

CITY OF SAN ANTONIO EARLY CHILDHOOD EDUCATION  
MUNICIPAL DEVELOPMENT CORPORATION

MEMORANDUM OF UNDERSTANDING

State of Texas           §  
  §  
County of Bexar       §

This Memorandum of Understanding (“MOU”) is entered into by and between the City of San Antonio Early Childhood Education Municipal Development Corporation (“Corporation”), a municipal development corporation created by the City of San Antonio (“City”), and the \_\_\_\_\_ Independent School District (“District”), a political subdivision of the State of Texas, (collectively referred to hereinafter as “the Parties”). The purpose of this MOU is to set forth the objectives, understandings, and agreements of the Parties in connection with the establishment and operation of the “Pre-K 4 SA” early childhood education initiative.

**1. RECITALS**

- 1.1. The Parties are “local governments”, and public education, in the context contemplated herein, is a “governmental function and service” as those terms are defined in the Texas Interlocal Cooperation Act, codified as Chapter 791 of the Texas Government Code.
- 1.2. The Texas Interlocal Cooperation Act authorizes any local government to contract or agree with another local government in accordance with the Act to perform governmental functions and services that each party to the contract is authorized to perform individually.
- 1.3. The Texas Education Code, Section 11.157, authorizes the board of trustees of an independent school district to contract with a public or private entity to provide educational services for the district.
- 1.4. The Texas Education Code, Section 29.153, requires a school district to offer prekindergarten education classes during a school year on a half-day basis to eligible children who are at least four years of age on or before September 1<sup>st</sup> if the district identifies at least fifteen eligible children.
- 1.5. The Texas Education Code, Section 29.1531, authorizes a school district to offer on a tuition basis or use other district funds to provide an additional half-day of prekindergarten education classes to eligible children under Section 29.153, and to children who are not eligible under Section 29.153.
- 1.6. The Texas Education Code, Section 42.003, entitles qualifying students who are enrolled in prekindergarten education classes in accordance with the Texas Education Code, Section 29.153, to the benefits of the Foundation School Program.

1.7. Texas Local Government Code, Chapter 379A, authorizes a municipality to establish a municipal development corporation, which may develop and implement programs for early childhood development, after-school programs for primary and secondary schools, and any other undertaking that the corporation's board determines will directly facilitate the development of a skilled workforce.

1.8. The City has established the Corporation, a municipal development corporation, for the limited purpose of developing and implementing an early childhood development program under Texas Revised Civil Statutes, Annotated Section 379A.051(a)(2).

1.9. Texas Local Government Code, Section 379A.052, authorizes a municipal development corporation to enter into a contract, memorandum of understanding, or similar agreement with a political subdivision in connection with a program authorized by Chapter 379A.

1.10. Texas Local Government Code, Section 379A.081, authorizes the City to levy a sales and use tax for the benefit of the Corporation, if the tax is authorized by a majority of the City's voters who vote at an election called for that purpose. A majority of the City's voters who voted in an election on November 6, 2012 have authorized the levy of a one-eighth cent sales and use tax, and the use of said tax for the purpose of supporting the "Pre-K 4 SA" early childhood education initiative.

## **2. PURPOSES OF EARLY CHILDHOOD EDUCATION INITIATIVE**

2.1 Research strongly supports the conclusion that early childhood interventions, particularly prekindergarten education in quality programs, is one of the best investments in the United States to improve educational outcomes. Attendance in quality prekindergarten education significantly increases high school graduation rates for at-risk children, significantly reduces later placement rates in special education programs, and dramatically reduces the likelihood of a student being retained in one or more grades in school.

2.2 The Corporation will work to achieve its purpose by investing in four distinct, but inter-related, priorities:

1. The Corporation will establish early learning centers to provide high quality prekindergarten education to eligible students in the City;
2. The Corporation will support increasing student achievement in existing prekindergarten and early childhood education programs in the City by investing in research based ongoing professional training for educators throughout the City;
3. The Corporation will provide funds to serve additional eligible children in high quality prekindergarten programs throughout the City.
4. The Corporation will provide funds to assist and supplement a limited number of non-eligible children in high quality prekindergarten programs throughout the city.

**3. PREKINDERGARTEN CENTERS OF EXCELLENCE**

3.1. The Corporation's Responsibilities:

3.1.1. The Corporation shall establish, prior to the beginning of the 2013-2014 school year, two early learning centers (individually "Center" and collectively "Centers"), and two additional Centers prior to the beginning of the 2014-2015 school year.

3.1.2. The two initial Centers each will serve approximately 350 children for the 2013-2014 school year, for a total of 700 children. The two additional Centers each will serve approximately 350 children for the 2014-2015 school year, for a total of 700 additional children. The Corporation intends to expand the four Centers in subsequent school years, with a goal of serving approximately 500 children in each Center, for a total of 2,000 children. The Corporation may establish additional Centers in subsequent school years.

3.1.3. In order to attend a Center, a child must be a resident of the City, must be enrolled in the District, must be four years of age on or before September 1<sup>st</sup>, and must be eligible for prekindergarten education classes and the benefits of the Foundation School Program. Actual selection of children to attend a Center shall be determined by the District, as described herein.

3.1.4. The Corporation shall allocate to the District for each school year a proportionate number of spaces in the Centers, expressed as a percentage of the total number of spaces established under Subsection 3.1.2, to be calculated by dividing the District's number of eligible children in the prior school year under Subsection 3.1.3 above by the total number of eligible children in the prior school year in all participating school districts, and then multiplying the resulting fraction by 90% of the total number of spaces in the Centers. If a participating school district does not use all of its allocated spaces in a school year, any remaining spaces shall be re-allocated to other participating school districts in the same percentages as the initial allocations.

3.1.5. The Corporation will fill the remaining 10% of the total number of spaces in the Centers by conducting a lottery of non-eligible children who apply to attend a Center. The Corporation may establish a sliding scale tuition schedule for such non-eligible children.

3.1.6. The Corporation shall be responsible for selecting the location of each Center, and shall provide an appropriate facility that complies with all applicable legal requirements. Further, the Corporation is responsible for all costs of operating each Center, including, but not limited to, maintenance, utilities, repairs and renovations, and security.

3.1.7. The Corporation shall be responsible for maintaining all enrollment, attendance, and other reports and records, and accounting required by the Texas Education Agency ("TEA"), and other applicable state and federal agencies.

3.1.8. For purposes of accountability under the Texas Education Code, Chapter 39, and for funding under the Foundation School Program, Chapters 41 and 42, a student who is provided prekindergarten education services in a Center shall be reported by the District as if the student was served at the student's home campus in the student's regularly assigned education program in the District, including a special education program where applicable. The District shall cooperate fully in making all required reports and in accepting such accountability. All Public Education Information Management System ("PEIMS") reporting requirements for a student placed in a Center shall remain the responsibility of the District. The Corporation shall submit to the District appropriate information to assist the District with making timely and accurate PEIMS reports throughout the duration of a student's attendance at a Center, including, but not limited to, student attendance and absence reports.

3.1.9. The Corporation shall prepare the annual budget for each Center, shall disburse and account for all funds as required by law, shall be responsible for professional and support personnel serving each Center, shall maintain all educational records applicable to the program, shall communicate with each participating school district regarding the status of each student served in a Center, and shall provide all necessary curriculum and other responsibilities normally associated with the administration and provision of education services.

3.1.10. The Corporation may contract with one or more participating school districts, by written agreement separate from this MOU, for the day-to-day operation of each Center and for the performance of any of the Corporation's responsibilities under this MOU.

3.2. District's Responsibilities:

3.2.1. The District shall establish a process to identify eligible children in accordance with Subsection 3.1.3 of this MOU for attendance at a Center.

3.2.2. The District shall make all reasonable efforts to apply for all available funding for a student receiving prekindergarten education services in a Center, including, but not limited to, funds based on average daily attendance under the Foundation School Program, and any state or federal funds for which the District may be eligible. All funds received by the District for a student attending a Center, including, but not limited to, the benefits of the Foundation School Program, shall be paid by the District to the Corporation.

3.2.3. For purposes of accountability under the Texas Education Code, Chapter 39, and for funding under the Foundation School Program, Chapters 41 and 42, a student who is provided prekindergarten education services in a Center shall be reported by the District as if the student was served at the student's home campus in the student's regularly assigned education program in the District, including a special education program where applicable. The District shall cooperate fully in making all required reports and in accepting such accountability. All PEIMS reporting requirements for a student placed in a Center shall remain the responsibility of the District. In accordance with Subsection

3.1.7 of this MOU, the Corporation shall provide the District with appropriate information to assist the District with making timely and accurate PEIMS reports throughout the duration of a student's attendance at a Center, including, but not limited to, student attendance and absence reports.

3.3. Special Programs:

3.3.1. Students with disabilities who attend a Center will be provided prekindergarten education services as determined by the District's Admission, Review and Dismissal ("ARD") Committee, and as articulated in the Individualized Education Program ("IEP") for the student, such that the student receives a free and appropriate public education as defined by state and federal laws, and as further provided herein. The IEP must delineate the projected date for the beginning of services, personnel who will provide direct and/or related services, the anticipated frequency, location and duration of services, and any modifications resulting from the student's attendance at a Center.

3.3.2. The District remains responsible to ensure that appropriate programs and services, as articulated in a student's IEP, are provided at the Center. A Center will have special education personnel as part of the normal operation of the Center. A Center will have necessary personnel and services to provide the related services of counseling, speech therapy, and sign language interpreters. All other related services articulated in a student's IEP will be provided by the District.

3.3.3. A Center's principal, chief administrator, or other designated person will notify the District if the Center is unable to implement the services assigned to it in a student's IEP. The District will convene an ARD Committee meeting, including appropriate Center personnel, to reconsider the placement of the student at the Center, or amend the IEP as deemed necessary for the student to remain at the Center. Any amendment to a student's IEP will be effectuated through the District's ARD Committee, in coordination with the Center.

3.3.4. If a student attending a Center is suspected of having a disability under the Individuals with Disabilities Education and Improvement Act ("IDEIA"), a Center's principal chief administrator, or other designated person will notify the District and the District's Child Find procedure will be initiated to resolve whether an assessment to determine eligibility is necessary. The Center's staff will assist with the completion of necessary referral documents. Any student determined to qualify for services and protection under IDEIA or Section 504 shall be afforded all lawfully required services and protections by the District to the extent the Center cannot provide the service and the District is notified of the need to provide the service.

3.3.5. If a student attending a Center has been identified as a second language learner, the District shall obtain appropriate documentation from its Language Proficiency Assessment Committee ("LPAC") with regard to the student's dominant oral language, the student's level of oral proficiency, and the type, level, frequency and duration of

instruction and/or support services needed. A Center will provide direct instruction by certified bilingual/ESL teachers.

3.3.6. The Corporation may provide transportation from participating school districts to the Centers, for the convenience of students attending the Centers. However, the Corporation is not legally required to provide transportation for all students attending the Centers. The Corporation may contract with one or more participating school districts, or with other governmental entities, to provide some transportation to the Centers.

3.4. Assessment and Evaluation:

3.4.1. The Corporation will develop, identify, purchase, or otherwise acquire the use of a common assessment process that will be used in all Centers to evaluate the performance and progress of students, to provide consistent professional development and assistance to educators at the Centers, and to evaluate the effectiveness and cost-efficiency of the program. The assessment process will measure and observe the teaching and learning process of both individual students and groups of students at the Center multiple times during a school year. The assessment process will use direct assessment of students, observational assessment of classes, and program assessment. The assessment process will provide for assessment of students in English and Spanish. Assessment of students will focus on the students' progress and development in literacy and pre-literacy skills, including language acquisition, vocabulary development, and phonological awareness, and numeracy/math. The assessment process will compare the progress and development in kindergarten and grades 1, 2 and 3 of students who attended the Centers to the progress and development of students who did not attend prekindergarten.

3.4.2. The District will continue to assess the progress and development of students who attend a Center and who subsequently attend school in the District. The District will provide information about such students' progress and development to the Corporation for kindergarten through third grade, including the students' performance on the third grade STAAR examination, or its replacement.

3.4.3. The Corporation will consult with participating school districts in the development, identification, purchase or other acquisition of the common assessment process. The goal is for the assessment process ultimately to be adopted and used by participating school districts in the districts' own prekindergarten programs, so as to provide a common measure of the performance, progress and development of young students in Bexar County. With this goal in mind, the Corporation will select an assessment process that is scalable, cost-efficient, research and data based, and non-disruptive of the educational process in classrooms.

4. **EARLY CHILDHOOD GRANTS**

4.1. After the four Centers established under subsection 3.1.1 all have operated for at least one full school year, the Corporation may establish a program to provide grants to qualifying school districts, open enrollment charter schools, and nonprofit organizations

beginning the succeeding school year for the purposes of increasing the number of children participating in high quality prekindergarten programs and also improving the quality of such programs.

4.2. Prior to providing any such grants, the Corporation shall develop one or more requests for proposals and evaluation procedures that are objective and consistent with current research and best practices regarding early childhood education.

4.3. A school district, open enrollment charter school, or nonprofit organization located wholly or partly within the City may submit a proposal to the Corporation for consideration. A proposal may include such services such as: expanding half-day prekindergarten programs to full-day programs; enrolling additional children in full-day or half-day programs; improving adult-to-child ratios in prekindergarten programs; providing extended day and/or extended year prekindergarten programs; professional development for teachers in kindergarten and grades 1, 2 and 3.

4.4. The Corporation may award grants to qualifying applicants for one to three years; provided that any grant for more than one year must reserve to the Corporation the ability to terminate the grant at the end of each school year, based on upon the Corporation's evaluation of the performance of the program funded by the grant.

4.5. The Corporation shall establish an objective process consistent with current research and best practices to evaluate the performance of a program funded by a grant from the Corporation. The Corporation may contract with other public or private entities to assist it with such evaluation.

4.6. The Corporation has the sole authority to evaluate proposals for grants, to determine the amount and length of grants that are awarded, and to evaluate the performance of a program funded by a grant. No school district, open enrollment charter school, or nonprofit organization has an entitlement, property interest, or any other legally recognized or enforceable interest in receiving a grant from the Corporation.

**5. PROFESSIONAL DEVELOPMENT**

5.1. The Corporation may provide professional development opportunities for educators in early childhood education programs, including public school districts, as defined by the Texas Education Code, and private schools located in the City of San Antonio. The professional development opportunities will include, but will not be limited to: utilizing the Centers as "lab schools," in which educators work with master teachers in the Centers' classrooms; side-by-side teacher mentoring; quarterly training events, and summer in-service training programs.

**6. GENERAL PROVISIONS**

6.1 Change in Participating School Districts:

6.1.1. A school district that does not initially elect to participate in the early childhood initiative established under this MOU may apply to participate in a subsequent year by submitting a written request and a properly approved and executed copy of this MOU to the Corporation no later than March 1<sup>st</sup> preceding the start of the next school year. The request must be approved by the applying school district's board of trustees and signed by both the district's board president and superintendent of schools. The Corporation shall consider the school district's application at the next regularly scheduled meeting of the Corporation's Board, or at a special meeting called for this purpose. If the Corporation approves the school district's application to participate in the early childhood initiative, the district's participation will be effective at the beginning of the next school year. For the next school year after an additional school district begins to participate in the early childhood initiative, spaces in the Early Childhood Centers will be reallocated in accordance with the formula set forth in Subsection 3.1.4 of this MOU.

6.1.2. A school district that is participating in the early childhood initiative established under this MOU may withdraw from such participation at the end of a school year by giving prior written notice to the Corporation thereof no later than March 1<sup>st</sup> of the school year in which notice is given. The notice of withdrawal must be signed by the withdrawing school district's board president and superintendent of schools. For the next school year beginning after a school district withdraws from participation in the early childhood initiative, spaces in the Early Childhood Centers will be reallocated to the remaining participating school districts in accordance with the formula in Subsection 3.1.4 of this MOU. A withdrawing school district shall remain responsible for all of its obligations under this MOU prior to the effective date of withdrawal. Further, a withdrawing school district shall reasonably cooperate with the Corporation after the effective date of withdrawal with regard to settle-up of funding, correction and/or completion of student records and other information, audits, and similar matters for which the Corporation requests the withdrawn district's assistance.

6.2 Partial Invalidity:

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

6.3 Integration and Complete Agreement:

6.3.1. This MOU, together with any instruments or documents expressly incorporated herein by reference, and any attachments hereto, contains the entire agreement between the parties with respect to the subject matter hereof. No other agreement, statement, or promise made by or to any officer, employee, official, or agent of any party that is not

contained herein shall be of any force and effect. Any modifications to the terms of this MOU must be in writing and approved and signed by the parties.

6.4 Advisory Board:

6.4.1. The Corporation may create an Advisory Board to provide a forum for representatives of the participating school districts, or other entities, to meet and discuss issues related to the operation of the Corporation, the Early Childhood Centers, and other aspects of the operation of the early childhood initiative established by this MOU. Each participating school district shall designate a representative to serve on the Advisory Board. The Advisory Board shall meet not less than once a semester of each school year during the term of this MOU. Recommendations of the Advisory Board shall be forwarded in writing to the Corporation's Board, and such Board shall consider all such recommendations relating to the early childhood initiative.

6.5 Liability and Immunity:

6.5.1. Each party shall be responsible for the costs of its own defense and/or representation in any dispute, lawsuit, investigation or other proceeding relating to any aspect of the early childhood initiative established in accordance with this MOU. It is expressly understood and agreed that no party to this MOU waives any immunity, defense, or other protection to which it may be entitled under either state or federal law, as a result of its participation in this MOU and the early childhood initiative.

6.5.2. The parties acknowledge they are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001, *et seq.*, and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury, or death. The District and Corporation shall each promptly notify the other in writing of any claim or demands that become known against them in relation to or arising out of activities under this MOU.

6.5.3. The parties further acknowledge that they each maintain insurance for general liability and worker's compensation claims and causes of action to meet their statutory obligations.

6.6 Independent Relationship:

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

6.7 Assignment:

6.7.1. This MOU is not assignable by any party without the prior written consent of the other parties.

6.8 Construction of MOU:

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

6.9. Applicable Law:

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

6.10 Open Records:

6.10.1 The Public Information Act, Government Code Section 552.021, requires the Corporation and District to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if any party hereto receives inquiries regarding documents within its possession pursuant to this MOU, said party shall, within twenty-four (24) hours of receipt by the designated officer for that party who handles public information requests (“designated public information liaison”), provide notice of such requests to the other party for the coordination of disposition of that request. For the purposes of communicating and coordinating with regard to public information requests, all communications shall be made to the designated public information liaison for each party. Each party shall designate in writing to the other party the public information liaison for its organization and notice of a change in the designated liaison shall be made promptly to the other Party.

6.11 Student Records:

6.11.1 The Corporation and the District agree that they will maintain all educational records of any students attending a Center, or who participate in any program funded in whole or in part by the Corporation through the early childhood initiative, in accordance with the Family Educational Rights and Privacy Act of 1974 ("FERPA").

6.12 Notice:

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

**If to the Corporation**

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San Antonio, TX 782--

**If to the DISTRICT:**

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ISD Superintendent  
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San Antonio, TX 782--

By : \_\_\_\_\_  
Board President

By: \_\_\_\_\_  
Chair, Board of Directors

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

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

By: \_\_\_\_\_  
Superintendent of Schools

By: \_\_\_\_\_  
Executive Director

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

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

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