



# Brownsville Independent School District

Agenda Category: General Function  
Contracts/MOU Board of Education Meeting: 06/24/26

Item Title: Facility Use Lease Agreement X Action  
Between NINOS Head Start and Information  
Brownsville ISD Discussion

## BACKGROUND:

This Memorandum of Understanding (MOU) sets forth Lease Agreement procedures agreed upon by NINOS Head Start and Brownsville ISD. The terms and conditions set forth in the following document shall constitute the entire agreement between the NINOS Head Start and Brownsville ISD and either party may cancel the lease by giving sixty (60) days prior written notice to the other.

Ninos in turn will pay \$4,000.00 to be paid quarterly, an additional \$1,000.00 per month to cover custodial services and \$500.00 per month for custodial supplies.

BISD agrees to enter into a revocable facility use lease starting the 2025-2026 academic school year for the use of Facility Space for Licensee’s Head Start/Early Head Start Program to service infants and toddlers at Gallegos Elementary School (2700 Avenida Rancho Viejo, Brownsville, TX 78526).

## FISCAL IMPLICATIONS:

No Fiscal Implications

## RECOMMENDATION:

Recommend approval of Memorandum of Understanding (MOU) with NINOS Head Start to enter into a revocable facility use lease agreement for the use of Facility Space to service infants and toddlers at Gallegos Elementary School to commence the 2026-2027 school year.

*Dolores C. Emerson*  
Dolores C. Emerson  
Submitted by: Principal/Program Director

Approved for Submission to Board of Education:

*Dolores C. Emerson*  
Dolores C. Emerson  
Recommended by: Asst. Supt./Exec. Dir.

*Alda T. Benavides*  
Dr. Alda T. Benavides, Interim Superintendent

*Miguel Salinas*  
Miguel Salinas  
Reviewed by: Staff Attorney

*Beatriz Hernandez*  
Beatriz Hernandez  
Approved by: Chief Officer

## FACILITIES USE AGREEMENT

This Facilities Use Agreement ("Agreement") is between BROWNSVILLE INDEPENDENT SCHOOL DISTRICT, an independent school district and political subdivision of the State of Texas, (the "District" or "BISD") and NEIGHBORS IN NEED OF SERVICES, INC. ("Licensee" or "NINOS"), (both collectively referred to as "the Parties") for the use of BISD facilities as set out herein.

WHEREAS, the District owns and maintains the designated facilities set out herein ("District Facility") and permits use of such facilities for educational, recreational, civic, or social activities when these activities do not conflict with school use or with District Board Policy.

WHEREAS, Licensee has requested use of a District Facility, and the Parties enter into this Agreement in compliance with the requirements of BISD Board Policy;

NOW THEREFORE, for and in consideration of the mutual promises and covenants expressed herein, the Parties agree as follows:

### I. LICENSED PREMISES

1. License For Facilities Use: In consideration of the mutual covenants and agreements of this Agreement, and other good and valuable consideration, District grants to Licensee a license to use the following District Facility as set out herein:

**District Facility: Those designated Areas of Gallegos Elementary School, as more specifically depicted in Exhibit A.**

**Including the use of a parking lot on the property of the District Facility ( referred to as "Parking Area")**

**Address: 2700 Avenida Rancho Viejo, Brownsville, TX 78526**

(hereinafter "District Facility" and "Parking Area"). This Agreement does not entitle Licensee and/or Licensee's officers, agents, employees, contractors, students, or invitees to enter, occupy, or use any other area of the District Facility, facility, or building owned or controlled by the District. This Agreement only entitles the Licensee and/or Licensee's officers, agents, employees, contractors, students, or invitees to use the facilities as set out in this Agreement. All children and students are enrolled in the NINOS Program and are not BISD students.

### II. GRANT OF NON-EXCLUSIVE LICENSE FOR FACILITY USE.

Subject to the District's right to use to the District Facility described in this Section 1 and subject to the other terms and conditions outlined in this Agreement, the Licensee may use the District Facility for the sole purpose of providing Head Start Program services ("Program") as specified herein, and for no other purposes without the prior written consent of the District. In the event that the Licensee ceases to use the District Facility for its Program or uses the District Facility for a significantly different purpose without District written consent, this Agreement may be terminated by the District, in its sole discretion, under Section VIII hereof.

Nothing herein, transfers or changes title or ownership to the District Facility as it is owned and shall remain under the sole and exclusvie ownership of District. Licensee represents and warrants that other an non-exclusive license for facility use on the terms and conditions set forth herein, it has no interest and waives and disclaims any interest to the title or ownership in or to the District Facility.

1. Permitted Use.

- A. Scope. BISD grants to Licensee a non-assignable right during regular school district business days and hours and between the hours needed for the Program to use and occupy the portion of District Facility as described in Section 1.
  
- B. Extent of Right. Licensee's right includes a right of ingress and egress through the halls and corridors of the District Facility, as well as designated restroom facilities. Licensee's right does not include any right in any other part of the District facilities or other District property other than the parts specified in this Agreement.
  
- C. Parking. Licensee's right to park at BISD's campus is limited to the Parking Area~~lot~~ located at the address identified in Section 1, as designated by BISD and subject to its rules, and the availability of spaces. Any alternative parking arrangements must be agreed upon in writing and signed by authorized representatives of both Parties prior to Licensee's use.

2. Prohibitions. Licensee shall not:

- A. Use or permit the District Facility or Parking Area to be used for any purpose in violation of any statute, ordinance, rule, order, or regulation of any governmental authority regulating the use or occupancy of the District Facility or Parking Area.
  
- B. Create any nuisance, interfere with the District's normal school operations, permit any waste, or use the District Facility or Parking Area in any way that would be construed as extra hazardous, would increase the District's insurance premiums, or void its policy, and as determined by the District in its sole discretion.
  
- C. Use or permit the use of the District Facility or Parking Area in any manner that will tend to create or raises an allegation of a nuisance or tends to affect or injure the reputation of the District adversely, as determined by the District in its sole discretion.
  
- D. Allow any activity to be conducted on the District Facility or Parking Area, including to maintain, possess, use or store any material on the District Facility or Parking Area grounds, which may increase insurance premiums for or violate the terms of any insurance policy(s) maintained by or for the benefit of the District, as determined by the District in its sole discretion.
  
- E. Use or allow the District Facility or Parking Area to be used for sleeping quarters, dwelling rooms, or for any unlawful purpose.
  
- F. Use or permit use of the District Facility or Parking Area for commercial purposes. Under no circumstances during the Term of this License shall the Licensee use, permit the use or cause to be used any hazardous or toxic substances or materials, or store or dispose of any such substances or materials on the District Facility or Parking Area.

- G. Licensee may not use all or any part of the District Facility, Parking Area or any building situated on it for any use or purpose that violates any valid and applicable law, regulation, or ordinance of the United States, the State of Texas, the County of Cameron, the City of Brownsville, or other lawful authority with jurisdiction over the District Facility.
  - H. Possession or consumption of alcohol or tobacco products is strictly prohibited in the District Facility, adjacent parking area, or elsewhere at any district facility.
  - I. The District Facility and Parking Lot shall be subject to and used as a public school campus pursuant to District facility administrative rules and directives, Board Policy, law, rules and ordinances particularly with regard to safety and security requirements.
3. Licensee Representation.
- A. Specified Use. Licensee represents that it possesses all required licenses and certifications for the intended use of the Facility and Parking Lot for the sole operation of the a federally and state agency approved operation of a Child Development Center for the administration of a Head Start Program.
  - B. Consent Needed to Extend Use. Licensee acknowledges that Licensee has no right to use the above Facility or Parking Area for any other purpose without the District's prior written consent. Licensee represents and warrants further that before beginning to use these Facility or Parking Area for any other purpose than that described above, Licensee will request and must obtain BISD's prior written approval of the Superintendent or designee.
  - C. Increased Payment for Extended Use. Licensee acknowledges that under BISD's regular schedule of charges, BISD has the right to increase Licensee's fee for any use of the Facility beyond that specified above. Licensee accordingly represents that upon BISD's demand, Licensee will pay BISD the difference beyond the fee set forth under this Agreement and any fee due under BISD's regular schedule of charges for any use beyond that specified above.
4. District Use of Facility. BISD retains its right to use the District Facility or Parking Lot at all times that do not interfere with Licensee's use or Licensee's specifically permitted use under this Agreement, including, but not limited to, conducting the District's programs. In addition, the District shall retain full use of the Facility or Parking Lot, except for scheduled uses by Licensee.
5. Agreed Scheduling Procedures. The District further retains the right to allow use of the District Facility or Parking Area to other users for use of the District Facility or Parking Area on unscheduled days by Licensee, on an individual basis, as long as those events do not interfere with the schedule of the District or the Licensee. The Licensee and District covenant that their respective representatives will act in good faith in connection with scheduling the use of the District Facility and Parking Area under this Agreement and will act in a cooperative manner in arriving at a schedule. Notwithstanding anything in this Agreement to the contrary, however, the District's use of the District Facility or Parking Area shall in all circumstances take precedence over use by the Licensee in making such schedule.

6. Advertising and Promotional Regulations. The Licensee agrees to comply with the District Board Policy regarding advertising. Specifically, the District Facility or Parking Area shall not be used to advertise, promote, sell tickets, or collect funds for any non-school-related purpose without prior written approval of the Superintendent or designee, as appropriate. Upon License request, the Board Policy on advertisement will be provided. Otherwise, Board Policy may be reviewed at Brownsville ISD Board Policy Manual - Policy Online.

The District shall retain final editorial authority to accept or reject submitted advertisements in a manner consistent with the First Amendment. The District shall retain the authority to determine the size and location of any advertising. The District shall also reserve the right to reject advertising that is inconsistent with federal or state law, Board policy, District or campus regulations, or curriculum, as well as any content the District determines has a reasonable likelihood of exposing the District to controversy, litigation, or disruption. The District does not allow or permit paid political advertising.

For purposes of this Agreement, "advertising" shall mean a communication in any medium designed to attract attention or patronage by the public or school community and communicated through means under the control of the District in exchange for consideration to the District. "Advertising" does not include public recognition of donors or sponsors who have made contributions, financial or otherwise, directly to the District or school support organizations.

Inspection of Premises. Licensee represents that it has examined the premises and fixtures contained in the premises. Prior to the execution of this Agreement, Licensee has been provided an opportunity to inspect the Facility and Parking Lot and accepts the premises and fixtures in the District Facility "as is" and as being clean and in good order, condition, and repair with reasonable wear and tear accepted. Licensee will be responsible for providing its own furniture and equipment. In the absence of any such inspection, Licensee waives any objection or challenge to the condition of the premises and fixtures and accepts and shall be liable for the condition of the District Facility during its use. Licensee shall pay District the cost for repair/replacement of any and all damages to the District Facility or Parking Lot or and its equipment, fixtures, improvements etc., caused by it or its officers, agents, employees, contractors, students, invitees, guests, or the participants in Licensee's Program. Licensee's obligation remains to return the premises in good order and condition to the satisfaction of the District.

### III. TERM

1. Initial Term. This Agreement will be for a term of five years, commencing on August 1, 2026, and continuing through July 31, 2031 ("Initial Term"), subject to another five (5) year term renewal upon written agreement by the parties, unless otherwise earlier terminated in accordance with the terms of this Agreement

### IV. CONSIDERATION FOR FACILITY USE

1. License Fees. In exchange for the rights of use, occupation, and access granted under this Agreement, the Licensee will pay, in advance to the District, an annual fee ("License Fee") in four quarterly installments as set out in **Exhibit B**. Further, all other costs and

expenses which the Licensee assumes or agrees to pay and any other sums payable to District pursuant to this Agreement shall be deemed to be an Additional License Fee. The License Fee shall be due and payable in advance per quarter on or about August 1, November 1, February 1, and May 1 on the Commencement Date of this Agreement, and on that same date each year thereafter, through the expiration of any term or earlier termination of this Agreement.

2. Additional License Fees. The following fees are separate and apart from the License Fee above (referred to as "Additional License Fees"):
  - A. Security and Emergency Services: The District will provide security services to support the instructional day, from 7:00 a.m. to 4:30 p.m. Any events occurring outside of the instructional day will require additional security services at the Licensee's expense. These additional services will be paid directly to BISD. The Licensee shall be responsible for all costs associated with security and emergency services for the District Facility during Licensee's events. The Licensee is required to utilize the District's preferred security provider by contacting the BISD Emergency Management and School Safety Department.
3. Modifications to District Property and Return of District Facility to Original Condition. For any installation or construction in the District Facility, Licensee shall submit plans and specifications to the District for prior approval that conform with all laws and regulations applicable to school districts in Texas related to the same. The District shall retain the sole right to determine if any installation or construction requested by Licensee will be approved and in what manner such work will be conducted, if approved. Any approved installations or construction shall vest title and warranty immediately in BISD unless otherwise specified by applicable law and memorialized by the parties in a separate written agreement.
4. Insurance Obligations.
  - A. Insurance on Buildings and Improvements. The District, as the owner of the District Facility, agrees to keep all buildings and other improvements located on the District Facility insured against loss or damage by fire or other casualty in amounts not less than one hundred percent (100%) of the full insurable value of the buildings and other improvements. In the event of a casualty loss of the District Facility, regardless of the extent of damage or destruction, the District will have no obligation to repair or replace the District Facility. In the event that the District elects not to rebuild or repair the District Facility, this Agreement shall terminate, and neither Party shall have any further contractual responsibility to the other under this Agreement. This waiver of contractual liability shall not extend to any negligent act or omission by the Licensee or Licensee's obligations in connection with its use, maintenance, or improvement of the District Facility. Licensee shall maintain its own fire or renters liability insurance policies as District will not be liable for any damages, theft or losses sustained by Licensee or its officials, officers, employees, program participants, students, invitees, agents or representatives sustained for any reason including theft, fire, acts of God.

- B. **Liability Insurance.** At all times during the Agreement Term, the Licensee will shall provide and keep in force liability insurance covering the District and the Licensee for liability for property damage and personal injury. This insurance is to be carried by one or more insurance companies duly authorized or admitted to transact business in Texas, selected by the Licensee and approved by the District. The Licensee will pay for it. The insurance will be written on an "occurrence basis" provided under this Section must be in the amount of not less than \$1,000,000.00 for property damage (per incident/in aggregate), not less than \$1,000,000.00 for personal injury to any per person, and not less than \$2,000,000.00 for any one accident per aggregate. This insurance will protect and name the District as an additional insured on a primary, noncontributory basis, along with the Licensee against liability to any employees or servants of the Licensee and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the District's Facility. Professional liability coverage shall also be maintained by Licensee in the amount of not less than \$1,000,000.00 for personal injury to any per person, and not less than \$2,000,000.00 for any one accident in aggregate. Licensee shall provide workers compensation insurance coverage and limits as required by state law.
- C. At all times during the License Term, the Licensee shall provide and keep in force an Automobile Liability Policy of insurance protecting and naming the Licensee and the District, as an additional insured on a primary, noncontributory basis. The Auto Liability Policy shall shall be written on an "occurrence basis" and protect against claims for bodily injury and property damage, with a combined single limit of \$1,000,000.00 per person and in aggregate and property damage limits of \$1,000,000.00 per occurrence and in aggregate, based upon or involving any of the Licensee's vehicles which are used in connection with its use, occupancy of the District Facility. This insurance is to be carried by one or more insurance companies duly authorized or admitted to transact business in Texas, selected by the Licensee and approved by the District. The Licensee will pay for it
- D. **All Insurance Coverage Primary/Modification of Coverage Limits.** The limits of said insurance required by this Agreement or as carried by the Licensee shall not, however, limit the liability of the Licensee nor relieve the Licensee of any obligation hereunder. All insurance to be carried by the Licensee shall be primary to and not contributory with any similar insurance carried by the District, whose insurance shall be considered excess insurance only. The above provided coverage limits shall be the agreed initial coverage limits, but may be modified from time to time by a written Agreement of the Parties.
- E. **Release of Claims/Waiver of Subrogation.** To the extent allowable under the laws and regulations governing the writing of insurance within the state in which the District Facility is located, the District and the Licensee each release the other and their respective agents and employees from all liability to each other, or anyone claiming through or under them, by way of subrogation or otherwise, for any loss or damage to property caused by or resulting from risks insured against under this License, pursuant to insurance policies carried by the Parties which are in force at the time of the loss or damage. The District and the Licensee will each request their respective insurance

carrier to include, in the policies provided pursuant to this Agreement, an endorsement recognizing this waiver of subrogation.

- F. Insurance Certificates. The Licensee must furnish the District with ACCORD form certificates of all insurance required by this Agreement. If the Licensee does not keep this insurance in full force, the District may notify the Licensee of this failure. If the Licensee does not deliver to the District certificates showing all such insurance to be in full force within ten (10) days after this notice, the District may, at its option, take out or pay the premiums on the insurance needed to fulfill the Licensee's obligations under this article. On the District's demand, the Licensee must reimburse the District the full amount of any insurance premiums paid by the District under this Section, with interest at the rate of ten percent (10%) annually from the date of the District's demand until reimbursement by the Licensee. Alternatively, upon lapse of coverage by Licensee, the District may choose to terminate the Agreement in its sole discretion.
- G. Deductibles. If the insurance is written with stipulated amounts deductible under the terms of the policy, the Licensee shall pay the difference attributable to deductions in any payment made by the insurance carrier on claims paid by this insurance.
- H. Coverage Period. Coverage, whether written on an occurrence basis, shall be maintained without interruption from the date of commencement of this Agreement until the date of termination. Nothing contained herein shall limit or waive the Licensee's legal or contractual responsibilities to the District or others.
- I. Minor Repair, Replacement, and Maintenance Other Than Those Set out in Section IV, Item 3 and any referenced exhibits. The Licensee shall be responsible for minor repair, replacement, and maintenance of any part of the District Facility that the District is not obligated to repair, replace, or maintain, (normal wear excepted) and agrees immediately upon discovery of such condition for which the District is responsible, to submit a request in writing to the District for repairs, replacement, and maintenance.

## 5. Repair and Maintenance Responsibilities

The Parties acknowledge that the License Fee includes custodial and routine maintenance services as described in **Exhibit B**. To avoid doubt, responsibilities for repair, replacement, and maintenance of the District Facility shall be allocated as follows:

### A. District Responsibilities

- i. BISD shall, at its sole cost and expense, provide and maintain the following in good working order and condition, subject to normal wear and tear: Structural components of the building, including roof, foundation, exterior walls, and load-bearing elements;
- ii. Major building systems, including HVAC, plumbing, electrical, fire alarm, and life-safety systems;
- iii. Common area custodial services and routine janitorial services are included in the License fee;
- iv. Grounds maintenance, exterior lighting, parking areas, and trash collection;

- v. Playground structures and other existing District-owned improvements, unless damage is caused by NINOS, its officials, representatives, agents, employees, agents, contractors, program participants or invitees.

B. NINOS Responsibilities

NINOS shall, at its sole cost and expense:

- i. Maintain its own furniture, fixtures, equipment, technology, and supplies placed in the District Facility;
- ii. Perform ordinary day-to-day housekeeping within its designated program areas;
- iii. Repair damage caused by the negligent or intentional acts or omissions of NINOS, its officials, representatives, agents, employees, agents, contractors, invitees, or program participants or invitees, excluding ordinary wear and tear;
- iv. Replace consumable items used exclusively by NINOS in connection with its operations, unless otherwise provided herein; and
- v. Maintain and preserve the premises and facility in its current condition and not allow for damage or deterioration to occur without immediate remediation and repair.

C. Repairs Requiring District Notice

NINOS shall promptly notify BISD in writing of any condition requiring repair by BISD. BISD shall complete such repairs within a reasonable time after notice, taking into account the nature and urgency of the repair.

D. No Duplicate Charges

No repair, maintenance, or custodial cost already included in the License Fee under **Exhibit B** shall be separately charged to NINOS unless expressly agreed to in writing by both Parties.

E. Conflict Control

If any provision of this Agreement conflicts with **Exhibit B** regarding maintenance or custodial responsibilities, this Section shall control unless expressly amended in writing by both Parties.

**V. THE LICENSEE'S PROGRAM STAFF AND PARTICIPANTS.**

1. All Program staff persons will be employed by and under the direct supervision of the Licensee at all times during the hours of operation of the Program at the District Facility. The Licensee will provide on-site supervision of the Program staff and volunteers at all times when they are performing Program duties. The District shall have no responsibility for or liability for any acts of the Licensee staff or volunteers.
2. Licensee shall take the steps necessary to protect and guard the safety of officials, employees, students, program participants, representatives, volunteers, agents and invitees of the Licensee to the District Facility. Licensee agrees to provide written certification to

District of Licensee's compliance with Texas Education Code Section 22.834 and has performed required criminal history background checks for all Licensee officials, employees, subcontractors, program participants, representatives, volunteers, agents and invitees who are likely to or will have continuous contact with students and that they have passed a criminal history background check conducted prior to the beginning of the Agreement. Licensee will, at least annually, obtain criminal history record checks as required under Section 22.834 and provide written certifications of lawful and acceptable background checks to the District. Licensee shall assume all expenses associated with the background checks, and shall immediately remove any employee or agent who was convicted of a felony or a misdemeanor involving moral turpitude from the premises. The final decision on whether Licensee's official, employee, subcontractors, program participants, representatives, volunteers, agents and invitees is allowed to enter the premises for any lawful reason including on the basis of the results of a criminal history background check is in the sole discretion of the District. Licensee represents and warrants that it will abide by the District's decision and remove any person from the premises as requested or stated by the District.

3. To the extent applicable, pursuant to Texas Education Code, § 22A.055, Licensee shall ensure that any person who will act as a service provider for a school district must submit an executed affidavit, on a District provided form, to the District prior to the commencement of this Agreement.

## **VI. EQUIPMENT USE.**

1. With the exception of fixtures and permanently affixed equipment available in the District Facility, the Licensee shall provide its own furniture, equipment, materials, and other property necessary to conduct the Program at the District Facility ("Program Equipment"). The District shall not be responsible for damage, theft, or other loss of any Program Equipment or personal property of the Licensee's officials, representatives, employees, volunteers, contractors, or invitees using the District Facility.
2. Upon expiration or termination of this Agreement, the District may retain, destroy, or dispose of any of the Program Equipment left by the Licensee at the District's Facility more than thirty (30) days after expiration or termination, unless other arrangements are made in writing, signed by both Parties.

## **VII. LIABILITY AND INDEMNIFICATION.**

1. The District shall have no liability whatsoever for the actions of, or failure to act by, or with respect to any claim or cause of action that arises from the actions or omissions of Licensee or for any officers, employees, invitees, contractors, agents, volunteers, program participants, students or assigns of the Licensee, or with respect to the District Facility or Parking Area, and the Licensee covenants and agrees that the Licensee shall be solely responsible for and with respect to any claim or cause of action arising out of or with respect to any act, omission or failure to act by the Licensee or its agents, officers, invitees, contractors, volunteers, program participants, students and/or assigns.

2. The Licensee shall be solely responsible for procuring and maintaining in effect any insurance coverage required by this Agreement, and shall provide evidence of such insurance coverage to the District as provided herein.
3. **INDEMNIFICATION. NINOS SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS BISD, ITS BOARD OF TRUSTEES, OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES, VOLUNTEERS, AND AGENTS, EACH IN THEIR INDIVIDUAL AND OFFICAL CAPACITIES, FROM AND AGAINST DEMANDS, CAUSES OF ACTIONS CLAIMS, DAMAGES, LOSSES, LIABILITIES, INCLUDING ATTORNEY'S FEES AND LEGAL COSTS, FOR PERSONAL INJURY, INCLUDING ILLNESS OR DEATH, OR PROPERTY DAMAGES OR LOSS, CAUSED BY THE NEGLIGENT OR GROSS NEGLIGENT ACTS, ERRORS, OMISSIONS, OR FAILURE TO ACT OR WILLFUL MISCONDUCT OF NINOS, ITS OFFICIALS, OFFICERS, EMPLOYEES, CONTRACTORS, AGENTS, INVITEES, STUDENTS OR PROGRAM PARTICIPANTS IN CONNECTION WITH THIS AGREEMENT OR NINOS'S USE OF THE DISTRICT FACILITY AND/OR PARKING LOT.**
4. Notwithstanding anything herein to the contrary, NINOS shall have no obligation to defend, indemnify, or hold harmless BISD for any claims, damages, losses, or expenses caused by the negligence, fault, misconduct, or legal violations of BISD, its trustees, officers, employees, contractors, or agents.
5. If a claim is caused by the joint negligence or fault of both Parties, each Party shall be responsible only for its proportionate share of liability as determined under applicable Texas law.
6. Nothing in this Agreement shall be construed as a waiver of any governmental immunity, sovereign immunity, official immunity or other defenses available to BISD under United State and Texas law.
7. **Casualty Damage or Destruction.** The District shall have the option to repair or replace the District Facility in the event it is damaged or destroyed by fire or any other casualty. If the District elects not to repair or replace the District Facility, this Agreement shall be automatically terminated upon notice of such election by the District. If the District elects to repair or rebuild the District Facility, and the casualty damage that occurs would materially affect the Licensee's intended use of the District Facility, the Licensee may, at its election, terminate this Agreement by giving notice to the District within thirty (30) days after receipt of the District's notice of the casualty. If the Licensee does not terminate this Agreement, all of its obligations hereunder shall be abated in proportion to its use until Substantial Completion of the necessary construction.

## **VIII. DEFAULT AND TERMINATION**

1. **Termination for Convenience.** Either Party may terminate this Agreement for convenience upon sixty (60) days' prior written notice to the other.
2. **Termination For Cause.** District has the right immediately to terminate this Agreement if Licensee, or any Licensee officials, officers, employees or representatives commits a

material breach of this Agreement, including the failure to pay any Fees when due in Section IV.

3. No Holdover. Upon termination or at the end of the Agreement, Licensee shall vacate the Facility, subject to the applicable terms in this Agreement.
4. Abandonment. If Licensee moves out of the Facility or ceases to operate prior to termination of this Agreement, Facility Owner shall have the right to enter the Facility (and may, at Facility Owner's sole discretion, immediately terminate this Agreement) and take all other lawful actions without relieving Licensee of its obligations under this Agreement.
5. Remedies. The Licensee's remedies for the District's default are to terminate this Agreement and/or to sue for actual damages. The District's remedies for the Licensee's default are to (a) enter and take possession of the District Facility, after which the District may re-license the District Facility to another entity for the scheduled uses remaining in license term, on behalf of the Licensee and receive the License Fees directly by reason of the re-licensing, and the Licensee agrees to reimburse District for any expenditures made to re-license, and (b) terminate this Agreement by written notice and sue for damages as well as pursue all other legal remedies available to the District.
6. Any waiver by the Parties of any default or defaults shall not constitute a waiver of the right to terminate this Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect either Party's ability to enforce any provision of this Agreement.

## IX. GENERAL PROVISIONS

### 1. Notices.

A. Procedure. For any notice to another Party under this Agreement, a Party must provide delivery in writing, either by hand or by mail, registered or certified, postage prepaid, with return receipt requested. The Party must address any mailed notice to the other Party's address as it appears in the Agreement.

B. Identities.

- i. *If to Licensee*. Licensee's contact person is:

Neighbors in Need of Services, Inc.  
Executive Director  
P.O. Box 189  
22887 State Highway 345  
Rio Hondo, Texas 78583

- ii. *If to District/BISD*. District's contact person is:

Brownsville Independent School District Attention:  
Superintendent of Schools  
1900 Price Road  
Brownsville, Texas 78550

Notice of Claim - Licensee Breach Claim. If Licensee asserts a contract breach claim under the Agreement, then each Party may attempt to resolve the claim using the grievance policy set forth in BISD policy. Prior to filing litigation, the parties agree to submit a party's dispute to mediation before a neutral mediator, who is licensed in the State of Texas, practices in Cameron County, Texas and is agreed to by the parties. The parties agree to bear the mediator's fees and expenses on an equal basis and to bear their the fees and costs of their own legal counsel.

2. **Force Majeure.** "Force Majeure" means any fire, earthquake, flood, act of God, strike or other labor disturbance, riot or civil commotion, litigation, terrorism, war or other act of any foreign nation, order of government or government agency or authority, pandemic, epidemic, public health emergency or any other like cause above-mentioned that is beyond a Party's control or authority. If any Force Majeure event or similar casualty renders BISD unable to conduct any activity or event, then BISD has a right to terminate this Agreement by written notice after the Force Majeure event without liability to Licensee for any performance; and is not responsible for any damages sustained by Licensee, although Licensee is entitled to either a pro-rata return of any advanced sum that Licensee has paid and for which it has not received use of the Facility or Parking Area, or any other arrangement mutually accepted by Licensee and BISD.

**3. Licensee Responsibilities:**

- A. Licensee shall not have the right to assign this Agreement or sublet the District Facility.
- B. Licensee, while providing services, shall adhere to all provisions of the MOU executed by the parties concerning Head Start Services. Licensee will give preference to eligible children of low-income families meeting the Head Start Federal Income guidelines and eligibility criteria, all in accordance with the rules and regulations promulgated by the U. S. Department of Education.
- C. Licensee will be responsible for complying with all applicable license requirements and for obtaining the necessary operating permits from the appropriate local, county, state, and federal agencies. Any failure to obtain such required licenses, or the withdrawal of any licenses or permits from any of the entities issuing same, shall be considered a breach of this Agreement.
- D. Licensee will provide training to its staff and the parents of the children eligible for inclusion in the programs provided by Licensee hereunder.
- E. Licensee will provide screening and assessment to children enrolled in the Program in accordance with applicable rules and regulations applying to children eligible for enrollment in such Program.
- F. Licensee will ensure the provision of nutritious meals, including breakfast, lunch, and snacks, daily while operating the Program. Such meals shall comply with any fFederal guidelines for quality, nutrition, and quantity promulgated by the federal agency administering the Program. All persons preparing and distributing such meals shall meet all applicable Health Code requirements for food handlers in Brownsville, Texas, and shall secure applicable or required permits prior to handling or serving any of such foods or meals.

- G. The Licensee will provide a developmentally appropriate educational curriculum.
- H. Licensee will ensure compliance with Americans with Disabilities Act requirements in the construction and operation of any of the improvements located upon the District Facility.
- I. The Licensee will reserve 10% of the enrollment slots for children with disabilities.
- J. The Licensee will assist Program parents with individual family needs.

**4. Miscellaneous:**

- A. Authority. Each person signing below represents that he or she has the authority to sign this Agreement on behalf of either the District or Licensee.
- B. Compliance with Law. Licensee certifies that Licensee complies with all applicable state and federal laws, including licensing or certification requirements and follow applicable District Policy which may be reviewed at Brownsville ISD Board Policy Manual - Policy Online.
- C. Entire Agreement. This Agreement, including any attachments, constitutes the entire understanding between Licensee and the District and supersedes each prior or contemporaneous Agreement - whether written or oral - between the Parties. Any oral representation not contained in the Agreement is binding on the Parties only if the Parties have acknowledged it in writing and expressly incorporated herein. This Agreement, while in force, is binding upon each Party's respective successors and assigns.
- D. Governing Law. The laws of the State of Texas govern the validity of this Agreement and any interpretation of its provisions. Venue for any legal proceeding incident to this Agreement lies in Cameron County, Texas.
- E. Legal Construction/Severability. If any court or other competent tribunal for any reason holds any Agreement provision to be invalid, illegal, or unenforceable in any respect, then: a) ~~that~~ holding does not affect any other provision; b) ~~that~~ tribunal must construe this Agreement as if it had never contained the invalid, illegal, or unenforceable provision; and c) the remainder of the Agreement provisions remain enforceable .
- F. Officials Not To Benefit. No trustee, officer, director, regent, employee, administrator, or representative of District or Licensee has any right to share in or be part of this Agreement or to any benefit that arises from the Agreement.
- G. Extent of Agreement. Licensee has no authority at any time to act as an agent for the District for any purpose unless expressly outlined in this Agreement.
- H. No Partnership or Joint Venture. The relationship between the District and Licensee is solely that of property owner and tenant and is not and may not be deemed a partnership or a joint venture.

- I. No Waiver of Governmental Immunity. Nothing in the Agreement shall be construed to waive any immunities from suit or liability enjoyed by either the District, the Licensee, or their Board of Trustees, officials, trustees, ~~present~~ officers, elected officials, employees, volunteers, representatives, or agents. Nothing herein shall be construed as consent to suit by the District.
- J. No Third Party Beneficiary. This Agreement inures to the benefit of and obligates only the Parties executing it. No term or provision of this Agreement shall benefit or obligate any person or entity not a party to it. The Parties hereto shall cooperate fully to oppose any attempt by any third person or entity to claim any benefit, protection, release, or other consideration under this Agreement.

*[The remainder of this page is intentionally left blank; signature page follows]*

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Daniela Lopez Valdez, Board of Trustees President  
Brownsville Independent School District

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Date

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Dr. Alda T Benavides, Superintendent  
Brownsville Independent School District

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Date

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David Kowalski, Executive Director  
Neighbors in Need of Services, Inc.

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Date

**EXHIBIT A**

## **EXHIBIT B**

### **LICENSE FEE AND/OR GOODS/SERVICES IN LIEU OF LICENSE FEE(S) AND ADDITIONAL LICENSE FEES**

#### **LICENSE FEE:**

\$4,000 per month to be paid quarterly on August 1, November 1, and February 1. An additional \$1,000 per month is included in the total lease fee to cover custodial services and \$500.00 per month for custodial supplies.

The total annual fee is \$66,000.00.

This contract covers 12 months, from August through July.

This monthly lease fee includes the usage of the designated interior facility space, playground areas designated to the NINOS Head Start Program, parking lot accessibility, building insurance, all utilities, garbage disposal, employee identification door swipe cards, phone, internet, and custodial/maintenance services.

Any security services requested will be billed on an as-needed basis at BISD's hourly rates.

#### **ADDITIONAL LICENSE FEES:**

No other additional fees.