

## **MEMORANDUM OF UNDERSTANDING**

This document is a Memorandum of Understanding (this "Memorandum of Understanding") between Denton Independent School District ("DISD") and Fred Moore Day Nursery School, Inc. ("FMDNS") and is dated May \_\_\_\_\_, 2015.

**WHEREAS**, DISD is an independent school district organized and existing pursuant to the laws of the State of Texas and has its main administrative offices situated at 1307 North Locust, Denton, Denton County, Texas;

**WHEREAS**, DISD's mission is to empower lifelong learners to be engaged citizens who positively impact their local and global community;

**WHEREAS**, FMDNS was founded in the early 1950s as a non-profit childcare center, exempt from Federal income taxation under §501(c)(3) of the Internal Revenue Code, that offers comprehensive, affordable, and well-balanced childcare program for children from infancy through kindergarten age with a goal to help every child develop the intellectual and social skills necessary to excel in kindergarten and beyond and has its main administrative offices at 821 Cross Timbers, Denton, Denton County, Texas;

**WHEREAS**, FMDNS is licensed by the State of Texas pursuant to the Human Resources Code, Chapter 42, and is a provider of Child Care Services;

**WHEREAS**, DISD has the duty to seek working relationships with public entities to make effective use of resources and to serve the needs of public school students in the community;

**WHEREAS**, DISD and the FMDNS, both recognizing the significance, the importance, and the value of early childhood education, began their collaboration in the 1990's with DISD conveying an unneeded portion of its educational facilities to FMDNS, which serves as FMDNS's current facility, situated on Cross Timbers, in Denton, Texas;

**WHEREAS**, DISD currently has two educational facilities dedicated solely to early childhood education, the Ann Windle School for Young Children and the Popo and Lupe Gonzalez School for Young Children; and

**WHEREAS**, DISD and FMDNS, understanding the growth of their community, the significance of efficiency in facility use, and the importance of providing quality early childhood education to the community, desire to continue their collaboration and expand their provision of early childhood educational services.

**NOW THEREFORE**, for and in consideration of the promises and the mutual covenants set forth in this Memorandum of Understanding, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- I. **Term.** The initial term (the "Initial Term") of this Memorandum of Understanding shall begin on July 1, 2015 ("Effective Date") and end on June 30, 2016. Notwithstanding anything herein to the contrary, however, this Memorandum of Understanding may be renewed or terminated pursuant to the Provision IV below.
- II. **Operation of Fred Moore at Gonzalez.** DISD and FMDNS will continue to jointly operate an educational and childcare program at the DISD Popo and Lupe Gonzalez School for Young Children ("Gonzalez Campus") as outlined in Attachment A to this Memorandum of Understanding. In carrying out this joint operation, such program being hereafter be collectively referred to as "Fred Moore at Gonzalez":
- A. FMDNS will provide an adequate number of FMDNS staff members to provide childcare services to DISD Students and FMDNS Students (both as defined on Attachment A), which number shall be sufficient to maintain a student-to-teacher ratio of no more than 18:1 or such greater or lesser number as may be required by law or regulation.
  - B. FMDNS will provide an on-site administrator at the Gonzalez Campus to provide oversight for the Fred Moore at Gonzalez program.
  - C. FMDNS will provide DISD Department of Human Resources documentation that all FMDNS personnel assigned to Fred Moore at Gonzalez have obtained and maintained the necessary licensure, and successfully passed background checks and fingerprint checks, and such documentation shall be maintained on file in DISD Human Resources.
  - D. FMDNS will provide DISD with evidence of licensure through Texas Department of Family and Protective Services.
  - E. FMDNS will provide DISD with evidence of attainment of requirements necessary to accept Child Care Services (CCS) payments issued by and through the Texas Workforce Commission.
  - F. FMDNS will provide services to families accepted through their program at Fred Moore at Gonzalez from 6:30 a.m. until 6:00 p.m. During DISD school hours, DISD will provide Pre-K programming for a period no less than three (3) hours for all DISD Students and FMDNS Students (as defined on Attachment A).
  - G. FMDNS will purchase and provide all consumable supplies and materials for the implementation of FMDNS's portion of the program at Fred Moore at Gonzalez.
  - H. FMDNS and DISD will each be responsible for providing any and all equipment and furniture necessary to provide reasonable accommodations for any student with disabilities for such student's period of time at Fred Moore at Gonzalez or at DISD, respectively.
  - I. FMDNS will purchase and maintain Commercial General Liability Insurance for its activities at Fred Moore at Gonzalez naming DISD as an additional insured, and shall

provide DISD evidence of such coverage. DISD shall continue its insurance coverage for its employees, students, and staff at Popo and Lupe Gonzales School for Young Children.

- J. FMDNS administrators, subject to the authority of FMDNS's Board of Directors, will be solely responsible for planning, organizing, assigning, directing and supervising the Fred Moore at Gonzalez personnel under this Memorandum of Understanding. The rendition of service, the standard of performance, the discipline of Fred Moore at Gonzalez staff members, and other matters incident to the performance of such services and the control of personnel so employed will be determined, directed and performed by FMDNS administrators, subject to the authority of FMDNS's Board of Directors. However, all FMDNS personnel will be subject to the rules, regulations and policies of DISD and the Popo and Lupe Gonzalez School for Young Children. All grievances and disciplinary actions involving FMDNS employees will be processed in accordance with policies set forth in the FMDNS Board of Directors approved Personnel Policy manual and in compliance with DISD policies and procedures.
- K. All FMDNS personnel associated with Fred Moore at Gonzalez shall be required to become acquainted with and adhere to:
  - i. FMDNS Board of Directors approved Personnel Policies;
  - ii. The Texas Human Resources Code, Chapter 42;
  - iii. DISD policies and Employees Code of Conduct;
  - iv. The Texas Education Code; and
  - v. The Family Educational Rights and Privacy Act [FERPA] regarding student confidentiality.
- L. In the event that FMDNS personnel fail to maintain Texas Educator Code of Ethics and/or DISD standards, DISD reserves the right to request FMDNS to remove personnel as necessary.
- M. FMDNS shall provide DISD with daily attendance reports on a weekly basis, and enrollment verification as requested by DISD.
- N. For all days that Fred Moore at Gonzalez is open, DISD will provide:
  - i. Maintenance and appropriate insurance for the Popo and Lupe Gonzalez School for Young Children;
  - ii. Custodial services through its current contract for the portion of the utilized by Fred Moore at Gonzalez;
  - iii. Appropriate secure storage for materials and supplies purchased by FMDNS for the Fred Moore at Gonzalez program;
  - iv. Access for Fred Moore at Gonzalez staff members to the teacher workroom, machinery and devices located therein, the teacher's lounge area, washer and dryer rooms and other areas reserved for adults on the campus;

- v. Access for students in Fred Moore at Gonzalez to all necessary classrooms, associated restrooms, central entrance area immediately outside of their classrooms, as well as the associated internal offices and closets, the playground, and the activity center.
- O. DISD will make available to Fred Moore at Gonzalez all appropriate support personnel, in accordance with appropriate laws, including counselor, nurse, social worker, and special education support staff according to the DISD calendar for employee's active duty.
- P. DISD will make available to all FMDNS staff, both at the main campus and at the Gonzalez Campus, the staff development opportunities provided to DISD pre-kindergarten teachers. FMDNS administrators will make decisions regarding the level and dates of participation for FMDNS staff members.
- Q. DISD will make available to all FMDN staff access to the policies of the DISD, Employees Code of Conduct and Student Code of Conduct, and shall require all FMDN staff associated with Fred Moore at Gonzalez to provide sufficient documentation that each has accessed and become acquainted with this information.
- R. On those weeks that DISD is open, the DISD librarian or staff will provide literature from the library to the classrooms of Fred Moore at Gonzalez.

III. **Funding.** The Fred Moore at Gonzalez program will be funded as follows:

- A. Each party will be entitled to receive and retain any and all tuition payments paid by the parents or legal guardians of their respective schools, that is:
  - i. FMDNS will be entitled to receive and retain any and all tuition payments paid by the parents or legal guardians of FMDNS students whether or not such students are enrolled in the Fred Moore at Gonzalez program; and
  - ii. DISD will be entitled to receive and retain any and all tuition payments paid by the parents or legal guardians of DISD students whether or not such students are enrolled in the Fred Moore at Gonzalez program.
- B. By this Memorandum of Understanding, pursuant to Texas Education Code, section 11.157, DISD does hereby contract with FMDNS for the provision of educational and childcare services for the 2015-2016 school year.
- C. Without limiting the generality of Provision IIIA above, DISD, pursuant to Texas Education Code, section 11.157, did advance FMDNS pre-funding of FMDNS's projected fully-burdened personnel cost for FMDNS's staffing at Fred Moore at Gonzalez and other start-up costs to be incurred at the beginning of the 2014-2015 school year.

- D. FMDNS and DISD shall continue their annual meetings to discuss this project, and during such meeting will discuss and determine the amount, if any, FMDNS shall reimburse DISD for any pre-funding payment described in Provision III.C above at the time. FMDNS and DISD both agree that the manner and amount shall be as the parties may hereafter mutually agree.

#### **IV. Renewal and Termination.**

- A. This Memorandum of Understanding will automatically renew for an additional term of one-year (a "Renewal Term"), beginning at the end of the Initial Term, unless either party has given the other party written notice of such party's desire to terminate the Fred Moore at Gonzalez program no later than February 28, 2016. Thereafter, this Memorandum of Understanding will automatically renew for additional sequential one-year periods unless and until either party gives the other party written notice of such party's desire to terminate the Fred Moore at Gonzalez program no later than one hundred twenty (120) days before the date a subsequent Renewal Term would otherwise end. The purpose of these notice periods is to provide each party with an appropriate amount of time for transition of the students, parents, and staff upon termination of the Fred Moore at Gonzalez program.
- B. If either party shall default in the performance of any of the terms or conditions of this Memorandum of Understanding, that party shall have thirty (30) days after delivery of written notice of such default within which to cure such default. If the defaulting party fails to cure its default in such period of time, then the non-defaulting party shall have the right, without further notice, to terminate this Memorandum of Understanding at such time as the non-defaulting party, in its sole discretion, determines to be appropriate. However, the effective date of termination shall not be until the last day of the Fall, Spring, or Summer school terms after the expiration of no less than one hundred twenty (120) days from the date of the written notice of default.

#### **V. Notices.**

All written notices shall be sent to the following parties by postage prepaid, U.S. certified mail-return receipt requested:

**Fred Moore at Gonzalez:**  
Executive Director  
Fred Moore Day Nursery  
821 Cross Timber Street  
Denton, Texas 76205

**DISD:**  
Superintendent of Schools  
Denton I.S.D.  
1307 N. Locust  
Denton, Texas 76201

- VI. **Dispute Resolution.** In order to ensure an effective relationship between the parties and to provide the best possible pre-kindergarten service, it is mutually agreed that all questions arising under this Memorandum of Understanding shall be handled and resolved between FMDNS President of the Board of Directors and FMDNS Executive Director and DISD Superintendent, or

superintendent designee (with such resolution only being effective if duly ratified by both the respective governing bodies). Any issues not resolved under the terms of this section shall be referred to the respective governing bodies for resolution, and the parties hereby agree to the appointment of a court-certified mediator to assist in resolving said dispute as a prerequisite to the filing of any lawsuit over such issues. Any such mediation shall be held within thirty (30) days of a demand therefore by any party. If one party fails or refuses to mediate within such 30-day period, the other party may proceed to enforce its rights in a court of competent jurisdiction.

VII. **Jurisdiction.** This Memorandum of Understanding shall be governed by the laws of the State of Texas.

VIII. **Venue.** Venue to any judicial or administrative dispute arising pursuant to this Memorandum of Understanding shall be in Denton County, Texas.

IX. **Legal Relationship.** It is understood and agreed that FMDNS is an independent contractor and regardless of anything in this Memorandum of Understanding to the contrary, DISD and FMDNS shall not be construed to be partners or joint venturers, nor shall the relationship of the parties be constructed as principal and agent, master and servant, or employer and employee for any purpose whatsoever. FMDNS as an independent contractor assumes any and all liability for injury to the FMDNS or its agents or employees, and DISD assumes no liability for injury to FMDNS or its agents or employees, unless such injury is caused by the DISD. It is further understood that the FMDNS shall be solely liable for damage that is the direct result of FMDNS' actions, its agents or employees.

X. **Indemnification.** To the extent allowed by law, each party agrees to release, defend, indemnify, and hold harmless the other (and its officers, agents, and employees) from and against all claims or causes of action for injuries (including death), property damages (including loss of use), and any other losses, demands, suits, judgments, and costs, including reasonable attorney's fees and expenses, in any way arising out of, related to, or resulting from its performance under this Memorandum of Understanding. DISD may be held liable only to the extent provided in Texas Civil Practice and Remedies Code, Chapter 101. This Memorandum of Understanding and the indemnity provided herein is not intended to and shall not create any cause of action for the benefit of third parties or any person not a party to this Memorandum of Understanding. It is expressly understood and agreed that, in the execution of this Memorandum of Understanding, no party waives, nor shall be deemed hereby to have waived any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental or quasi-governmental powers and functions. By entering into this Memorandum of Understanding, the parties do not create any obligations, express or implied, other than those set forth herein, and this Memorandum of Understanding shall not create any rights in parties not signatories hereto.

XI. **Waiver of Breach.** No waiver by either party of any default or breach of a term or condition of this Memorandum of Understanding by the other party may be treated as a waiver of any subsequent default or breach of the same or any other term or condition of this Memorandum of Understanding.

XII. **Amendment or Modification.** This Memorandum of Understanding may only be modified, changed or altered at any time upon mutual agreement of the parties, provided that any such modification, change, and/or alteration be reduced to writing and approved by the governing bodies of the Fred Moore Day Nursery and DISD.

XIII. **Complete and Entire Memorandum of Understanding.** This Memorandum of Understanding, and any other schedules, exhibits and addenda attached hereto prior to execution by the parties, states the entire understanding between the parties with respect to its subject matter, and supersedes all prior proposals, negotiations and other written or oral communications between the parties with respect to the subject matter of this Memorandum of Understanding.

The foregoing Memorandum of Understanding between Denton Independent School District and Fred Moore Day Nursery was offered for approval on motion made by \_\_\_\_\_, seconded by \_\_\_\_\_, after discussion was adopted by the Board of Trustees of the Denton Independent School District in a regularly scheduled meeting called, posted, and held in Denton, Denton County, Texas on June \_\_\_\_, 2015, at which \_\_\_\_\_ Trustees were present, by the following vote: \_\_\_\_ for, \_\_\_\_ against, and \_\_\_\_ abstaining.

DENTON INDEPENDENT SCHOOL DISTRICT

\_\_\_\_\_  
Barbara Burns, President  
Board of Trustees

ATTEST:

\_\_\_\_\_  
Dorothy Martinez, Secretary

FRED MOORE DAY NURSERY, INC.

\_\_\_\_\_  
Margaret B. Bays,  
President, Board of Directors

**Fred Moore at Gonzalez Operations  
at the  
DISD Gonzalez Campus**

Unless FMDNS and DISD otherwise agree, Fred Moore at Gonzalez will operate at the DISD Gonzalez Campus as follows:

1. Beginning July 1, 2015 Fred Moore at Gonzalez will be open for operation between 6:30 a.m. and 6:00 p.m.
  - a. each day that DISD schools are open for educational operation,
  - b. Monday through Friday each week during the DISD summer vacation period, and
  - c. such other days as the FMDNS Board of Directors deems necessary in order for FMDNS better to accomplish FMDNS's mission.
2. DISD will accept, screen, confirm eligibility, and approve students from Fred Moore at Gonzalez in accordance with DISD established pre-kindergarten guidelines for three- and four-year olds.
3. From August 24, 2015, each day that DISD schools are open for educational operation during the fall and spring semesters, DISD will continue to operate DISD's pre-kindergarten classes (the "DISD Classes") in two daily sessions at the Gonzalez Campus, i.e., a morning session (the "Morning Session") and an afternoon session (the "Afternoon Session").
4. From August 24, 2015, through the end of the DISD 2015-2016 school year,
  - a. DISD students at the Gonzalez Campus (the "DISD Students") will continue to be enrolled in either the DISD Morning Session or the DISD Afternoon Session as determined by DISD, and
  - b. Approximately one-half of the Fred Moore at Gonzales Students will be enrolled in the DISD Morning Session and the other approximately one-half of the Fred Moore at Gonzales Students will be enrolled in the DISD Afternoon Session, as determined by FMDNS.
5. All students, whether classified as DISD Students or Fred Moore at Gonzales Students, will be provided nourishment as follows:
  - a. During the DISD school year, fall and spring semesters only, students for whom the DISD Free/Reduced meal application has been completed and submitted to the proper DISD authority, and who DISD determines to meet the income eligibility guidelines for free meals established by the USDA will be provided lunch by DISD at no charge;
  - b. Students who do not qualify for free lunches will be expected to either bring their nourishment (breakfast and/or lunch) from home or will be required to pay the DISD the



paid or reduced price for those meals. Any and all necessary payments shall be made pursuant to DISD regulations directly to DISD food service through established channels;

- c. During the summer months when DISD is not in session for the fall and spring semesters, DISD will utilize the Seamless Summer Option (SSO) to provide breakfast and lunch at no cost to Fred Moore at Gonzales students;
  - d. During the school year, fall and spring semesters, and on days that DISD is in session, DISD shall provide nutritious snacks to all students;
  - e. During the summer months when DISD is not in session for the fall and spring semesters Fred Moore at Gonzales shall provide such nutritious snacks;
  - f. FMDN will reimburse DISD for excess custodial costs incurred by FMDN during those times that DISD is not in session. This cost shall not exceed \$3,588.00 and shall be paid to DISD in monthly installments of \$299.00.
- 6. FMDN will reimburse DISD for excess utility expenses incurred by FMDN during those times that DISD is not in session. This cost shall not exceed \$900.00 and shall be paid to DISD in monthly installments of \$75.00.
  - 7. FMDNS will be solely responsible for operating Fred Moore at Gonzalez, all in compliance with applicable laws and regulations.
  - 8. DISD Students and FMDNS Students will be considered dually enrolled at FMDNS and DISD for purposes of funding.