments A, the parties may act as one another's agents if a party or parties request another party or parties to do so and that party or those parties, in their sole discretion, agree.

6.12 No Third Party Beneficiaries. This Agreement is not intended to create any rights in any person or entity who is not a party to this agreement, and no such rights are created hereunder.

(Remainder of Page Intentionally Blank)

IN WITNESS WHEREOF, the parties have executed this Master Services Agreement on _____, 2010. The Agreement is effective for each party as of the respective date set forth next to each party's signature below.

By:
Name:
Title:
Address:

By:
Name:
Title:
Address:

By:
Name:
Title:
Address:

ATTACHMENT A

Definitions: All capitalized terms in this Attachment A have the respective meanings assigned to such terms in the Master Services Agreement unless otherwise noted herein.

I. PRICING OF SERVICES; ADDITIONAL EXPENSES

1. Pricing of Services:

1.1 Services described under Section II of this Attachment A (General Services) will be provided at cost, including overhead expenses which represent the XXX-allocated percentage of the expenses shared by all chapters of the Provider. Unless otherwise agreed upon by the parties, cost will consist of direct employee and program expenses, plus overhead. Overhead will consist of allocated technology and business expenses (administration related only), office operations, human resources, training and other similar charges that are directly related or tend to increase with staffing levels.

1.2 Notwithstanding the foregoing paragraphs or any other term to this agreement, in the event that (and for the purpose of reflecting economic results comparable to transactions between unrelated parties) a governmental regulatory or judicial agency directs Provider to adjust the charges for any or all services performed under this agreement, or in the event that changing economic circumstances call for such an adjustment, the parties agree to work together, acting in good faith, in re-evaluating such charges and in making a corresponding adjustments on each parties' books and records.

2. Additional Expenses:

2.1 If Provider purchases or leases on behalf of a Recipient any furniture, equipment or other personal property, then the Recipient shall reimburse Provider in full for items purchased for and applicable lease costs; provided that if a lease permits assignment to Recipient, then Provider shall assign the lease to Recipient, and Recipient shall assume all of Provider's obligations thereunder. However, no party shall purchase or enter into any lease for any such personal property on behalf of any other party without that party's prior consent. Recipient shall comply with all terms and conditions of all applicable leases.

2.2 Nothing in the forgoing paragraph shall be construed as meaning that Recipient shall reimburse Provider for the cost of property purchased or leased, in whole or in part, *other than* for the express purposes of performing the services set-forth under the terms of this agreement. The periodic determination of the costs incurred for such property leases and purchases will be determined in a manner in consistent with U.S. GAAP and reimbursed in accordance with the *Pricing of Services* provisions above.

2.3 Unless otherwise set forth herein, direct expenses incurred by Provider with third parties in connection with performance by Provider hereunder will be reimbursed by Recipient, or billed directly to Recipient, in addition to any fees payable to Recipient hereunder.

II. GENERAL SERVICES TO BE PROVIDED

The Provider will provide preschool services to 40 eligible children, according to the State of XXX 2010 XXX Performance Standards.

PROGRAM GOALS

The overall goal of XXX as operated by the Provider is to support kindergarten readiness for each child and his/her family enrolled in XXX by:

- Providing a high-quality early childhood education preschool program with comprehensive preschool and health and family support services that promote the physical, cognitive, social, emotional, cultural, and linguistic development of children.
- Supporting parents and guardians in their role as primary caregiver/educators of their children, in meeting family goals and in achieving success across a wide variety of domains including education, employment, health and basic needs.
- Providing leadership and facilitating community partnerships and collaboration that support the success of children and families.

PROGRAM DESCRIPTION

The XXX is a whole-child, family-focused preschool program designed to help low-income and at-risk children and their families succeed in school and life. The target XXX population is four and three-year-old children and their families with incomes at or below 110 percent of the federal poverty level. Because many factors affect a child's learning ability and development, XXX takes a comprehensive approach toward achieving this goal:

- **Education:** XXX fosters young children's early learning, social and emotional well-being, and physical growth and development by providing developmentally-appropriate, culturally relevant, high quality learning environments and by identifying and intervening to address problems that interfere with learning early on.
- **Health and Nutrition:** XXX also supports young children's physical health by providing nutritious meals throughout the program year and health education, health screening for each child within first 90 days of program enrollment. Medical dental, mental health and nutritional needs are evaluated and immunizations are brought up to date. Concerns are referred to the appropriate community services. All children receive at least one complete meal a day while in class.
- **Parent Involvement:** Children are more motivated to do better in school when parents are directly involved, so XXX supports families in taking an active role in their child's growth and development. XXX provides information, develops families' skills, and encourages family involvement in decisions that affect their children's education and development including participating in decision making in the program's leadership and governance. The program also supports families with the kindergarten enrollment and transition to kindergarten process.
- **Family Support:** XXX works with families to identify their priorities, strengths and goals and then help families locate and access community resources to support the achievement of their goals.

The Provider will operate the program according to the agency's mission which is to XXX. The Provider will operate the program according to agency's values, which are to XXX.

SERVICE DELIVERY

The Provider will oversee and manage the day-to-day operation of the Recipient's center and oversee the Recipient's compliance with regulatory requirements and standards, including licensing by the State of XXX.

The Provider will operate the program under the name 'XXX' at [address] and during the days and hours required by the City of XXX XXX program. The Provider will make every reasonable effort within its control to meet the performance commitments and milestones outlined by the City of XXX in the Recipient's contract with the City of XXX for the 2010-2011 program year. Slots will be filled with children meeting program eligibility criteria and XXX guidelines as defined in XXX Recruitment and Enrollment Policies and Program Standards.

[details of how city program requirements will be met]

The Recipient agrees to inform the Provider of all other contracts it holds that might affect the children, families or staff at the program location and include the Provider in all email or written communication and summarize all oral communication regarding such contracts.

This agreement gives the Provider sole authority to hire and fire all teaching and service staff and make all other personnel decisions relating to operations at the Recipient's center.

The agreement gives the Provider sole authority to bill the USDA for meals served to the children at the Recipient's center. If USDA does not allow the Provider to bill the USDA for children's meals at the Recipient's center, the Recipient agrees to continue its USDA contract for the 2010-2011 school year. If the USDA contract continues under the Recipient's name, the Provider agrees to complete all the required USDA paperwork and prepare the invoices for the Recipient to send to USDA. The Recipient agrees to submit the invoices to USDA before the deadlines set forth in their agreement with USDA.

The Provider will purchase all program materials and acquire any additional services necessary to meet the educational requirements outlined by the City of XXX XXX contract.

This agreement gives the Provider authority to submit grant proposals to generate additional funding for services or support for children at the Recipient's center. Grant proposals may be jointly developed between the Recipient and Provider for the purpose of generating additional funding for services or support for children at Recipient's center. The Provider is not responsible for the success or failure of any applications for grants. The Provider staff will work in partnership with the Recipient to support special events as jointly agreed upon in Recipient board meetings. The success or failure of any programs or special events designed to provide additional funds to the Recipient is the sole responsibility of the Recipient.

The Recipient agrees to invite the Director of XXX to all Recipient Board meetings where program issues are planned to be discussed.

If the Director of XXX changes before the end of the program year, the Recipient Board of Directors will have the opportunity to help hire the new director by reviewing and commenting on the job description and participating in the interview panel for the new director. If the Executive Director of XXX changes before the end of the program year, the Recipient Board will be invited to the Advisory Boards meeting with the XXX Board of Directors to participate in the hiring process of the new Executive Director.

The Provider and Recipient agree to communicate with each other within 48 hours regarding any changes listed below in the required notifications to the City of XXX. The Recipient agrees to comply with the City's notification requirements as outlined below.

- [notification requirements]

The Provider will maintain Liability Insurance to cover all services and activities provided by its staff and any other 'additional insured' required by the City of XXX for the duration of this agreement.

The Recipient agrees to maintain Director and Officer's insurance for the duration of this agreement.

The Provider's Board of Directors will order an annual audit of the Provider's financial information. The Provider will invite the Recipient to the audit meeting scheduled for the Advisory Boards of the Provider's chapters.

Pricing

On September 1, 2010 the Provider will bill the Recipient 10% of the monthly base total outlined in the Recipient's final contract with the City of X for the 2010-2011 school year or an amount equivalent to the expected June, 2011 bill to the City of XXX.

On October 10 and the 10th of every month through and including June, the Provider will bill the Recipient the amount equivalent to the XXX bill to the City for the previous month. On July 10th, the Provider will bill the Recipient the difference between the amount billed on September 1, 2010 and the amount billed to the City of XXX in the final invoice for the 2010-2011 program year.

If the Provider is unable to bill USDA for Recipient children, then the Provider will prepare the bill due to USDA by the Recipient by the time required by USDA each month; and then the Provider will bill the Recipient for the same amount expected from USDA.

If there are unexpected or unforeseen expenses associated with serving the children enrolled at the Recipient's program which go beyond those covered by the XXX and USDA funding, the Provider will bill those expenses separately, at cost, in a timely fashion. The Provider will not actively spend funds beyond the amount covered by the XXX and USDA funding without prior approval of the Recipient, but if expenses are incurred due to events beyond the Provider's control (such as a fire or any unexpected expenses) the Recipient will be responsible for reimbursing the Provider for expenses incurred for operating the Recipient's center. The Provider will make every reasonable effort to inform the Recipient about these unexpected expenses as quickly as possible.

Following the Recipient's annual fundraiser, the Provider will bill the Recipient for costs associated with program improvements as jointly agreed upon by the Provider's representative and the Recipient Board of Directors.

If the City of XXX substantially changes the requirements of the XXX program before September 1, the Pricing will be readjusted to address the changes in the contract.

If funding for the XXX program or USDA funding available to the Recipient's program is eliminated or reduced by more than 5%, the Provider has the right to terminate the program within 30 days.

If a catastrophic event happens which prevents the Provider from conducting the program in the current physical location (such as an earthquake, fire or other event which substantially impacts the classroom

physical environment) the Provider has the right to terminate the program within 30 days if the Provider deems that no another educationally appropriate location can be secured in the same geographic area and for the same occupancy costs as the current location before the end of the program year.

If the Recipient withholds payment for more than 5 days beyond the due date for any reason, the Provider has the right to terminate the program within 30 days.

The Provider will spend Recipient funds in support of educational and family support services for Recipient children, as outlined in the City of XXX XXX contract.

The Provider agrees to adhere to the terms of the lease of the physical property and maintain the premises accordingly. The Provider also agrees to coordinate with the Recipient on any communication with landlord.