

AGREEMENT BETWEEN GALVESTON  
INDEPENDENT SCHOOL DISTRICT  
AND MOODY EARLY CHILDHOOD CENTER  
6/21/2023

This Agreement (the "Agreement") is made and entered into as of July 1, 2023("Renewal Date") by and between GALVESTON INDEPENDENT SCHOOL DISTRICT, a public independent school district and political subdivision of the State of Texas, ("District") and MOODY EARLY CHILDHOOD CENTER ("Operating Partner" or "OP") (together, the "Parties") to operate MOODY EARLY CHILDHOOD CENTER (the "School"). The purpose of this Agreement is to set forth the objectives, understandings, and agreements of the Parties in connection with the establishment and operation of Senate Bill No. 1882, adopted by the 85th Texas Legislature in 2017, codified as Texas Education Code §11.174 and §42.2511 ("SB 1882"), which allows this cooperative partnership between a public education institution and an in-district charter.

ARTICLE 1. RECITALS

1.01 Independent School District. The District is an independent school district created in accordance with the laws of Texas.

1.02 Authority to Contract. The Board of Trustees of the District is empowered by Texas Education Code ("TEC") §11. 157 and §11.174, to contract with a public or private entity for that entity to provide educational services for the District.

1.03 Statutory Authorization. This Agreement is made pursuant to and in accordance with SB 1882, which allows school districts to partner with either an open-enrollment charter school or other eligible entity to operate a district campus, including an in-district charter as in this Agreement.

1.04 Non-Profit Organization. Moody Early Childhood Center is an organization that is exempt or has applied for exemption from taxation under Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. §501(c)(3)) and is hereby contracted to operate a charter granted to the School under TEC Subchapter C, Chapter 12 and is eligible under TEC §11.174 and, §12.101 (a) to operate the School.

1.05 Charter Granted & Term of Charter. On this Commencement Date, the District hereby grants the School a charter in accordance with and under TEC Chapter 12, Subchapter C, specifically §12.0521 or §12.0522. This is not an in-district charter with the lowest performance rating in accordance with TEC §12.0522(c), such that this Agreement is subject to the 15% limit in TEC §12.0522(c). The District shall ensure that the charter is properly authorized under TEC Chapter 12, Subchapter C. A charter granted under TEC Chapter 12, Subchapter C begins on August 1, 2018 and expires on July 31, 2028 unless the specified performance goals set forth in Addendum A-3 are substantially met, as determined by the Board of Trustees of the District in accordance with TEC §12.0531.

1.06 Consultation. The District has consulted with District-employed campus personnel regarding provisions to be included in this Agreement. The District's consultation with campus personnel occurred at a meeting where personnel were able to ask questions and receive information. At that meeting, the District informed campus personnel of the opportunity to apply for an "assignment" at the School and campus personnel understand that all assignments shall be determined by OP and the District (as detailed in Article IX below) and that OP may have a separate Employee Handbook than what is required of the District. The District recognizes that all rights and protections afforded by current employment contracts it has with personnel shall not be affected by this Agreement.

1.07 Consideration. In consideration of the mutual agreements set forth in this Agreement, and for other good and valuable consideration, the Parties agree as follows:

## ARTICLE II. PURPOSE OF AGREEMENT

2.01 Contract for Services. This Agreement constitutes a contract for services.

2.02 Premise of Agreement. This Agreement is predicated on an understanding that students benefit when decisions regarding educational programs, operations, and student services are made at the school level and that autonomy and accountability are mutually reinforcing principles.

2.03 Student Achievement. The primary purpose of this Agreement is to improve student outcomes by allowing the District to partner with OP to operate the School as an independent campus subject to transparent accountability requirements, which are set by TEC Chapters 39 and 39A. The provisions of this Agreement shall be construed and applied to achieve this purpose.

2.04 Continuation of Agreement for the Benefit of Students. The Parties intend that this Agreement shall continue in effect and may be renewed for successive five (5) year terms in accordance with the provisions of Article IV.

## ARTICLE III. DEFINED TERMS

3.01 School Campus. "School Campus" has the meaning assigned in the Texas Administrative Code Title 19, §97.1051 (3) and includes all components of the operation of the campus, including, without limitation, the grade levels served, the courses taught, the instructional materials, staffing, budgetary allocations, scheduling transportation, and other services and responsibilities associated with school operation.

3.02 Facilities. "Facilities" are defined as the building(s) located on the School Campus and related equipment, furnishings, and property improvements, including any athletic fields and related improvements, and the land on which the building(s) and related improvements are located as more fully defined in Article XIII.

3.03 Material Breach. A "Material Breach" of this Agreement shall include the failure of a Party to comply with or fulfill any material obligation, condition, term,

representation, warranty, provision, or covenant contained in this Agreement, including without limitation any failure by either to meet generally accepted fiscal management and government accounting principles, or comply with all Applicable Law under Paragraph 3.04.

3.04 Applicable Law. "Applicable Law" means all state and federal laws, rules, regulations, administrative and judicial determinations, and decisions that govern the performance of this Agreement, as they currently exist or as they may be adopted, amended, or issued during the Term of this Agreement as more fully described in sections 6.01 and 6.02

#### ARTICLE IV. TERM AND TERMINATION

4.01 Term. The term of this Agreement shall begin on the Renewal Date and end on June 30, 2028. At the end of the Term, and if the Agreement has not been terminated, then the Parties may elect to renew this Agreement for another three (3) years with an automatic two (2) year renewal, so long as OP meets performance standards in Addendum A-3. Any such renewal shall be in writing. This Agreement is subject to the termination provisions detailed in this Agreement.

4.02 Notice of Non-Renewal. If this Agreement has not been terminated and the District anticipates opting to not-renew the Term of this Agreement, then no later than April 1, 2028 the District shall notify the OP in writing of its intent to not-renew this Agreement.

4.03 Termination Right to a Public Hearing. If the School successfully achieves the student outcome goals specified in Addendum A-3, attached, the District must hold a public hearing at least thirty (30) days prior to any District action to terminate the Agreement. If the School fails to achieve the student outcome goals specified in Addendum A-3, the District shall not extend this Agreement without a public hearing at least thirty (30) days prior to any District action to extend or renew this Agreement. This section is not applicable to termination related to material breach.

4.04 Termination by Mutual Consent. This Agreement may be terminated at any time by mutual written agreement of OP and the District if termination is effective no sooner than the end of the then current school year.

4.05 Termination for Cause. Either Party may terminate this Agreement if the other Party fails to remedy a Material Breach of this Agreement within sixty (60) days after written notice by the non-breaching Party of such Material Breach; provided, however, that if the breach would affect the safety or well-being of a student or is not reasonably capable of being cured, then no such notice and opportunity to cure shall be required.

4.06 Termination Related to Program Performance. The District may terminate this Agreement if the School does not comply with the program requirements of TEC §29.1532 and §29.154 and the student outcome goals specified in Addendum A-3. Termination under this paragraph shall be effective at the end of the then-current school year so long as written notice of such terminate is provided no later than

thirty (30) days after receipt of the Commissioner of Education's evaluation or the determination of student outcome goals.

4.07 Material Reduction in Per Student Funding. If there is a material reduction in per-student funding available from the State of Texas below the amount for the prior fiscal year, then the Parties shall meet no later than July 1 to determine whether to continue this Agreement. If the District and OP do not agree, then this Agreement shall terminate at the end of the current school year. "Material reduction" means a reduction of funding per student by more than five percent (5%) of current funding per student per half/full day, as applicable.

## ARTICLE V. RELATIONSHIP OF THE PARTIES

5.01 Nature of Relationship. The relationship between the Parties hereto shall be that of contracting parties. OP shall operate as an independent contractor to the District and shall be responsible for delivering the services required by this Agreement. The relationship between and among the Parties was developed and entered into through arms-length negotiations and is based solely on the terms of this Agreement and such contracts and agreements as may be created in the future from time to time between the Parties and reduced to writing.

5.02 No Agency. Neither Party will be the agent of the other Party except to the extent otherwise specifically provided by this Agreement. Neither Party has the express nor implied authority to bind the other Party to any contractual duty other than what is specifically stated in this Agreement. Furthermore, both Parties shall represent to third parties and shall disclaim to such third parties, the extent of that Party's binding authority, which must be approved by the Parties' respective governing boards held in accordance with the Texas Open Meetings Act (appearing in minutes of such meeting) and as agreed to in writing by the Parties.

5.03 No Common Control. Neither Party is a division, subsidiary, affiliate, or any part of the other Party, nor has the right or authority to exercise any common control of any other Party. Nothing herein shall be construed to create a partnership or joint venture by or between the District and the OP.

5.04 Assurance of Independence. The OP and/or the School's governing body shall remain independent of the District. Both OP'S and the School's governing bodies are not and shall not be comprised of any members of the District's Board of Trustees, the Superintendent, or any staff member responsible for granting this Agreement.

## ARTICLE VI. APPLICABLE LAWS

6.01 Compliance with Applicable Law. The Parties shall perform their respective obligations under this Agreement in compliance with Applicable Law. The Parties stipulate that Applicable Law includes, but is not limited to, Title VI of the Civil Rights Act of 1964, as amended; Title VII of the Civil Rights Act; Title IX of the Education Amendments of 1974; Section 504 of the Rehabilitation Act of 1973 ("Section 504"); the Age Discrimination Act of 1975; the Americans with Disabilities Act; the Individuals with Disabilities in Education Act ("IDEA"); the Family Educational Rights and Privacy Act of 1974 ("FERPA"); the Every Student Succeeds

Act to the extent specified in the Act; the Texas Education Code to the extent the School is not exempt; record retention laws and conflicts of interest laws under the Texas Local Government Code; the Texas Local Government Code, to the extent it applies to school districts; and any amendments, interpretations, and reauthorizations of the foregoing.

6.02 Scope of Applicable Law. The Parties agree that certain laws and regulations that apply to other schools within the District may not apply to the School or its operation as a consequence of the grant of a campus charter under Texas Education Code, Chapter 12. The Parties further agree that, except as provided in this Agreement, as identified in Addendum A-2, or required by Applicable Law, no provision, rule, or guideline of Texas law otherwise applicable to a governing body or school shall apply to the School or its operation.

6.03 Immunity. Nothing contained in this Agreement shall be read to waive the immunity granted by TEC Chapter 22, Subchapter B, and TEC Chapter 12, Subchapter C.

## ARTICLE VII. GOVERNING POLICIES

7.01 Limitation on Authority. An educational or administrative service necessary for operation of the School, but not specifically reserved for the District to provide under this Agreement, shall be provided and solely managed by OP insofar as such delegation is permitted by state and federal law. A service is provided by OP if OP performs the service, contracts for its performance, or otherwise ensures and oversees provision of the service. Neither this paragraph nor this Agreement prohibits the District from contracting with another entity for the provision of services for the campus. Any and all services contracted for or performed for the School must be made in accordance with the responsibilities detailed in this Agreement.

7.02 Policy Election. OP shall operate in accordance with the District's Charter Policy specified in Addendum A-1 and other policies specified in Addendum A-2, as they currently exist or as they may be amended, so long as any such amendment does not constitute a Material Breach of this Agreement. If both Parties agree that an amendment amounts to a Material Breach, then the Parties may agree to operate under a prior (non-amended) policy so long as the prior policy is in compliance with the then-current Applicable Laws.

7.03 Adoption and Publication of School Policies. OP'S Board of Directors shall research, draft, and adopt policies addressing matters not specified in Addendum A-2, attached to this Agreement, at a meeting open to the public. OP shall have the final decision in adopting policies applicable to the School, other than the policies specified in Addendum A-2. All policies adopted by OP shall comply with Applicable Law. OP shall also provide drafts of proposed policies or proposed amendments to policies currently in effect to the District for review and comment no later than 30 days prior to the meeting at which the policies are to be considered for adoption or amendment. OP will publish adopted policies and District Board Policies applicable by law or by election under this Agreement on the School's website.

7.04 Future Waivers and Exemptions. Pursuant to 19 TAC§ 97.1075(d)(6), the School is exempt from laws and rules to the fullest extent allowed by TEC Chapter 12,

Subchapter C, and is exempt from all District policies except for laws, rules, and policies that are specifically identified as applicable to the School in this Agreement and/or incorporated by reference herein. The Parties will collaborate in applying for waivers from any restrictions imposed by Applicable Law when it is jointly determined that such waiver would expand opportunities for students enrolled in the School. If the District is relieved from compliance from certain state or federal law or regulation through a waiver, adoption, or amendment of a local innovation plan under Chapter 12A, Texas Education Code, the School is automatically relieved from compliance regardless of whether such relief is addressed in this Agreement. Further, if a waiver from a local policy, procedure, protocol, or other requirement is granted to another school in the District that serves students at the same grade levels offered at the School, and the policy is not waived by this Agreement, the waiver applies to the School unless the District notifies the School otherwise in writing within 60 days of the waiver's application to the other school(s).

## ARTICLE VIII. PERFORMANCE REQUIREMENTS

8.01 Student Outcome Goals. The primary responsibility of OP under this Agreement is to ensure that the annual student outcome goals specified in Addendum A-3, or as amended, are achieved. Prekindergarten performance objectives may be based on TEC Chapter 39, Subchapter B, TEC §29.154, (which includes, but is not to be limited to, diagnostic reading and the number of kindergarten students who were enrolled in the School's prekindergarten program in the previous school year), TEC Chapter 29, Subchapter E and/or 19 TAC §102.1003 (c), (d) (which lists the Texas Prekindergarten Guidelines). Student outcome goals shall be evaluated as to their developmental appropriateness.

8.02 Performance Measurement, Methods, and Timeline. The Parties agree that achievement of annual student academic and financial performance targets agreed upon by the Parties and specified in Addendum A-3 will be determined using the methods, indicators, and timelines specified in that Addendum.

8.03 Performance Consequences. The Parties agree to specific consequences described in Addendum A-3 in the event that the OP does or does not meet the annual academic or financial performance expectations and goals described in Addendums A-3.

8.04 Responsibilities of OP Governing Board. The governing board of OP agrees that it is responsible for ensuring that OP achieves performance goals specified in Addendum A-3 and is obligated to oversee management of the School and intervene as required to ensure that performance goals are achieved.

8.05 Monitoring Performance. The District shall retain the right to monitor the performance of the School and OP under Addendum A-3.

## ARTICLE IX. RESPONSIBILITIES

9.01 OP Responsibilities. The OP shall have the sole authority over matters involving academic curriculum and the instructional program (except for Special Education as detailed in Paragraph 9.02.2 below). OP shall have sole authority to hire or terminate OP's employees. OP must employ at least one employee at the School.

9.01.1 Administration. Any Campus Chief Operating Officer, Principal, Assistant Principal, or other employee designated as an administrator at the School shall be employed and managed by OP.

9.01.2 Teaching Staff. Any teachers, teaching assistants, paraprofessionals, curriculum specialists, program coordinators, or other academic instructional employee at the School shall be employed and managed by OP.

9.01.3 Miscellaneous Instructors. Guidance counselors, librarians, extracurricular activity instructors, physical education instructors, and any other employee directly involved in overseeing/creating academic curriculum shall be employed and managed by OP.

9.01.4 Perimeter Lawn Area and Playgrounds. OP shall maintain and repair only the School Campus' immediate perimeter of the building and the two smaller playgrounds located on the School Campus. Upon seeking written approval from the District, OP may decide to enhance the School's playgrounds with an addition and shall be responsible for funding any addition. The District shall give reasonable and timely written approval for any such addition.

9.01.5 Landscaping. OP shall provide any necessary or desired landscaping for the School. Any changes to the current landscaping are subject to receiving written approval from the District. The District shall give reasonable and timely written approval for any such addition.

9.01.6 Signage. OP shall maintain the School's signage. Subject to written approval from the District, OP may change or add to the School's signage at OP's expense. The District shall give reasonable and timely written approval for any such addition.

9.01.7 Building Operations. Subject to written approval from the District, OP shall be able to alter the operations rooms within the School. For example, OP shall be able to make an existing office a classroom and vice versa. The District shall give reasonable and timely written approval for any such addition.

9.01.8 Substitute Teachers. OP shall provide substitute teachers to the School as necessary.

9.01.9 Health. OP shall employ the School's nurse and/or any other health care provider located on the School.

9.01.10 Bilingual Support and Assessment. Pursuant to TEC § 12.056(b)(E). OP shall comply with TEC, Subchapter B, Chapter 29, and any bilingual support and assessment requirements (e.g., the Home Language Survey) that the District must comply with relating to the identification of bilingual speakers and shall select any necessary or desired bilingual support and assessment assistance needed at the School.

9.01.11 Miscellaneous. Except as provided for in section 9.02.2, any registrar, secretaries, accounting staff, purchasing staff, human resources staff, or other administrative support staff at the school shall be employed and managed by OP.

9.01.12 Employees. OP has initial, final and sole authority to approve the assignment of all district employees or contractors to the School, as well as initial and final authority to rescind the assignment of any district employee or district contractor from the School. This authority includes assignment of employees, and evaluation and development of instructional skills. OP will cooperate with the District in its evaluation, development, advancement, compensation, continuation, and establishment of any other terms of employment, including assistance in the District's formal evaluation process. If OP removes any District employee or District contractor, then the OP shall provide any accompanying documentation, if available, to support the removal and the District will grant any requests within twenty (20) business days of receiving the request from the OP.

9.01.13 Special Education. OP shall provide special education services with support from the District as outlined in section 9.02.8. OP agrees to comply with best practices for Special Education instruction in compliance with guidance from the DOE and TEA. OP shall identify and participate in evaluation of students in need of special education in cooperation with the District and shall provide instruction to qualifying students, which shall comply with the student's Individualized Education Program (IEP). Should OP and the District determine OP is not able to provide instruction and services in accordance with the student's IEP, the District will provide Special Education instruction and services at the School for students enrolled at GISD, as mutually agreed by the parties.

9.02 District Responsibilities. The District shall maintain control of and shall be responsible for some non-academic and non-curriculum staff and personnel, which includes but is not limited to the below. The amount the District retains for these services may not exceed the District average cost per student for similar services rendered.

9.02.1 Maintenance. Subject to 9.01 above, the District shall maintain the School Campus and Facilities by overseeing and contracting for the maintenance of the campus via necessary repair work. Subject to 9.01 above, the District shall also be responsible for any improvements it deems necessary or desires to add to the School. The District shall maintain the remainder of the School Campus (that OP is not maintaining as detailed in 9.01.4), which includes the large open field at the eastern end of the property. The District shall also provide regular pest control services. Notwithstanding the foregoing, the District shall maintain the School Campus and Facilities in a timely and effective manner and in a manner that is consistent with the level of service provided to the District's other campuses and facilities.



9.02.2 Record Keeping. The District shall appoint and employ the District central administration personnel responsible for maintaining necessary records, which shall include, but not be limited to, student attendance, and State and Federal funds accounting. The District shall undertake to ensure that OP has access to reasonably appropriate information that allows OP to monitor the progress of its PreK4 graduates during their time in the District.

9.02.3 Food Services. Pursuant to this Agreement, the District shall provide food and cafeteria services to the School for pre-k students in accordance with the District's standard food service calendar, including summer feeding programs. This Agreement shall have no impact on ancillary agreement with OP regarding the feeding of infants and toddlers year-round or prek students on non-instructional days in accordance with *the Contract for G1SD Child Nutrition to Provide Meals for Moody Early Childhood Center 2020-2021* and marked Addendum A-8 or any other similar agreement.

9.02.4 Utilities. The District shall provide the utilities and an alarm system for the School.

9.02.5 Security. The District shall provide security monitoring of the facilities, as well as will send emergency personnel as needed

9.02.6 Transportation. The District shall provide all necessary transportation to and from the School. Additional routes and transportation needs outside of the regular transportation route will be billed at a rate outlined in the district menu of services.

9.02.7 Special Education. The District and OP will share responsibility in identifying students to be evaluated for special education eligibility. The District will timely evaluate students to determine eligibility and develop IEPs for students determined eligible with information and participation from OP staff. The District shall provide OP with reasonable advance written notice if the District is unable to complete student evaluations within the statutorily required timeline, and OP may elect to complete a separate evaluation of the student at its own expense.

OP and the District shall comply with State and Federal laws, including but not limited to the IDEA, Section 504, and any statutorily mandated timelines. OP shall be responsible for compliance with student IEPs. Should OP be unable to provide the instruction or related services necessary to adequately implement a student's IEP, the District will provide OP access to District employees and/or vendors, at the District's discretion, to implement the student's IEP. Any funding attendant to Special Education services provided by the District will be retained by the District. Any funding attendant to Special Education services provided by OP will be forwarded to the OP by the District. This Paragraph also applies to infants and toddlers under 20 U.S.C. § 1431, which allows for the District to enhance development of infants and toddlers with disabilities to minimize their potential for developmental delay, and to recognize the significant brain development that occurs during a child's first three (3)

years of life. The parties agree to designate a representative from each entity to meet and review data and expectations regarding special education services on a quarterly basis.

9.02.8 Technology. OP will continue to have access to all devices and technology currently allocated to the School. Should OP determine it needs additional technology, the District will provide the technology pursuant to Section 14.02 and the Menu of Services. Any devices, laptops, or desktop computers provided to OP will include the District's standard load set as well as any other supporting software identified and purchased by OP through the District.

## ARTICLE X. SCHOOL OPERATIONS

10.01 OP's Governing Board. OP represents that a true and accurate list of its current directors ("Directors") is attached to this Agreement as Addendum A-6. If there is any change to the Directors during the Term of this Agreement, OP shall provide written notice to the District of the change within 30 days. No District Board of Trustees member, Superintendent, or any staff member responsible for granting this Agreement shall be appointed to OP'S Governing Board. District staff may not compromise a majority of OP'S Governing Board.

10.02 Budgetary Authority of OP. OP has initial, final and sole authority to approve or amend the budget for the School.

10.03 Campus Chief Operating Officer ("COO"). The Executive Director of the School shall be the COO, who shall be selected and managed by the OP. The COO shall oversee the School's day-to-day operations. The COO shall be assigned to record, prepare, disseminate, and maintain meeting minutes. The School's overall educational framework, mission, budgetary approval, and policies shall be developed and adopted by OP with input from the OP's Board of Directors. The School shall be subject to the direction, control, policies, practices, and procedures of the COO, subject to the requirements of this Agreement and input from the OP's Board of Directors. The COO shall ensure that the curriculum meets the requirements of state law, subject to the academic program review and input from the OP's Board of Directors.

10.03.1 Director of Education/Principal. If OP elects to employ a Director of Education/Principal of the School, the employee shall be the Director of Education /Principal, who shall be subject to the control of the COO but may be required to report to and attend Board of Directors meetings, if requested.

10.03.2 OP Employee. OP shall hire and manage at least one employee at the School, which may be, but is not limited to, the COO.

10.04 Grade Levels. Unless agreed otherwise in writing by the Superintendent and COO, the School will serve infants, toddlers, and Prekindergarten students. The District retains the authority to open the School to additional grade levels or programs, with the written consent of OP. All PreK3 students, with the exception of students educated in the self-contained ECSE program or those attending Crenshaw on Bolivar Peninsula, will be served at the School, unless the student's ARDC

determines placement outside the School is necessary in accordance with section 9.02.8. PreK4 students who attended the School as infants and/or toddlers and/or as PreK3 students, may elect to enroll in PreK4 at the School. OP shall not change the grade levels previously served at the School without the District's written consent.

10.05 Enrollment Policies. Prekindergarten students who meet the requirements of TEC §29.153 shall be eligible for free enrollment at the School. Prekindergarten students who do not meet the requirements of TEC §29.153, shall be eligible for enrollment at the School under TEC §29.1531. The Parties will collaborate and agree on a process for enrollment of students into the School, which may include an application. In addition to the agreed-upon admission policies, the following applies:

10.05.1 OP is prohibited from discriminatory admission, suspension, or expulsion of a student on the basis of a student's national origin, ethnicity, race, religion, disability, gender, or academic achievement.

10.05.2 Subject to Paragraph 10.07, OP shall give preference for admission to students who were previously enrolled at the School.

10.06 Discipline and Expulsion Policies. Subject to TEC §37.005(c), §37.007(h), OP shall comply with the District's discipline policies. OP understands that TEC§37.005(c), §37.007(h) limits suspension and expulsion of prekindergarten students.

10.07 Schedule. OP will have sole authority in determining the school day, school year, bell schedule, schedule for before and after-school services and for extra-curricular activities. OP's schedule shall comply with the State of Texas' required minutes of instruction. OP agrees to provide this information to the District no later than 45 days before start of school and to confer with the District prior to altering.

10.08 District Meetings, Initiatives, and Training. School staff under the supervision and control of OP will not be required to participate in District training events or other meetings unless directed by OP. OP agrees that all School staff shall comply with and receive training required by Applicable Law.

10.09 Contractor Criminal History Background Checks. The District shall conduct criminal history background checks for all vendors and contractors selected by the District as well as for all District employees. OP shall conduct criminal history background checks for all vendors and contractors selected by OP as well as for all OP employees, or OP may contract with the District for such checks. The District and OP shall adhere to reporting requirements, definitions, and laws further detailed in Paragraph 11.03.

10.10 Technology Infrastructure; Network Services. The District shall be responsible for providing, repairing, and maintaining technology infrastructure and network services at the School. The District shall furnish equitable technology equipment to that of the other schools in the district to OP to ensure consistency between the standard equipment and the needs of the School. The District shall also provide proper "cyber" insurance and antivirus to protect OP's data & personnel information. OP shall provide the District with a list of equipment purchased and collaborate with the District to ensure consistency between the

standard equipment and the needs of the School. The initial information technology equipment located at the School as of the commencement of the Term is included in the term "furnishing."

10.11 Media Requests. The Parties agree to collaborate on responses to any media requests or press releases related to the School. The Parties shall collaborate prior to responding to any media request or making a press release and further agree that any statement made will have prior approval by each Party, which shall be reasonably and timely granted. This requirement does not apply to general communications regarding OP or the District that may include references to the School. OP agrees to comply with all Applicable Law and District policies related to photographs, audio, or video recordings of students.

10.12 Communications with Students' Parents. The District shall notify the OP of any communication to be shared with students' parents. OP will distribute the same communication released by the District through electronic media and/or notes home. In the event of a campus emergency, OP will alert the District for information to be distributed as needed.

10.13 Communication between OP and District. The District will provide the OP with any and all communications that are circulated to other District campuses and departments that are relevant to the PreK program at the OP campus. Conversely, the OP will provide the District with any and all communication relevant to aspects of the OP's operation which relate to or impact the District.

10.14 Child-Care Licensing. OP is responsible for ensuring that the School meets at least the minimum requirement to comply with applicable child-care licensing standards adopted by the Department of Protective and Regulatory Services under Human Resources Code §42.042. OP shall bear the financial cost of ensuring compliance with the same.

## ARTICLE XI. STAFFING

11.01 Employment. Except as otherwise provided herein, all personnel and staff of the School including, but not limited to, the Executive Director, other administrators, teachers, and teaching assistants, are employees of OP and not of District. The Parties acknowledge and understand that employees of OP are not subject to District personnel policies and that OP has sole authority over hiring, assignment, evaluation, development, advancement, compensation, continuation, other terms of employment with respect to School staff.

11.02 Criminal History Background Checks. Unless contracted for by the District as stated in Paragraph 10.10, OP shall perform all criminal history background checks required by Applicable Law, including without limitation those required for School personnel, applicants, vendors, contractors, and volunteers and shall take action required by law upon completing the background check. OP and the School's employees shall adhere to the laws in Senate Bill 7 in the 85th Texas Legislature and codified in TEC §21.006 and §22.087 and shall adhere to any District policies relating to TEC §21.006 and §22.087. OP shall notify the District of any unlawful conduct or criminal misconduct discovered by or reported to the School's administration within seven (7) business days of notice. OP shall comply with any

subsequent investigation by the District as OP understands that the District is bound by the reporting requirements of TEC §21.006 and §22.087. Additionally, OP also understands that the District's Superintendent may investigate and report any educator misconduct that he or she believes in good faith may be subject to sanctions under 19 Administrative Code, Chapter 249 and/or Chapter 247, Educators' Code of Ethics. OP's failure to comply with this paragraph's reporting requirements shall amount to a Material Breach of this Agreement.

11.03 Child Abuse Reporting. All District and OP employees working at the School shall comply with all Applicable Law governing mandatory child abuse and neglect reporting, including but not limited to the Texas Family Code Chapter 261, TEC §38.004, §38.0041, and the Texas Administrative Code §61.1051.

11.04 Certified Personnel. The District's personnel assigned to the School shall be certified for the position for which they are assigned unless OP selects a District employee who is not certified for an assignment, and the District agrees to the assignment. OP may directly employ an uncertified person for an assignment.

11.05 Employment Records. OP is responsible for maintaining the employment records for all School Personnel (both District employees and OP employees). The employment records of District employees are the property of the District and OP shall make these employment records available to the District. All employment records of OP employees only are the property of OP.

11.06 Employee Complaints and Grievances. The Parties agree that the District's employees' complaints and grievances will be governed by the District's policies and OP's employees' complaints and grievances will be governed by OP's policies.

11.07 Non-Solicitation. OP agrees it will not solicit or hire any District employees unless and until it receives written confirmation from the District that the employee has been released from any contractual obligations with the District. The District agrees it will not solicit or hire any employee of OP unless it receives written confirmation from OP that the employee has been released from any contractual obligation with OP. Nothing in this Agreement alters the nature of OP employees or changes the employment relationship between any employee and his/her employer.

11.08 Teacher Retirement System. An employee of the OP is eligible for membership in and benefits from the Teacher Retirement System of Texas if the employee would be eligible for membership and benefits if holding the same position at any Texas public school.

11.09 Nepotism Restrictions. The School shall comply with all nepotism restrictions as more fully described in Addendum A-7, including its attachment, both of which are attached to this Agreement. All persons employed by School prior to the effective date of this Agreement will be considered grandfathered in and exempt from nepotism restrictions.

## ARTICLE XII. ACADEMIC PLAN

12.01 Curriculum and Program. OP will have initial, final and sole authority to approve all curriculum decisions beyond the minimum requirements in TEC §29.1532 (relating to Prekindergarten Program Requirements), lesson plans, instructional strategies, and instructional materials, as defined in TEC §31.002(1), to be used at that campus. This authority includes sole authority over educational programs for specific, identified student groups, such as gifted and talented students, students of limited English proficiency, special education students, students at risk of dropping out of school, and other statutorily defined populations.

12.02 Educational Plan. OP will implement the education plan described in its proposal to operate the School, attached as Addendum A-3. OP will ensure that curriculum satisfies the minimum requirements outlined in TEC §29.1532. OP agrees to notify the District of any significant alteration of this plan.

12.03 Selection of Instructional Materials. OP has sole authority to select instructional materials (as defined in TEC §31.002(1)) for the School and any other standards that may be required under Applicable Law.

12.04 Assessments. OP has sole authority over the selection and administration of student assessments not required by state or federal law.

12.05 Student Behavior. Students enrolled at the School will be required to follow the District's Code of Student Conduct. OP reserves the right to develop its own Code of Student Conduct. OP agrees that it will not modify expulsion provisions without consent of the District and agrees to notify the District of any other modification in writing at least 60 days in advance of implementation. OP agrees that a student shall not be suspended or expelled from the School for attendance or academic performance reasons.

12.06 Due Process. OP will cooperate with the District to ensure that due process is afforded with respect to student removals and expulsions.

### ARTICLE XIII. FACILITIES

13.01 Facilities. The District shall provide facilities, in the form of classrooms, office furniture, equipment, and storage areas for the School at the cost detailed in Article XIV. The parties may expand or reduce the amount of space allotted to use by OP during the term as mutually determined and agreed upon by the parties. Facilities do not include classroom materials (e.g., books, notepads, pencils, etc.) or any other resources needed for the School's academic curriculum.

13.02 Ownership. The Parties acknowledge that all Facilities are owned by the District.

13.03 Permitted Use. Beginning on August 1, 2018 ("Possession Date"), and during the Term of this Agreement, OP may use and occupy the Facilities solely for the operation of the School as permitted by this Agreement and Applicable Law. To the extent OP wishes to use the Facilities for educational activities, separate from the School but associated with its educational purposes, OP must seek approval from the District, and such approval shall not be unreasonably denied but any costs for such facility use shall be reimbursed to the District by OP. Any use of the Facilities by any other individual, group, or organization shall be governed by the District's facilities use policies. Prior to the Possession Date, the District may provide OP access to

certain District facilities as requested by OP in order to allow OP to conduct job fairs, assess facilities, and take other reasonable steps necessary to prepare for the implementation of this Agreement.

13.03.1 Year-Round Programming for Infants and Toddlers and Programming for PreK Students Outside the Standard School Year. The District consents to OP's use of the Facility for infants and toddlers year-round and prek students during non-school days, hereinafter referred to as the "Day-Care Program." OP must comply with all terms of this Agreement that relate to facilities during all periods of use, including during operation of the Day Care Program. OP EXPRESSLY AGREES TO INDEMNIFY AND HOLD HARMLESS THE DISTRICT in accordance with section 18.01 of this Agreement for any and all claims that may result from the operation of the Day Care Program. OP is solely responsible for ensuring compliance with any and all Texas Child Care Licensing Requirements to operate the Day Care Program in the facility in accordance with Section 10.14.

13.04 Furniture and Equipment for Classrooms and Instructional Areas. In consultation with OP regarding the furniture and equipment needs of the OP classrooms, the District, for the term of this agreement, will supply existing chairs, desks, bookcases, bookshelves, file cabinets, computer tables, conference tables, and other furniture as reasonably required for the School. Such furniture and equipment will be substantially the same as furniture and equipment provided in other classrooms for the same grade level and/or same subject at the District. Such furniture and equipment do not include classroom materials (e.g., books, notepads, pencils, etc.) or any other resources needed for the School's academic curriculum. OP also may furnish other furniture, fixtures, and equipment, at OP's cost and expense, as OP determines what is needed to implement the Program. The title to all furniture and equipment supplied by the District for use by OP remains vested in the District. The title to all furniture and equipment purchased with federal, state, or local funds for use by OP at the School remains vested in the District. The title to all furniture and equipment provided by OP with funds other than funds received from this Agreement remains vested in OP. OP and the District shall tag and identify their respective property so that ownership is clear. Each Party shall maintain an inventory list of all of its assets ["assets" will be defined as an equipment with value >\$1,000 located at the School].

13.05 Fixtures and Alterations. OP may attach non-permanent materials and fixtures to the walls of the School's classrooms but may not make any other alterations (including adding/removing fixtures) in or to the School's classrooms or any other part of the District's facilities used by OP that would alter the walls, floors, or any other permanent structure of the District's premises without written consent of the District.

13.06 Order and Maintenance. Subject to Paragraph 9.02.1, OP shall keep the School classrooms and any other portion of the District's premises, such as office space and storage area used exclusively for OP in a neat and orderly manner. Both Parties shall comply with the Applicable Laws regarding standards of safety and health of students. The District shall be responsible for routine maintenance and major repairs of the school building including HVAC equipment, fire alarm, roof repairs, and parking lot repairs to maintain the safety and security of the campus. The District shall maintain all other portions of the School in a neat and orderly manner. OP shall

immediately (no later than 12 hours of discovery) notify the District of any immediate and urgent repairs needed at the School.

13.07 Insurance Coverage. In addition to the requirements of Article XV below, each Party, at its own expense, shall maintain its own insurance throughout the Term of this Agreement. The insurance required under this Agreement shall be bound to the following:

13.07.1 Comprehensive or Commercial General Liability Insurance. Comprehensive or commercial general liability insurance for not less than \$1,000,000 (combined single limit for bodily injury and property damage per occurrence and in the aggregate). Each Party may elect to carry what other insurance that Party decides is necessary or advisable for its obligations under this Agreement. Such insurance shall be written to cover claims incurred, discovered, manifested, or made during or after the Term:

i) Automobile insurance to cover losses for motor vehicles accidents by that Party; and ii) Workers Compensation insurance as may be required by Applicable Law for that Party.

13.07.2 Property Insurance. The District shall obtain and maintain property insurance for the School as it deems necessary and advisable to carry. Each Party may elect to carry insurance to insure its own personal property located at the School. The District shall have no obligation to replace, repair, or compensate OP for any loss affecting OP'S property, trade fixtures, furniture, equipment, playgrounds which OP is responsible for under Paragraph 9.01.4, or other installations or for any physical or personal injuries, losses, or damages to or sustained by OP, its agents, invitees, OP'S improvements, equipment, or personal property.

13.07.3 Negligence. Neither Party will be responsible for the negligence or liability of the other Party.

13.08 Disaster Preparedness. District shall be responsible for preparing the building for a possible natural disaster. OP shall be responsible for preparing the playgrounds and interior furniture and equipment for a possible natural disaster. The District will inform the OP of timing and level of preparedness it expects to undertake. District will inform the OP of timing of return to the campus following a natural disaster.

13.09 Surrender of the Facilities. On the termination of this Agreement, OP shall leave the Facilities in good condition and repair. OP shall return and surrender to the District all exterior door keys, interior door keys, mailbox keys, security access cards, and improvements that were provided to OP by the District. The obligations under this Section shall survive the termination of this Agreement.

#### ARTICLE XIV. FINANCIAL MATTERS



14.01 Payment Sources & Structure. The Parties understand that this Agreement allows for OP to receive the District's usual funds from the State's Foundation School Program ("FSP Funds") that all eligible students within the District receive and to receive SB 1882 funds ("SB 1882 Funds"), if awarded, for those eligible students due to this partnership Agreement as described in this Article. For purposes of this Agreement, FSP funds are based primarily on the weighted average-daily-attendance ("WADA") allocation received by the District under TEC Chapter 42, Tiers I and II for eligible students enrolled in the District and in actual attendance at the School.

14.01.1 Federal Funds and Instructional Materials Allotment. Federal funds and Instructional Materials Allotment attributable to the School shall not be included in the FSP Funds calculation and shall be retained by the District and utilized at the District's discretion in accordance with law and policy.

14.02 Menu of Services. The District may annually publish a service menu and price list for educational and support services other than or in addition to what the District is required to provide under this Agreement. If the District opts to publish a service menu and price list, the District must do so no later than April 1 for the following school year. Such services may include, but are not limited to, professional development; participation of School students in extracurricular activities; transportation for field trips; and transportation or food services needed on days in which the District is not operating. Prices will be stated in a per-pupil, per-square foot, or per-day/hour basis format. Prices will be the at-cost prices for District schools. Should OP utilize a service on the menu, the District will reduce OP's monthly payment pursuant to Section 14.05 for the services provided in the month following performance of the service. The District's service menu and price list is attached to this Agreement as Addendum A-5b.

14.03 Operational Expenses. Operational services are outlined in Worksheet C and D of Addendum A-52. OP may not elect out of operational services in Worksheet C and D, unless the parties agree to an amendment in writing.

14.04 Determination of Per Pupil Funding Allocation. Subject to section 14.04.1, in consideration of the services provided under this Agreement, the District shall pay OP for each school year of the Term, an amount equal to the basic allotment plus the weighted adjusted basic allotment for each student in Average Daily Attendance (ADA) at the School with a monthly offset as defined in Sections 14.02 and 14.03 above. The annual amount set forth in this Section shall be referred to herein as "the Fee", and uses Near-Final amounts from TEA's Additional Aid for Partnering to Operate a District Campus (part of GISD's Summary of Finances). Other than the Fee paid to the OP under this Section and the grants awarded for the School under Section 14.08, the District shall retain all state, federal, and local funds earned or received on behalf of each student at the School to pay for the activities and services provided by the District under this Agreement.

14.04.1 Funding Updates. The District may annually update the figures in Addendum A-5a to reflect actual expenses for the upcoming school year. The District will provide OP notice of any impact the amendments will have on the Fee no later than July 1 of each year during the term of this Agreement. Should the amendment result in an increase or decrease of the Fee of more than five percent, either party may terminate this agreement by written notice no later than July 15.

14.05 Distribution of Funding Allocation. Payments of the funding allocation set forth above shall be made in monthly installments on the 15th day of each month during the Term, commencing on September 15, 2023. On or before September 30 beginning with the second year of the Term, the estimated figures in 14.05.1 will be adjusted to actual figures, revenue, and expenses, as applicable, for purposes of determining the compensation hereunder and any amounts owed by either Party according to a mutually agreed upon settle-up process. In the event that the 15th shall fall on a Saturday or Sunday, payment shall be made on the following Monday.

14.05.1 Estimated Figures Adjusted to Actual in Settle-Up:

- A. Average Daily Attendance
- B. Funding generated in accordance with TEA's Additional Aid for Partnering to Operate District Campus (part of GISD's Summary of Finances).
- C. Campus Specific Expenses in Worksheet C of Addendum A-5a
- D. District and OP will continue to use the Funding Template Workbook.  
See Addendum titled "MECC Workbook"

14.06 Limitations. Payment shall be issued contingent on current Average Daily Attendance ("ADA") and Full Time Equivalent ("FTE") records (as applicable). In no case shall the District be obligated to pay any amount for students not included in the District's eligible ADA count to the Texas Education Agency. Notwithstanding any terms herein to the contrary, the District's obligation to compensate OP is expressly subject to the receipt, adjustment, or modification of funds by the District from the State of Texas specifically allocated for those eligible students in attendance at OP. In the event that such funding is not received or reduced, the District shall not be obligated to OP in any amount, and OP may terminate this Agreement, and any prior payments made by the District shall be retained by OP in consideration of and as payment for educational services provided up to the date of such termination. This paragraph shall not be construed to relieve the District of any responsibility or obligation to OP if the District fails to receive funding as a result of a failure by the District or its agents or contractors to fulfill requirements necessary for securing funding from the State of Texas. The parties agree that this agreement is not contingent upon approval of benefits under Texas Education Code section 11.174(a)(2).

14.07 Refund upon Termination. In the event of termination during the Term of this Agreement, OP agrees to refund to the District within ninety (90) days of the date of termination, all advanced but unearned funds.

14.08 Federal and State Grants. In addition to the funding described above, OP may also be eligible for Federal entitlement grants, such as Title I, as approved by the Federal granting agencies and the State based on the allocation determination by the GISD Assistant Superintendent for Student Support. Such finding must be spent as approved and designated by Federal and State agencies. OP admits knowledge of and agrees that the District's obligation hereunder for payment of Federal and/or State grants is limited to and expressly subject to receipt of any funds from the Texas Education Agency. In the event the District is ever required to refund any funds received from TEA specifically designated for any Federal or State grant program, then it is understood and agreed that OP shall be liable for and shall refund such amounts received. If OP obtains a federal or state grant specifically for the School and for a cost originally assigned to the District, OP shall use the grant money for the cost and the District shall not pay for the cost. This section specifically excludes any and all funds received pursuant to the Elementary and Secondary Emergency Relief Fund and the District shall allocate any one-time grant funds received in its sole discretion and in accordance with the Notice of Grant Award.

14.09 Contracting, Purchasing and Procurement. OP may establish school-level systems for obtaining, contracting with, and paying its vendors for goods it acquires and services it provides under this Agreement. OP will ensure compliance with applicable state and federal contracting and payment laws. OP reserves the right to contract for any services it deems beneficial in operation of the School.

14.10 Accounting and Audits. OP shall comply with generally accepted fiscal management and accounting principles. The Parties shall comply with the financial performance goals detailed in Addendum A-3, which shall include, but is not limited to a completion of OP's annual financial report, receipt of an unqualified audit opinion, and specific consequences in the event that OP does not meet the financial performance goals. In addition to any audits required by Applicable Law, OP shall submit to the District within 180 days following the end of each fiscal year starting with the 2nd completed fiscal year, financial statements audited by an independent certified public accountant. The OP will provide the District with the financial audit from the first Fiscal Year of this Agreement but will not include any Federal Funding, so the 180-day timeline does not apply. The District shall also retain the right to conduct its own campus audit of the School and annual audit of OP as it deems necessary. OP agrees to comply with all rules, regulations, ordinances, statutes, and other laws, whether local, state or federal, including, but not limited to, all audit and other requirements of the Single Audit Act of 1984. In the event an audit occurs and any expenditures relating to this Agreement are disallowed, OP agrees to reimburse the District immediately for the requisite full amount.

#### ARTICLE XV. RECORDS AND REPORTING

15.01 Records Management System. The District shall maintain a records management system that conforms to the system required of school district under the Local Government Records Act, Section 201.001 et seq., Local Government Code, and rules adopted thereunder; provided, however, that records subject to audit shall be

retained and available for audit for a period of not less than five (5) years from the latter of the date of termination or renewal of this Agreement.

15.02 State and Federal Reporting. OP shall report timely and accurate information to the District as necessary for the District to comply with all applicable state and federal requirements. OP shall report information in the manner requested by the District and correct any demonstrable errors as requested by the District, provided that the manner of reporting or correction requested is not unduly burdensome to OP.

15.03 Lawful Disclosure. To the extent that OP or the District will come into possession of student records and information, and to the extent that OP or the District will be involved in the survey, analysis, or evaluation of students incidental to this Agreement, both parties agree to comply with all requirements of the FERPA and the Texas Public Information Act. In the event that the District is required to furnish information or records of the School pursuant to the Texas Public Information Act, OP shall furnish such information and records to the District, and the District shall have the right to release such information and records. Either OP or the District may object to disclosure of information and records under FERPA or the Texas Public Information Act.

## ARTICLE XVI. INTELLECTUAL PROPERTIES

16.01 Proprietary Materials. Each of the Parties shall own its own intellectual property including without limitation all trade secrets, know-how, proprietary data, documents, and written materials in any format. Any materials created exclusively by the District for the School shall be owned by the District, and any materials created exclusively by OP for the School shall be OP's proprietary material. The Parties acknowledge and agree that neither has any intellectual property interest nor claims in the other Party's proprietary materials. Notwithstanding the foregoing, materials and work product jointly created by the Parties shall be jointly owned by the Parties and may be used by the individual Party as may be agreed upon by both Parties from time to time.

16.02 Name. OP owns the intellectual property right and interest to the name "Moody Early Childhood Center." The Parties agree that the name "Moody Early Childhood Center" may be used by either Party during the Term of the Agreement. The Parties agree that after the expiration or termination of this Agreement, the District shall not use the name "Moody Early Childhood Center" for its own individual purposes.

## ARTICLE XVII. INSURANCE

17.01 Insurance Coverage. OP shall secure and keep in force during the Term of this Agreement commercial general liability insurance coverage, including contractual coverage, automobile liability insurance coverage, and sexual misconduct and molestation coverage, with minimum liability limits of \$1 per occurrence, with a \$2,000,000 annual aggregate. The District is to be named as an additional insured under such coverage for any liability arising, directly or indirectly, under or in connection with this Agreement, or with regard to the operations of the School or any event arising therefrom. The District shall maintain casualty insurance on the Facilities and on its personal property and commercial general liability coverage

applicable to any services it provides at the School, in substantially the same manner as it maintains such insurance with respect to other District schools. OP shall also maintain (a) broad form casualty coverage for all personal property located or used at the School, including the Furnishings, which coverage shall be on a full replacement value basis, and (b) worker's compensation insurance to the extent required by the laws of the State of Texas, any deductible or other similar obligation under OP's insurance policies shall be the sole obligation of OP and shall not exceed \$25,000. Notwithstanding the foregoing requirement regarding insurance coverage, the District shall have the right to self-insure part or all of said insurance coverage in the District's sole discretion. In the event that the District elects to self-insure all or any part of any risk that would be insured under the policies and limits described above, and an event occurs where insurance proceeds would have been available but for the election to self-insure, the District shall make funds available to the same extent that they would have been available had such insurance policy been carried.

17.02 Form of Policies. All of the OP's insurance policies shall be issued by insurance companies qualified to operate in Texas and otherwise reasonably acceptable to the District. Such policies shall name the District, and such other related parties as the District elects, as additional insureds. Evidence of insurance shall be delivered to the District on or before the Possession Date, and thereafter within thirty (30) days prior to the expiration of the term of each such policy, or immediately upon OP's obtaining a new policy. Such coverage may be maintained under a blanket insurance policy of OP.

17.03 Evidence of Insurance. Upon request, a Party will furnish a certificate of insurance to the other Party evidencing the required coverage within thirty (30) days after the Possession Date of this Agreement and annually thereafter. Each Party will provide to the other Party notice of any cancellation or material adverse change to such insurance within thirty (30) days of such occurrence.

17.04 Cooperation. To the extent that it is reasonably practicable, each Party will comply with any information or reporting requirements required by any of the other Party's insurers.

17.05 Insurance Companies. All insurance coverage described in this Article shall be obtained from companies that are authorized to do business in the State of Texas.

## ARTICLE XVIII. INDEMNIFICATION

18.01 Indemnity Provision. OP agrees to comply with the following Indemnity Provision. OP covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the DISTRICT and the elected officials, employees, officers, directors, volunteers and representatives of the DISTRICT, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the DISTRICT directly or indirectly arising out of, resulting from or related to OP's activities under this AGREEMENT, including any acts or omissions of OP, any agent, officer, director,

representative, employee, consultant or subcontractor of OP, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this AGREEMENT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of the DISTRICT officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT OP AND THE DISTRICT ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE DISTRICT UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. The provisions of this INDEMNIFICATION are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. OP shall advise the DISTRICT in writing within 24 hours of any claim or demand against the DISTRICT or OP known to OP related to or arising out of OP's activities under this AGREEMENT.

#### ARTICLE XIX. SERVICE-LEVEL AGREEMENTS

19.01 District Authority. The District has sole decision-making authority regarding the delivery of any service related its responsibilities detailed in Paragraph 9.02. The District shall coordinate and cooperate with OP to determine dates of contracted service at the School and OP shall allow service contractors on School grounds absent any serious and legitimate complaints or concerns. OP shall inform the District of any service the District provides that is not complaint with Child Care Licensing requirements. The District understands that OP must comply with these licensing requirements and the District agrees to have its service vendors comply with the same and/or notify OP when the licensing requirements are too burdensome for the District and its vendor(s) to comply with. If the District is unable to have a specific vendor comply with the licensing requirements, then OP may select its own vendor for that specific service.

#### ARTICLE XX. GENERAL AND MISCELLANEOUS

20.01 Entire Agreement. This Agreement, including all referenced attachments and terms incorporated by reference contains the entire agreement of the parties. All prior representations, understandings, and discussions are merged into, superseded by, and canceled by this contract.

20.02 Severability. The parties intend that each provision hereof constitute a separate agreement between or among them. Accordingly, the provisions hereof are severable and in the event that any provision of this Agreement shall be deemed invalid or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions hereof will not be affected, but will, subject to the discretion of such court, remain in full force and effect, and any invalid or unenforceable provision will be deemed, without further action on the part of the parties, amended

and limited to the extent necessary to render the same valid and enforceable and reflect the intent of the parties.

20.03 Waiver. No waiver of any provision of this Agreement will be effective unless in writing, nor will such waiver constitute a waiver of any other provision of this Agreement, nor will such waiver constitute a continuing waiver unless otherwise expressly stated.

20.04 Venue and Jurisdiction. OP and the District agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Galveston County, Texas. Any action or proceeding to enforce the terms of this Agreement or adjudicate any dispute arising out of this Agreement shall be brought in a court of competent jurisdiction in Galveston County or in the United States District Court for the Southern District of Texas, Galveston Division.

20.05 Governing Law. The laws of the State of Texas, without regard to its conflict of laws' provisions, will govern this Agreement, its construction, and the determination of any rights, duties, obligations, and remedies of the parties arising out of or relating to this Agreement.

20.06 Assignment. Except as otherwise provided in this Agreement, neither Party may assign or delegate any rights or obligations under this Agreement without the prior written consent of the other Party.

20.07 Successors and Assigns. This Agreement will be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assigns.

20.08 Headings and Captions. The headings and captions appearing in this Agreement have been included only for convenience and shall not affect or be taken into account in the interpretation of this Agreement.

20.09 Competition. OP, its subsidiaries, and/or its related entities shall not fund or operate any educational institution in the District's Attendance Area during the Term of this Agreement.

20.10 Days. Any timeline in this Agreement referencing "days" shall mean calendar days.

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

If to the OP:

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Karin Miller, Executive Director Moody  
Early Childhood Center  
1110 21st Street  
Galveston, Texas 77550  
karin@moodychildhoodcenter.org

If to the District:

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Dr. Matthew Neighbors, Interim CEO  
Galveston Independent School District  
matthewneighbors@gisd.org  
3904 Avenue T  
Galveston, Texas 77550