



City of Seattle

Department of Education and Early Learning
 700 5th Avenue, Suite 1700
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 Seattle, Washington 98124-6965
 (206) 233-5118

SEATTLE PRESCHOOL PROGRAM GENERAL TERMS AND CONDITIONS

This agreement of General Terms and Conditions ("Agreement") is made between the City of Seattle ("City"), acting by and through its Director of the Department of Education and Early Learning ("Director"), and the Seattle School District #1 (hereinafter "Agency" or "SPS").

The parties hereto agree as follows:

The terms and conditions of this Agreement shall govern the provision of Seattle Preschool Program ("SPP") Levy classrooms. This Agreement shall be effective upon execution by the parties and shall be in effect for a term beginning September 1, 2015 and expiring on August 31, 2016 unless terminated by mutual agreement, as described in Section 550. Barring any exception, preschools meeting their annual performance targets will continue to receive Levy funding as part of Seattle Preschool Program for the remainder of the Levy, through the 2018 – 2019 school year.

I. PERFORMANCE TARGETS AND SCOPE OF WORK

Section 100. Performance Targets and Scope of Work

Throughout the term of this Agreement, the Agency shall support the City's Seattle Preschool Program Levy Goals included in Exhibit A and achieve the Performance Targets described in Exhibit C to this Agreement as an Agency provider of SPP by providing the Scope of Work ("Work") implementing a Program consistent with the description set forth in Exhibit B to this contract.

Section 110. Identification of Investment Source

In all significant communications with members of the public relating to the scope of work established in the Agreement, the Agency shall reference the City's investment through the Seattle Preschool Program Levy, and/or the Early Childhood Education and Assistance Program. The Agency shall also post a notice to this effect in a prominent place at each Agency location where programs are provided.

II. PAYMENT, RECORDS AND AUDIT

Section 200. Payment

All payments to the Agency for work satisfactorily performed or costs eligible to be reimbursed pursuant to this Agreement will be made directly to the Agency and directed to the attention of the individual or organization specified on the Invoice Payment Form for the Agreement unless the Agency requests otherwise. In no case shall payments exceed the maximum set forth in the Agreement.

Section 210. Method of Payment

As a condition of payment under this Agreement, the Agency shall submit properly executed invoices monthly and such accompanying performance reports and work statements as required by any tracking program performance requirements of the Agreement. All invoices, performance reports and work statements shall bear the Agency's name and address and the Agreement contract number. Invoices must be signed by an authorized representative of the Agency, who shall verify that the invoiced services have been performed.

Section 220. Record and Fiscal Control System

The Agency shall maintain its financial records and fiscal control systems in a manner that meets the approval of the Director, the City Auditor and the Washington State Auditor; it shall maintain personnel and payroll records to adequately identify the source and application of all funds received under this Agreement; withhold income taxes; pay employment (social security), unemployment compensation, industrial insurance (worker's compensation) and other taxes as may be due; and unless exempt, procure and maintain a City of Seattle Business License. The Agency shall maintain an effective system of internal control to assure that funds provided through the City are used solely for authorized purposes, including when requested by the City, fidelity bonding of personnel with fiscal responsibilities.

Section 230. Access to Records; Audits, Retention of Records

- A. The City, its designated agents and funding entities shall have access at any time during normal business hours and as often as necessary to any bank account and Agency books, records, documents, accounts, files, reports, and other property and papers of the Agency relating to the services to be provided under the Classroom Service Agreement for the purpose of making an audit, review, survey, examination, excerpt or transcript.
- B. The Agency shall submit to the City copies of any audit pertaining to SPP Levy, , accompanying management letter, review or consultant report of funds administered by the Agency that was conducted at the direction of other entities or the Agency's Board of Directors. Any such document shall be submitted to the City within thirty (30) days after the Agency receives the report.
- C. At its discretion, the City may require the Agency to obtain an audit that covers critical financial and compliance issues identified by the City. If requested by the City, the audit shall be prepared by an independent CPA according to procedures established by the American Institute of Certified Public Accountants. If the City requests such an audit, the City will be responsible for the cost.
- D. Records that document financial and/or program support of investments must be retained for the entire length of the program or levy and an additional 6 years afterwards. Records must be accessible for the entire length of the retention policy. If an agency is unable to maintain the records for the length of the retention policy, they must notify the City of Seattle's Department of Education and Early Learning.

Section 240. Notice Affecting Performance

The Agency shall notify the Director of any matters that could adversely affect the Agency's ability or eligibility to continue to achieve the Performance Targets

identified in this Agreement, and shall do so immediately after the Agency's discovery of the same.

III. ADDITIONAL TERMS OF PERFORMANCE

Section 300. Non-Discrimination/Equality in Contracting

Without limiting the generality of Section 500 below, the Agency shall comply with the following non-discrimination and equality in contracting provisions mandated by federal and state laws and City ordinance.

- A. The Agency will comply with all applicable provisions of the Americans with Disabilities Act in performing its obligations under this Agreement, and shall provide such reports and information relative to the accessibility of client services as may be requested by the Director.
- B. The Agency shall not discriminate against any employee or applicant for employment because of race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Agency shall affirmatively try to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical handicap. Such efforts shall include, but not be limited to the following: employment, upgrading, demotion, transfer; recruitment, layoff, rates of pay, or other forms of compensation and training.
- C. The foregoing provisions of this section shall be inserted in all subcontracts for the Work covered by this Agreement.
- D. Equal Benefits; Compliance with SMC Ch. 20.45:
The City acknowledges that as a public entity, the Agency is exempt from the requirements of SMC Ch. 20.45 and has the right to develop and implement its own program regarding equal benefits for Agency employees with domestic partners. The City recognizes that the Agency has its own program and accepts the Agency's existing program. At the City's request, the Agency shall provide complete information and verification of the Agency's equal benefits program. Failure to cooperate with such a request shall constitute a material breach of this Contract. *(For further information about SMC Ch. 20.45 and the Equal Benefits Program Rules call (206) 684-0430 or review information at [http://www.seattle.gov/contracting/equalbenefits.htm/.](http://www.seattle.gov/contracting/equalbenefits.htm/))*
- E. Non-Discrimination in Client Services: The Agency and each of its subcontractors shall not on the grounds of race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical handicap, illegally deny an otherwise qualified individual any services or other benefits provided under this Agreement.

Section 310. Efforts to Use Women and Minority Business Enterprises

- A. The City acknowledges and accepts the Agency's outreach program for hiring of minority and women employees. With respect to subcontracting of services

EXHIBIT B

provided under this Agreement, the Agency shall use affirmative efforts to promote and encourage participation by women and minority businesses. Agency agrees to make such efforts as a condition of this Agreement.

- B. Outreach efforts may include the use of solicitation lists, advertisements in publications directed to minority communities, breaking down total requirements into smaller tasks or quantities where economically feasible, making other useful schedule or requirements modifications that are likely to assist small or WMBE businesses
- C. Sanctions for Violation: Any violation of the mandatory requirements of the provisions of this section, or a violation of SMC Ch. 14.04, SMC Ch. 14.10, SMC Ch. 20.42, or other local, state or federal non-discrimination laws shall be a material breach of contract for which the Agency may be subject to damages and sanctions provided for by the Agreement and by applicable law. If the Agency is found to be in violation of the requirements, it shall be subject to debarment from City contracting activities in accordance with SMC Ch. 20.70.

Section 320. Prohibited Interlinkings

No person shall, as a condition to receiving services from the Agency funded by the City through this Agreement, be required to pay any fees other than those contemplated and included by specific reference in the Agreement, secure a membership in the Agency or an affiliated organization, be solicited to attend a religious service or subjected to religious instruction; nor shall any person be subjected to discrimination on account of a failure to make extra payments or to participate in such Agency activities.

Section 330. Status of Agency Employees

No employee, agent or volunteer retained by the Agency shall be deemed or represent herself or himself to be an employee or agent of the City.

In the performance of the Agreement, each party hereto will be acting in its individual capacity and not as an agent, employee, partner, joint venture or associate of the other. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. The Agency's staff shall work under the direction and control of Agency.

Section 340. Workforce Diversity

The City encourages the Agency to employ a workforce reflective of the region's diversity.

Section 350. Grievances by Participants

The Agency will establish a system through which applicants for and recipients of services under this Agreement may present grievances about the activities of the Agency or any of the Agency's subcontractors. The Agency will make all reasonable efforts to address and resolve the concerns raised by recipients of services.

IV. INDEMNIFICATION and INSURANCE

Section 400. Indemnification

The Agency shall defend, indemnify and hold the City and its employees, elected officials, and agents harmless from all losses, liabilities, claims, costs (including attorneys' fees), actions, or damages of any sort whatsoever arising out of: (i) the performance of the Work by the Agency, its officers, employees, subcontractors,

agents or volunteers; (ii) any act, omission, or willful misconduct of Agency, its officers, employees, subcontractors, agents, or volunteers; or (iii) the Agency's breach of this Agreement. The foregoing indemnity is expressly intended to and shall constitute a waiver of Agency's immunity under Washington's Industrial Insurance Act, RCW Title 51, but only with respect to the City and to the extent necessary to provide City with a full and complete indemnity from claims made by Agency's employees. The Agency acknowledges that the foregoing obligations were mutually negotiated. The parties further agree that the provisions of this section shall survive any termination or expiration of this Agreement for the duration of any limitation period established by law.

Section 410. Insurance

The City and the Agency each accepts the other's programs of self-insurance.

V. GENERAL CONDITIONS

Section 500. Other Legal Requirements

- A. General Requirement: The Agency, at no expense to the City, shall comply with all applicable laws, statutes, ordinances, rules, regulations, and administrative orders of the United States, the State of Washington, and the City of Seattle. Without limiting the generality of this paragraph, the Agency shall specifically comply with the following requirements of this section.
- B. Licenses and Similar Authorizations: The Agency, at no expense to the City, shall secure and maintain in full force and effect during the term of this Agreement all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.
- C. Americans with Disabilities Act: The Agency shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Agreement. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Agreement.

Section 510. Identity of Program Participants/Benefits Recipients

The use or disclosure by any party of any identifying information concerning the identity of any participant in the program(s), or any of the services or benefits provided under this Agreement for any purpose not directly connected with the administration of the City's or Agency's responsibilities with respect to services provided under this Agreement, is prohibited except on written consent of the participant or recipient or client, his or her attorney, or responsible parent or guardian or except as otherwise may be required by law.

Section 520. Copyrights and Patents

- A. If the Agency's performance of services under this Agreement results in a book or other copyrightable material, the author is free to copyright the work; but the City reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use all such copyrighted material and all materials which can be copyrighted.

Section 530. Alterations or Variations

No other alteration or variation of the terms of, or departure from, or change authorized in the performance contemplated by this Agreement(s) shall be valid

unless made by formal written amendment and signed by authorized representatives of both parties.

Section 540. Restrictions Upon Subcontracting, Transfer

The Agency shall not assign or subcontract any of its rights or obligations under this Agreement without the prior written approval of the City. Any such approved assignment or subcontract shall be subject to each provision of this Agreement and any procurement procedures required by the City, the State of Washington or the United States. The Agency shall not subcontract with any party which is debarred, suspended or otherwise excluded from, or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension." In the event of any approved assignment or subcontract, the City shall continue to hold the Agency responsible for proper performance of the Agency's obligations under this Agreement.

Section 550. Termination and Suspension

- A. For Cause: The City may terminate this Agreement if the Agency fails to perform any of the terms or conditions of this Agreement, and such failure has not been corrected to the City's reasonable satisfaction within a reasonable time period of no less than ten (10) days, but no more than thirty (30) days, after receiving notice specifying such failure. If the City terminates the Agreement for cause, the City shall be entitled to all remedies available at law or equity. Upon termination, the Agency may immediately stop performance of all work under this Agreement.
- B. For Reasons Beyond Control of Parties: Either party may terminate this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such party's reasonable control, such as but not limited to, an act of nature; war or warlike operation; civil commotion; riot; labor dispute including strike, walkout or lockout; sabotage; or, superior governmental regulation or control. Upon termination, the Agency may immediately stop performance of all work under this Agreement.
- C. Loss of Funds: In the event that, for any reason, federal, state or local funds allocated to or by the City for services contracted under this Agreement are or become no longer available to the City for the purpose of conducting the program/project or compensating the Agency, the City may suspend without recourse the Agency's obligation to render services to the City and the City's obligation to pay for further services, by providing written notice to the Agency specifying the effective period of such suspension. Any such suspension shall have no effect on the Termination Date. Alternatively or subsequently, the City may terminate the Agreement.
- D. By Mutual Agreement. Either party may terminate this Agreement for any reason at the end of a quarter term upon sixty (60) days written notice to the other party. In addition, the Agency may terminate this Agreement at any time if it determines that such action is necessary for the health, safety, or education of students or staff.
- E. Notice: Notice of termination pursuant to A, B, or C of this section shall be given by the party terminating this Agreement to the other not less than five (5) business days prior to the effective date of termination.

F. Actions Upon Termination: In the event of termination not the fault of the Agency, the Agency shall be paid for the services properly performed prior to termination together with any reimbursable expenses then due and together with any costs necessarily incurred to terminate the services, but in no event shall such compensation exceed the maximum compensation to be paid under this Agreement. The Agency agrees that this payment shall fully and adequately compensate the Agency and all subcontractors for all costs, expenses, losses, liabilities, damages, taxes and charges of any kind whatsoever (whether foreseen or unforeseen) attributable to the termination of this Agreement.

Section 560. Future Support

The City makes no commitment of future Agency support and assumes no obligation for future support of the services and activities contracted for under this Agreement, except as may be specifically provided for therein.

Section 570. Reservation of Rights

Neither payment by the City nor performance by the Agency shall be construed as a waiver of either party's rights or remedies against the other. Failure to require full and timely performance of any provision, at any time, shall not waive or reduce the right to insist upon complete and timely performance of such provision thereafter.

Section 580. Severability

If any provisions of this Agreement are held legally unenforceable or invalid, the remainder of this Agreement shall not be affected thereby, if such remainder would then continue substantially to serve the purposes and objectives originally contemplated.

VI. SPECIAL CONDITIONS

Section 600.

Requirements unique to a program’s funding source will govern the scope of work and will be detailed in this Agreement. When a program is funded by multiple sources, any conflicts that occur will be resolved first by City of Seattle Ordinance requirements, followed by the SPP Implementation Plan followed by the SPP Partnership Agreement requirements.

VII. SIGNATURES

IN WITNESS WHEREOF, the parties have executed this Agreement by having their representatives affix their signatures below.

SEATTLE SCHOOL DISTRICT #1

THE CITY OF SEATTLE

By

By

Holly Miller, Interim Director
Department of Education and Early Learning

Name (Typed)

Name (Typed)

Date

Date

Address

PO Box 94649

Address
Seattle, WA 98124-4649

EXHIBIT B

City, State, Zip Code

City, State, zip code

Phone Number (*Include Area Code*)

206-684-4508

Phone Number

E-Mail Address (*Required*)

holly.miller@seattle.gov

E-Mail Address (*Required*)