

AGREEMENT BETWEEN WEBB COUNTY, TEXAS EARLY HEAD-START- CHILD CARE PARTNERSHIP (E.H.C.S.) & EDUCATION AURA, INC./DR. MIRASLOVA VARGAS

This Agreement is hereby entered by and between Webb County, Texas ("Webb") Early Head Start Child Care Partnership ("Webb-E.H.S.-C.C.P.") a political subdivision of the State of Texas, acting by and through its County Judge and **Education Center Aura, Inc. a Private for profit, Texas Corporation**, acting, by and through its President/owner Dr. Miroslava Vargas, hereinafter referred to as "Education Center", on this 14th day of September, 2020.

The purpose of this Agreement is to document the terms and conditions and contractual relationship between WEBB and **Education Center Aura, Inc./Dr. Miraslova Vargas, a Private for profit, Texas Corporation**, wherein "Education Center" will set up, implement, and operate Seven (7) classrooms for the Early Head Start Child Care Partnership of Webb under Dept of Health and Human Services Administration for Children and Families No. 06HP0006/01 ("the Award"), during the term set forth herein and in accordance with the terms set forth herein.

The term and conditions set forth herein constitute the entire agreement between Webb and "**Education Center**" and may not be modified or amended except by and through a written instrument executed by both parties to this agreement and approved by the Webb County Commissioner's Court.

A. PROGRAM DESCRIPTION

Webb was provided certain funds by the Department of Health and Human Services Administration for Children and Families through the Award for the purpose of establishing and operating an EHS Child Care Partnership for the benefit of the residents of Webb County, Texas. Per the Award, Webb is authorized to contract with a third party for the purpose of delegating to the third party the responsibility to set up and operate all or a portion of the EHS Child Care Partnership. Through this Agreement, Webb has contracted with and delegated to Education Center the rights and benefits it has under the Award for the purpose of establishing and operating the Early Head Start Child Care Partnership to service ~~Fifty-Six~~ (56) Early Head Start children, as described in the Award with services including providing meals for the children throughout the year, and in accordance with the terms of this Agreement Pursuant to this Agreement, "**Education Center**" will set up and use SEVEN (7) classrooms for the Early Head Start Child Care Partnership.

B. TERM OF AGREEMENT AND CONTRACT SUM

The term of this Agreement shall be from September 1, 2020 to August 31, 2022.

The Webb County Early Head Start Care Partnership grant will compensate each partner as follows:

- a. **\$25 per day per "non-subsidized" child for each service day offered during the term of this agreement.**
- b. **Copayments for subsidized children (rate varies per child) offered service during the term of this agreement**
- c. **Monthly Rents/Minor Maintenance Repair:** Webb will compensate **Education Center Aura, Inc.**, a monthly rental fee/charge of **\$400 per classroom X Seven (7) Classrooms for "Education Center"** to be used for housing Head Start children. The rent is payable in advance and due on the 1st of each month during the term. The awarded funds dedicated for this program will be the compensation to be paid to "Education Center" by Webb for the services to be provided to the children described above during the Term. The funds shall be paid by Webb to Education Center Aura, Inc. through bi-weekly drawdown requests submitted by Education Center to Webb, in writing, to the address listed below. Webb shall pay to Education Center the monthly rental payment drawdown requested on or before Thirty (30) business days after County Auditors approval of such rents is submitted by Education Center.

This Agreement shall effective for a **TWO (2) YEAR term** to become effective on September 1, 2020. The Agreement shall remain in effect as of the official award letter of EHS Child Care Partnership and terminate on August 31, 2022, unless sooner terminated in accordance with the terms herein.

Education Center Aura, Inc., reserves the right to designate teaching staff that it deems necessary and required to provide the services set forth in this Agreement. Education Center will abide by EHS-CCP Eligibility, Recruitment, Selection, Enrollment, Attendance System (ERSEA) to implement Head Start federal regulations and guidelines in recruiting and selecting the persons it will serve hereunder. **Education Center** will follow the terms of its Proposal to Webb County by which it was granted or awarded this portion of the EHS Child Care Partnership from Webb, for rendition of services herein, and which is incorporated herein by reference.

Webb represents to "**Education Center**" that it is fully authorized to contract with them for the purpose of delegating to it the duties and obligations of the contractor and Webb under the agreement.

C. INDEMNIFICATION:

To the extent permitted by Article XI, Section 7 of the Texas Constitution, and with the mutual understanding that Webb County is a political subdivision of the State of Texas and that an indemnity obligation cannot be paid from current revenues and that no order, resolution, tax nor interest and sinking funds has been set, adopted or established for

payment of this indemnity obligation, and without expanding Webb County's liability beyond the statutory limits of the Texas Tort Claims Act of under existing law, and furthermore, without waiving Webb County's immunity beyond the scope of that allowed by the Texas Tort Claims Act or existing law, Webb County to the extent permitted by the Texas Law and/or the Texas Constitution/Law, except that neither party shall indemnify the other for claims or liabilities arising solely from its own negligent acts or omissions.

D. INSURANCE:

Contractor Insurance: The financial integrity of Contractor is of interest to the Owner, therefore, subject to the right of Contractor to maintain reasonable deductibles in such amounts as are approved by the Owner. Contractor shall obtain and maintain in full force and effect for the entire duration of this agreement, and any extension hereof, at Contractor's sole expense, which shall be required to have **Webb County, Texas named as an additional named party** covered under the insurance policy coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A or better by A.M. Best Company (Best's Key Insurance Company Rating Guide, current edition and/or as amended) and/or otherwise acceptable to Webb County/Webb County Risk Manager, the following types and amounts:

The Contractor shall not commence services/work under this Agreement until it has obtained all the insurance required under this paragraph and such insurance has been approved by the Owner, or shall the Contractor allow any services/work to be performed under this agreement until the insurance required of the Subcontractor has been so obtained and approved.

1. **Worker's Compensation Insurance:** The Contractor shall procure and shall maintain during the life of this Contract Workers' Compensation Insurance as required by applicable State or Territorial law for all of his/her employees to be engaged in work at the site of the project under this Contract and, in case of any such work sublet, the Contractor shall require the Subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Workers' Compensation Insurance. In the case where any class of employees engaged in hazardous work on the project under this Contract and is not protected under the Workers' Compensation Statute, The Contractor shall provide and shall cause each Subcontractor to provide adequate employee's liability insurance for the protection of such of his/her employee as are not otherwise protected.
2. **Contractor's Public Liability Insurance, Contractor's Public Liability Insurance and Vehicle Liability Insurance coverages** in the amount of not less than \$1,000,000 for bodily injury, including accidental death, to any one person and an amount not less than \$1,000,000 on account of any one occurrence: Property Damage in the amount not less than \$100,000 per occurrence and \$200,000 aggregate; and Vehicle Liability of \$100,000 for any one person or \$200,000 for each occurrence.
3. The Contractor shall procure and shall maintain during the life of his Contract, insurance in the amounts listed in Subparagraphs 1 and 2.

4. Scope of Insurance and Special Hazards: The insurance required under Subparagraphs 1 & 2 above, shall provide adequate protection for the Contractor and Webb, respectively, against damage claims which may arise from operations under this Contract, whether such operations be by the insured or by any one directly or indirectly employed by him/her and also against any special hazard which may be encountered in the performance of this Contract.
5. Webb County, Texas, a political subdivision of the State of Texas shall be named as an additional name insured party with respect to General Liability, Fire and/or Automobile Liability. A blanket waiver of subrogation in favor of Webb County, Texas, a political subdivision of the State of Texas shall be contained in the Workers' Compensation, and all liability policies.

E. Confidentiality of Student Records

All records relating to children and families which are generated or maintained by any employee of the Program shall be considered education records, regardless of where such records were generated. "Education Center shall maintain the confidentiality of these and all education records in accordance with all applicable state, federal and local laws and regulations, including FERPA, and Board Policy. "Education Center" shall not release education records to any third party without prior written consent by the child's parent or other person in lawful control of the child, except as otherwise permitted by law.

F. Notices

Notices to the parties hereto required or appropriate under this agreement shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to:

TO: Webb County, Texas
Attn: Webb County Judge, Tano E. Tijerina
1000 Houston St. 3rd Floor
Webb County Courthouse
Laredo, Texas 78040

TO: Education Center Aura, Inc., c/o
Dr. Miraslova Vargas, President
412 Concord Hills
Laredo, Texas 78046

G. GENERAL CONDITIONS

1. The Parties represent that the persons who have executed this Agreement are duly authorized and have the authority to execute this Agreement in their individual representative capacity as indicated.
2. This Agreement may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.
3. This Agreement, any duties hereunder, or interest, may not be assigned or delegated by either Party without the prior written consent of the other Party. Any assignment or

delegation made in violation of this provision is voidable.

4. This Agreement constitutes the entire agreement and understanding of the parties. There are no representations or understandings of any kind not set forth herein. Any amendments to this Agreement must be in writing and executed by both parties.
5. If any term of this Agreement is found to be void or invalid, such findings shall not affect the remaining terms of this Agreement, which shall continue in full force and effect. The Parties further agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable. Any questions of particular interpretation shall not be interpreted against the draftsman, but rather in accordance with the fair meaning thereof. No provision of this Agreement will be deemed waived by either party unless expressly waived in writing signed by the waiving party. No waiver shall be implied by delay or any other act or omission of either party. No waiver by either party of any provision of this Agreement shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision.

H. TERMINATION OF AGREEMENT BY EITHER PARTY:

Either party may terminate this lease at any time by serving upon the other party in the manner hereinafter provided, a written notice of its election so to terminate, which said notice shall be served at least Sixty (60) days prior the date in said notice named for such termination.

I. RELATIONSHIP OF THE PARTIES

Contractor is engaged under this Agreement as an ***“INDEPENDENT CONTRACTOR”*** and not as an agent or employee of Owner. Contractor is not entitled to benefits of any kind to which Owner’s employees are entitled, including but not limited to unemployment compensation, workers’ compensation, health insurance, or retirement benefits. Contractor assumes full responsibility for payment of all federal, state and local taxes or contributions, including but not limited to, unemployment insurance, social security, Medicare, and income taxes with respect to Contractor and Contractor’s employees. This Agreement does not create a partnership or a joint venture between the parties hereto, nor does it authorize either party to serve as the legal representative or agent of the other. Neither party has any right or authority to assume, create, or incur any liability or any obligation of any kind, express or implied, against, or in the name of, or on behalf of the other party.

J. SUCCESSORS AND ASSIGNS:

This Agreement may not be assigned or subcontracted, in full or in part, by either party without first obtaining written consent of the other party. The parties shall not be relieved of its full responsibility for completion of work because of subletting of any portion of the work. This Agreement shall be binding upon and shall ensue to the benefit of the parties hereto and their respective successors, transferees, and assigns.

K. INDEMNITY:

CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD WEBB COUNTY

HARMLESS FROM ANY AND ALL LOSS, EXPENSE, COST, OR LIABILITY (INCLUDING REASONABLE LEGAL FEES AND EXPENSES), ARISING FROM ANY CLAIM OR CAUSE OF ACTION FOR ANY LOSS OR DAMAGE CAUSED BY OR ARISING FROM THE PERFORMANCE OF CONTRACTOR'S OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE CONDUCT OF CONTRACTOR'S EMPLOYEES AND/OR ANY ACTS PERFORMED UNDER THIS CONTRACT AND THAT RESULT FROM ANY NEGLIGENT ACT, ERROR, OR OMISSION OF THE CONTRACTOR OR OF ANY PERSON EMPLOYED BY THE CONTRACTOR. IN CASE OF ANY SUCH CLAIM, CONTRACTOR, UPON NOTICE FROM OWNER, COVENANTS TO DEFEND ANY SUCH ACTION OR PROCEEDING. THE CONTRACTOR SHALL ALSO SAVE AND HOLD HARMLESS THE OWNER FROM AND AGAINST ANY AND ALL EXPENSES, COURT COSTS, INCLUDING, BUT NOT LIMITED TO, ATTORNEY'S FEES THAT MIGHT BE INCURRED IN LITIGATION OR OTHERWISE DEFENDING OR PROSECUTING THE CLAIMS.

L. COMPLIANCE WITH LAWS:

Independent Contractor agrees that it will, in its performance of its obligations hereunder, fully comply with all applicable laws, regulations and ordinances of all relevant authorities, including, but not limited to, those pertaining to safety, and shall obtain all licenses, registrations, or other approvals required in order to fully perform its obligations hereunder. Contractor represents and warrants that all improvements made to the property shall comply with the Americans with Disabilities Act (ADA) and all other applicable Federal/State Codes, regulations, and laws.

M. SEVERABILITY:

Should any part of this Agreement be rendered or declared invalid by a court of competent jurisdiction of the State of Texas, such invalidation of such part or portion of this Agreement shall not invalidate the remaining portions thereof, and they shall remain in full force and effect.

N. GOVERNING LAW/VENUE:

This agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Texas, without regard to choice of law rules of any jurisdiction. The parties hereby further agree that for any litigation regarding this agreement that venue lies exclusively in Webb County, Texas.

O. DEFAULT AND TERMINATION:

In the event either party default with any of the terms of this agreement, and/or interferes with the general progress of this Project intentionally, or by negligence, or intentional or negligent delay, the non-defaulting party shall provide a thirty (30) day written notice of default and opportunity to cure their default(s), breach of conditions, and remedy the situation in good and workmanlike manner.

However, in the event that the defaulting party fails cure their defaults within the 30 day cure period, and upon written notice by the non-defaulting party to the other party of such failure to cure their default(s) under the agreement, then in that even, the non-defaulting party may

complete the same or cause the same to be completed and charge all sums of money so expended for the completion of this Agreement against the defaulting party, and the defaulting party shall reimburse the non-defaulting Party for any such costs, expenses, losses, and/or damages sustained thereby.

P. ATTORNEY'S FEES:

In the event either party breaches any of the terms of this Agreement whereby the party not in default employs attorneys to protect or enforce its rights hereunder and prevails, then the defaulting party agrees to pay the other party reasonable attorney's fees incurred by such other party.

Q. ENTIRE AGREEMENT:

This Agreement and its Exhibits shall constitute the complete and exclusive written expression of the intentions of the parties hereto and shall supersede all previous communications, representations, agreements, promises or statements, either oral or written, by and between the parties. Any modifications to this Agreement must be in writing and signed by the party sought to be bound.

R. ACKNOWLEDGMENT:

To the Extent required by law this contract and any payments are subject to and may be disclosed pursuant to the Texas Public Information Act; Tex. Gov. Code 552.

S. OMISSIONS:

If any punctuation, word, clause, sentence, or provision necessary to give meaning, validity, or effect to any portion of this Agreement shall be omitted here-from, then it is hereby declared that such omission was unintentional and that the omitted element shall be included in order to give meaning, validity, and/or effect to any portion of this Agreement.

T. REQUEST FOR PAYMENT SUBMISSION:

All request for rental, and/or other charges, and/or payments are to be made payable to Contractor by dated and signed invoice(s). Said invoice and/or request for progress payments shall be submitted in writing to **Webb County Early Headstart Childhood Education Program Director Ms. Aliza Oliveros/Webb County Headstart Dept.**, and/or its' designated and authorized representative, on behalf of Owner for review and approval of same. Upon review and approval of the request for payment by **Webb County Early Headstart Dept.**, on behalf of Owner, the Webb County Headstart Program Director shall then forward the approved request for the payment amount to the Webb County Business Office to process the monthly rental payment request. Payment will be mailed to Contractor or made available for pick up at the Webb County Business Office.

U. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES:

Contractor agrees to comply at all times with all federal, state, county, and/or City of Laredo building, development codes, city building permits, rules, regulations, ordinances and laws, and Contractor shall not permit the Premises or any part thereof to be used for (a) any offensive, noisy, or dangerous activity that would pose a health or safety risk; (b) the creation or maintenance of a public nuisance, (c) anything which is against public regulations or rules of any public authority at any time applicable to the Premises; or (d) any purpose or any

manner which will obstruct, interfere with, or infringe on the rights of other tenants or adjoining properties.

V. LEGAL CONSTRUCTION:

In case any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

W. AMENDMENT:

No amendment, modification, or alteration of the terms of this Agreement hereof shall be binding unless the same be in writing, dated subsequent to the date hereof, and approved by the Webb County Commissioner's Court and duly executed by both of the parties hereto.

X. TIME OF ESSENCE:

Time is of the essence of this Agreement.

Y. ADDITIONAL PROVISIONS:

Inconsistencies: Where there exists any inconsistency between this Agreement and other provisions of collateral contractual agreements that are made a part hereof by reference or otherwise, the provisions of this Agreement shall control.

Entire Agreement: This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written Agreement. No other prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless signed by both parties and attached hereto and/or embodied herein.

Confidentiality: Any confidential information provided to or developed by Consultant in the performance of this Agreement shall be kept confidential, unless otherwise provided by law, and shall not be made available to any individual or organization without the prior approval of **WEBB COUNTY**.

Headings: The headings used herein are for convenience of reference only and shall not constitute a part hereof or affect the construction or interpretation hereof.

Waiver: The failure on the part of any party to exercise or to delay in exercising, and no course of dealing with respect to any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies provided herein are cumulative and not exclusive of any remedies provided by law or in equity, except as expressly set forth herein.

Consequential Damages: Neither party shall be liable to the other for consequential damages, including, without limitation, loss of use or loss of profits, incurred by one another

or their subsidiaries or successors, regardless of whether such damages are caused by breach of contract, will-full misconduct, negligent act or omission, or other wrongful act of either of them.

Counterparts: This Agreement may be executed in any number of and by the different parties hereto on separate counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same document.

Terminology and Definitions: All personal pronouns used herein, whether used in the masculine, feminine, or neutral, shall include all other genders; the singular shall include the plural and the plural shall include the singular.

Rule of Construction: The parties hereto acknowledge that each party and its legal counsel have reviewed and revised this agreement, and the parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this agreement or any amendments or exhibits hereto.

IN WITNESS WHEREOF, the parties aforesaid have duly executed the foregoing instrument, or caused the same to be executed in duplicate originals on this ____ **day of SEPTEMBER, 2020.**

WEBB COUNTY, TEXAS

HON. TANO E. TIJERINA
WEBB COUNTY JUDGE
Date: September ____, 2020

EDUCATION CENTER AURA, INC.

Dr. Miroslava, Vargas, President
Education Center Aura, Inc.
Date: September ____, 2020

ATTESTED:

Margie Ramirez Ibarra
Webb County Clerk

APPROVED AS TO FORM:

Ray Rodriguez

Asst. General Counsel

Webb County Civil Legal Division*

*The General Counsel, Civil Legal Division's office, may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).

Passed & Approved by the Webb Co. Comm. Court on September 14th, 2020, Item No. ____.