

AGREEMENT

THIS AGREEMENT (the "Agreement") made and entered into this ____ day of _____, 2011, by and between the City of Overland Park, Kansas (the "CITY"), and Head Start of Shawnee Mission, Inc. a non-profit organization ("HSSM").

WHEREAS, HSSM has expanded its service to Johnson County to include an Early Head Start program for low income families with infants and toddlers; and

WHEREAS, HSSM recognizes the benefits to children, families, and the community that an Early Head Start Program provides for the physical, social and emotional development of very young children; and

WHEREAS, the CITY has approved and proposes to make a grant of up to **\$17,808** from the Community Development Block Grant (CDBG) program, to provide child care scholarship assistance for the Early Head Start program for lower income Overland Park families, as described in the grant proposal dated March 24, 2010.

NOW, THEREFORE, in consideration of the promises and covenants of this Agreement, the parties hereto agree as follows:

I. TERM

The term of this Agreement shall be for the period commencing on April 1, 2011, and ending March 31, 2012, subject to the terms and conditions hereinafter contained.

II. ELIGIBILITY

HSSM shall provide eligibility determination for applicants for the scholarship program funded by this grant. The following factors will be used to determine eligibility:

- a. The applicant is the parent or legal guardian of the scholarship recipient(s) and is a resident of the CITY;
- b. The scholarship recipient(s) resides with the applicant; and
- c. The total income for all members of the applicant's household does not exceed 80% of the median income of the Kansas City metropolitan area, as determined by the Secretary of Housing and Urban Development.

III. FUNDING

The CITY agrees to disburse to HSSM in quarterly payments a grant of up to **\$17,808** from fiscal year 2011 CDBG funds, payment subject to conditions hereinafter stated and those applicable regulations as established by the Department of Housing and Urban Development, Catalog of Federal Domestic Assistance Number 14-218.

The CITY agrees to disburse the CDBG funds on the following schedule:

Funds shall be disbursed by the CITY upon request by HSSM, based on funds expended and costs incurred, quarterly. A final request for funds is to be made within thirty (30) days of the termination of this Agreement.

HSSM shall provide to the CITY, within thirty (30) days of the termination of this Agreement, a full accounting of the expenditure of all grant funds. All grant funds unexpended as of March 31, 2012, shall be retained by the CITY as unexpended funds.

Any program income derived from the Community Development Block Grant shall be reported to the CITY and shall be used by HSSM for purposes as outlined in this Agreement and subject to the requirements and conditions herein specified and with applicable federal requirements.

The cost and liability to the CITY for work under this Agreement shall not exceed the amount of fiscal year 2011 CDBG funds authorized and available to the CITY for this project and shall be subject to the release of funds by the Department of Housing and Urban Development.

IV. RECORDS AND REPORTS

HSSM agrees to maintain records and submit reports to the city on a quarterly basis. Such records and reports, at a minimum, shall include services provided and client totals by low/moderate income, race, ethnic group, head of household, city of residence and other information as may be required by the CITY and shall be in a form as approved by the CITY. These records shall also include all documentation pertaining to the applicant's eligibility for the scholarship program funded by this grant. HSSM shall provide the CITY with access to all records upon request. HSSM agrees to maintain all records for five years following the termination of this Agreement.

V. SPECIAL REQUIREMENTS

HSSM agrees to comply with applicable CITY zoning ordinances, building code requirements and other applicable city and state codes, ordinances, or licensing requirements. HSSM understands that execution of this Agreement is in no way a waiver or approval of any provision of this section.

HSSM understands and agrees that the administration and expenditure of funds from this grant shall be in compliance with CDBG regulations; provided further, HSSM agrees to be solely responsible for ensuring said compliance. HSSM further certifies that it will comply with the applicable provisions of the Code of Federal Regulations 24 CFR, Part 570, to include, but not limited to, 24 CFR, Section 570.502, and Office of Management and Budget Circulars, to include, but not limited to, Circular A-133: Audits of States, Local Governments, and Non-Profit Organizations, revised June 24, 1997; provided further, that HSSM agrees to comply with applicable federal law and regulations described in 24 CFR, Part 570, Subpart K including the Conflict of Interest provisions at 24 CFR Part 570, Subpart K, 570.611.

Title 31 U.C.S., Section 1352, requires all subgrantees, contractors, subcontractors, and consultants who receive federal funds via the CITY to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the award of any federal contract, grant, loan, or cooperative agreements.

In addition, contract applicants, recipients, and subrecipients must file a form disclosing any expenditures they make for lobbying out of non-federal funds during the contract period.

Necessary forms are available from the Program Grant Coordinator, Community Planning and Services of the City and must be returned to the CITY with other contract documents. It is the responsibility of the general contractor to obtain executed forms from any subcontractors who fall within the provisions of the Code and to provide the CITY with the same.

VI. NON-DISCRIMINATION

A. Non-Discrimination. HSSM agrees that:

1. During the performance of this Agreement or any subcontract resulting thereof, HSSM, all subcontractors and vendors shall observe the provisions of the Kansas Acts Against Discrimination (K.S.A. 44-1001, *et seq.*) and Title VII of the Civil Rights Act of 1964 as amended and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, national origin, age, disability, ancestry, veteran status, or low income;
2. In all solicitations or advertisements for employees HSSM, all subcontractors and vendors shall include the phrase “equal opportunity employer” or a similar phrase to be approved by the Kansas Human Rights Commission (“Commission”);
3. If HSSM, a subcontractor or vendor fails to comply with the manner in which HSSM, subcontractor or vendor reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, HSSM, subcontractor or vendor shall be deemed to have breached the present Agreement, and it may be canceled, terminated or suspended, in whole or in part, by the CITY;
4. If HSSM, a subcontractor or vendor is found guilty of a violation of the Kansas Acts Against Discrimination under a decision or order of the Kansas Human Rights Commission which has become final, HSSM, subcontractor or vendor shall be deemed to have breached this Agreement, and this Agreement may be cancelled, terminated or suspended in whole or in part by the CITY;
5. HSSM shall include the provisions of paragraphs 1 through 4 above in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

B. Age and ADA Discrimination. HSSM further agrees that HSSM shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 *et seq.*), and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*) as well as all other federal, state and local laws, ordinances and regulations applicable to this Project, and shall furnish any certification required by any federal, state or local laws, ordinances and regulations applicable to this Project and shall furnish any certification required by any federal, state or local governmental agency in connection therewith.

VII. GENERAL ADMINISTRATION

It is understood and agreed that the written terms and provisions of the Agreement shall supersede all prior verbal statements of any and every official and/or other representative of the CITY and HSSM, and such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any way, the written Agreement.

The parties agree that neither party shall assign or transfer their interest in this Agreement without the written consent of the other.

The failure of the CITY or HSSM to insist on strict performance of any of the terms and conditions herein shall not be deemed a waiver of the right to demand strict performance of that or any other provision at any time thereafter.

HSSM agrees to defend, indemnify, and hold harmless the CITY and its agents and/or employees from any and all claims, settlements, and judgements for personal injury, bodily injury, property damage, and/or death arising out of HSSM's or any of its agents', servants', and/or employees' negligent acts and/or failures to act in the performance of this Agreement.

HSSM shall maintain, either through traditional insurance, in whole or in part, or through a risk management reserve fund, in whole or in part, coverage of the types and in such amounts as may be necessary to protect itself and the CITY against all hazards or risks of loss as hereinafter specified, whether such hazards or risks of loss be generated by HSSM, its officers, employees, or agents, and shall provide the CITY with evidence of such coverage.

- 1) Commercial General Liability - \$500,000 combined single limit per occurrence for bodily injury, personal injury, and property damage.
- 2) Workers' Compensation and Employers' Liability
 - a) Workers' Compensation - Statutory
(Include all states' endorsement)
 - b) Employer's Liability - \$100,000 Each Occurrence

Comprehensive Automobile Liability - \$500,000 combined single limit per occurrence written in a comprehensive form, protecting the COUNTY against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles and shall cover the operation on and off the site of any automobile, whether it is owned, non-owned, or hired.

VIII. Termination

A. Termination for Convenience

The CITY may, when the interests of the City so require, with 60 days notice, terminate this contract in whole or in part, for the convenience of the CITY. The CITY shall give written notice of the termination to HSSM, specifying that the contract, or a designated part thereof,

shall be terminated; and when termination becomes effective, HSSM shall incur no further obligations to the CITY in connection with the terminated work or services; and on the date set in the notice of termination, HSSM will stop work or services on behalf of the CITY to the extent specified.

In the event the contract is terminated for convenience of the CITY, the CITY will disburse funds for costs incurred and funds expended by HSSM prior to the date of termination.

B. Termination for Default

If HSSM is violating any of the conditions of this Agreement or is executing the same in bad faith, the CITY may serve written notice on HSSM of its intention to terminate the contract and unless, within seven (7) days after the serving of the notice, a satisfactory arrangement has been made for the continuance thereof, this contract shall terminate. The CITY retains the right to withhold the grant or any portion thereof for damages incurred as a result of HSSM's breach of this Agreement.

IX. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

X. SECTION HEADINGS AND SUBHEADINGS

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

XI. WAIVER

The CITY's failure to act with respect to a breach by HSSM does not waive its right to act with respect to subsequent or similar breaches. The failure of the CITY to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

XII. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the CITY and HSSM for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the CITY and HSSM with respect to this Agreement.

XIII. GOVERNING LAW

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Kansas.

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Executed in triplicate the date first above written.

CITY OF OVERLAND PARK, KANSAS

HEAD START OF
SHAWNEE MISSION, INC.

By _____
Carl Gerlach, Mayor

By _____
Brian Clark, Board President

ATTEST:

ATTEST:

Marian Cook, City Clerk

Terrie VanZandt-Travis, Executive Director

APPROVED AS TO FORM:

Stephen B. Horner
Senior Assistant City Attorney