SHELBY COUNTY
COMMUNITY SERVICES DIVISION
HEAD START PROGRAM
COOPERATIVE AGREEMENT

This Agreement made this _____ day of _____, 2008, by and between Shelby County Government, a political subdivision of the State of Tennessee, hereinafter referred to as "COUNTY," 160 N. Main Street, Memphis, Tennessee, 38103, and **Goodwill Homes Community Services** having an office at **P.O. Box 161282, Memphis, TN 38186-1282** hereinafter referred to as "CONTRACTOR", states conditions and covenants for the administration of a portion of the Head Start Program, hereinafter referred to as "PROGRAM" for the County.

WHEREAS, Resolution No. ___ authorized the County Mayor to receive, expend and subcontract for Federal Health and Human Services (HHS) grant funds for the continued operation and administration of the Head Start Program; and

WHEREAS, The COUNTY is desirous of the CONTRACTOR providing those services and the CONTRACTOR is desirous of providing such services through all of its sites:

NOW, THEREFORE, in consideration of the mutual covenants recorded herein, the parties agree as follows:

ARTICLE I

Scope of Services

1.1 The CONTRACTOR agrees:

a. To administer the Head Start Program, as defined by HHS and County Rules, five days a week for a minimum of _180_ school days throughout the term of this agreement for a maximum of **100** pre-school children (ages 3-5).

b. To adhere to all applicable Head Start Program Performance Standards, notices and instructions as promulgated by HHS'S Administration for Children and Families (ACF), Administration for Children, Youth and Families (ACYF), including but not limited to the Code of Federal Regulations (CFR), Title 45, Parts 1301, 1302, 1303, 1304, 1305, 1306, 1308; 1310 OMB A-110, A-122 and A-133; and appropriate County requirements, all of which are incorporated herein by reference.

c. To provide a daily educational program for the pre-school children emphasizing the social, physical, emotional, cognitive and literacy skills appropriate for pre-school age children as specified in 45 CFR 1304.21.

d. To provide the number of teaching staff as specified in 45 CFR Part 1306.20(d), Subpart B, and as needed to teach and supervise the Program enrolled children. Teachers must possess, at a minimum, an Associate's Degree in Early Childhood Development or an Associate's Degree in any area with a National Child Development Association (CDA) Certification.

e. To provide general supervision, staff administration and programming for the program and to provide the necessary staffing for all service areas.

f. To provide the Early Childhood Development and Health Services as specified in 45 CFR 1304.20(a-f), 1304.21(a-c), 1304.22(a-f), 1304.23(a-e) and 1304.24(a)(1-3) including immunizations, medical exams, dental and developmental screening and appropriate follow-up care for all Program enrolled children.

g. To provide eligibility, recruitment, selection, enrollment and attendance requirements and procedures as specified in 45 CFR Part 1305 to meet the Federal HHS Head Start income guidelines; provide support services to families; and assist them to improve the condition and quality of their lives, as required in conjunction with family and community partnerships in 45 CFR Part 1304.40 and maintain the appropriate documentation as indicated in 1304.41, Subpart C.

h. To provide the parent involvement services, as specified in 45 CFR Part 1304.40 Subpart C and 1304.50 Subpart D, which includes but is not limited to establishing and maintaining a Head Start parent committee and a policy committee. The CONTRACTOR'S Head Start policy and parent committee must be clearly identified, maintain accurate minutes, which reflect Head Start parent activities, education and financial records and documents.

i. To provide a meeting allowance for policy Committee members and parent activity funds for all parents in accordance with HHS Program Performance Standards and Guidelines as delineated in CFR 1304.50 Subpart F.

j. To maintain and update the Contractor's personnel policies and procedures incorporating the requirements as specified in 1304-50 (Appendix A) (Governance and Management Responsibilities), which includes but is not limited to, Head Start Policy Committee approval prior to the hiring, demotion and dismissal of the Contractor's HHS funded staff. Consultants and staff must possess qualifications as stipulated in

CFR 1304.52 (b-f). Failure to follow these procedures will result in the disallowance by the County, for personnel costs and any other costs for those persons not approved by the Head Start Policy Committee.

k. The Contractor must at a minimum perform annual performance reviews of each Head Start and Head Start staff member, inclusive of the Head Start Director, and use the results of these reviews to identify staff training and professional development needs as necessary, and assist each staff member in improving his or her skills and professional competencies.

l. To ensure that classroom staff eat lunch with the children daily, and broaden their food experience, including supporting their development and socialization during meal services.

m. To meet and maintain full enrollment within the first 30 days of school.

n. To enroll and maintain at least 10 percent of the total enrollment with children who have disabilities and provide disability services as specified in 45 CFR Part 1308.

o. To ensure that all staff paid any portion of their salaries by Head Start funds attend the annual Pre-Service Training, and in-service staff training programs developed by the Program and mandated by CFR 1304.52 K (1-3) and 1306.23.

p. To submit any such reports as may be required by HHS directives and County to the County by the specified dates.

q. To prepare, retain and permit the County to inspect all records, as required by HHS directives, in the manner authorized by conditions in the HHS grant or as the County deems necessary for grant purposes.

r. To permit the County's staff to monitor and evaluate the Contractor's activities, including but not limited to, scheduled and impromptu site visits and observations of the Program's staff.

s. Staff is given three days for follow-up and documentation of unexcused absences. On the fourth day, after it has been confirmed that the child is not returning, immediate steps must be taken to fill the slot with a new or transfer child unless a vacancy occurs 60 days prior to the program enrollment deadline for the year.

t. To provide, by the tenth working day of each month, monthly status reports on: Education; Fiscal; Human Resources; Parent Involvement; Policy Committee minutes and Board of Directors minutes; Health; Social Services; Nutrition; Disability Services; Mental Health; the enrollment and

attendance of children and their families in the Head Start Program; and to forward copies of such reports to the Shelby County Head Start Administrative Office 1991 Corporate Avenue, Suite 600, Memphis, TN 38132. Said report data and format will be specified in writing by the County.

u. To ensure that program plans, recruitment, selection and enrollment criteria must be approved annually by the Policy Committee/Policy Council and the County prior to submission of the Grant Application as required by CFR 1304.50 (d)(1)(vii).

v. To provide non-federal resources, either in cash or in-kind, an amount equivalent to twenty-five percent (25%) of the total amount specified in Section 1.2(b) of this Agreement.

w. To furnish the County a monthly line-item budget summary which shall include a detailed segregation of all program and administrative costs; current month's expenses; year-to-date expenses and available balance. The Contractor shall provide copies of all contracts, agreements and purchase orders for the current program year, which shall include, but not limited to, leases for real and personal property and services to the County prior to requests for reimbursement for review and approval.

x. In the event of termination of the Agreement pursuant to Section 12.2, to transfer the Contractor's activities, records and any assets purchased with funds under this Agreement to another entity satisfactory to the County, or to the County, at the County's sole discretion.

y. To ensure the attendance of a minimum of one Contractor staff person at the annual National Head Start Conference and a minimum of one parent at the National Head Start Parent Conference. The Head Start Director is required to attend, at a minimum, one (1) National, one (1) Regional and one (1) State Association Head Start meeting. In addition, Head Start Directors are required to attend at minimum four (4) Head Start Directors state meetings.

z. To obtain County and Policy Committee approvals prior to making any line item budget adjustments over 5 percent. Salary adjustments and/or enhancements of employees who are paid any portion of their salary by Head Start funds must have prior Policy Committee and County approval.

aa. To ensure that all families enrolled in the Contractor's Head Start Program reside inside of Memphis-Shelby County and meet the enrollment and selection criteria.

bb. To ensure that all Policy Committee and (Board of Director's) minutes, pertaining to Head Start, are provided to the County within a fifteen (15) calendar days following the meeting.

cc. To make all expenditures in accordance with OMB A-110 & A-122; 45 CFR Part 74 and County directives.

dd. To provide grant activity schedules to the County annually to coordinate the County's audit schedule.

ee. To maintain Head Start Program enrolled children in separate classrooms from non-Head Start children. The maximum class sizes are as follows: Majority three year olds is 17 and majority 4 year olds is 20.

ff. To ensure implementation of all systems in accordance to 1304.5-1304-53.

gg. To prepare and submit grant applications for financial assistance according to County instructions.

hh. To submit annual work plan to the County on the specified date.

ii. To comply with the State of Tennessee's law regarding reporting of suspected child abuse and neglect.

jj. To ensure compliance with the administrative procedures attached to this agreement.

kk. To track administrative costs separately and not exceed the 12% limitation.

ll. To obtain prior written approval of the County to purchase any item with a unit cost of $5,000 or more.

mm. To obtain prior written County approval for the use of all consultants with costs in excess of $2,000 or more.

nn. To ensure that no County funds are utilized for lobbying or political purposes.

oo. To ensure that the Delegate Board of Directors and Policy Committee annually receive training from the Grantee on Shared Governance. The delegate is to ensure that training is provided to Parent Committee annually.

pp. To provide a smoke free environment at all locations for staff and clients.

qq. To ensure that approvals are obtained from the Policy Committee and the County before any major changes to the scope of services are made.

rr. To ensure that approvals are obtained from the Policy Committee and the County before enrollment is reduced at any location where Head Start services are provided.

ss. To maintain at least 85% average daily attendance or provide sufficient justification to excuse performance of this provision (Article XI, 11.2).

tt. To participate in all staff credentialing requirements of Head Start, including the Ready, Set, Grow Criteria, to achieve a "3-star" rating under Head Start requirements, and to meet all Head Start mandates regarding college degrees held by Contractor's staff.

1.2 The County agrees:

a. That the County will monitor, evaluate and provide guidance to the Contractor as it performs its obligations under this Agreement.

b. To reimburse the Contractor, within 30 days of the request, subject to availability of federal funds and pursuant to the HHS grant. The total reimbursement amount shall not exceed a maximum of **$741,392.00**. The Contractor is only authorized to incur costs to the extent that purchase orders have been issued by the County.

c. The County will audit the itemized statements submitted by the Contractor pursuant to Section 1.1(w), verify the expenditures and documentation, and submit to the County's Finance Department a request for payment to the Contractor.

d. To provide staff to coordinate services and technical assistance to the Contractor's Service Delivery Staff.

However, reimbursement is strictly contingent upon the Contractor's full compliance with the procedures described in Section 1.1 of this Agreement.

ARTICLE II

Term of Agreement

2.1 Effective Term. Both parties agree that the effective term of this agreement shall be from January 1, 2009 to December 31, 2009.

Budget Summary

3.1 Budget Summary. The Contractor agrees that all expenditures or costs shall be made in accordance with the Budget, which is attached herein and incorporated hereto as Attachment "A". Notwithstanding, Contractor's authorization to incur expenses under this Agreement is expressly conditional upon approval of this Agreement by the County's Board of Commissioners and the issuance of a purchase order by the County.

3.2 Subject to Funding. This Agreement is subject to annual appropriations of funds by the Shelby County Government. In the event sufficient funds for this Agreement are not appropriated by Shelby County Government for any of its fiscal period during the term hereof, then this Agreement will be terminated. In the event of such termination, the contractor shall be entitled to receive just and equitable compensation for any satisfactory work performed as of the termination date.

ARTICLE IV

INDEMNIFICATION

4.1 Indemnification by the Contractor. The Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, resulting to or resulting from the performance of this Agreement by the Contractor, its employees, agents, servants, partners, principals or subcontractors. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

ARTICLE V

Insurance

5.1 Modification and Changes. The Contractor shall notify the County of any intended changes in insurance coverage, including but not limited to any renewals of existing insurance policies. Upon review of the Contractor's Scope of Services by the County's Risk Management Division, the County may increase, decrease waive or modify any of the following insurance requirements. Any request by a Contractor to decrease, waive or modify any of the following requirements must be approved in writing by the County's Risk Management Division.

5.2 Minimum Insurance Requirements: Certificates of Insurance. The Contractor shall furnish to the County Certificates of Insurance, or certified copies of policies if so requested, indicating that insurance coverage has been obtained which meets the requirements as outlined below:

a. Worker's Compensation Insurance for all employees of the Contractor as required by Tennessee statute.

b. Commercial General Liability Insurance for day care operators in an amount not less than $1,000,000.00 per occurrence premises-operations/ $1,000,000.00 annual aggregate; $1,000,000.00 products-completed operations aggregate; $1,000,000.00 personal and advertising injury liability; $50,000.00 Fire Damage and $5,000.00 medical expense. This coverage must include child abuse and molestation endorsement. Volunteers are to be included as insured's. Coverage will be provided for all field trips. Shelby County must be endorsed on the policy as an additional insured with respect to this coverage. A copy of the endorsement to the policy will be provided to the COUNTY.

c. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than $1,000,000.00 per occurrence.

d. Professional Liability Insurance in the name of the contractor, including the employees as insured's, at an amount not less than $1,000,000.00 per occurrence.

e. Employee Dishonesty Bond not less than $100,000.00 per occurrence per employee.

f. Employment Practices Liability Insurance – minimum limit of $100,000.00.

g. Directors and Officers Liability $3,000,000.00 limit per occurrence.

h. Broad Form Commercial Property coverage written with no less than 80% coinsurance on a replacement cost basis with a deductible of no less than $5,000.00 per claim on all real and business personal property including

stock and equipment. Coverage to include earthquake and flood coverage at a minimum limit of $1,000,000.00 blanket limit.

i. Boiler and machinery insurance for the same properties as on the Commercial Property policy, with deductible of no less than $5,000.00 per claim.

j. Accidental Death and Dismemberment and Accident Medical Expense insurance for all Head Start participants. Primary coverage with maximum deductible of $100.00. Schedule of benefits to be reviewed and accepted by County prior to issuance of policy.

5.3 Classification and Ratings. The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the services or operations described in the Scope of Services. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Tennessee, with the following qualification:

The company must be rated no less than "A" as to management and no less than "Class V" as to financial strength by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

or

The company must hold a valid Tennessee Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Tennessee", issued by the State of Tennessee Department of Insurance and are members of the Tennessee Guaranty Fund.

Certificates of Insurance shall indicate that no modification or change in insurance shall be made without thirty (30) days written advance notice to the certificate holder.

5.4 Failure to Provide Certificates of Insurance. If the Contractor fails to furnish the County with the Certificate of Insurance or written verification required under this section or as determined by the County's Risk Management Division after review of the Scope of Services, the County shall not disburse any funds until it is provided with the necessary Certificates of Insurance or written verification. Failure to provide the Certificates of Insurance or written verification within fifteen (15) days of execution of this Agreement may result in termination of this Agreement.

ARTICLE VI

Proof of Licensure and Certification and Background Screening

6.1

a. Proof of Licensure and Certification. If the Contractor is required by the State of Tennessee or Shelby County to be licensed or certified to provide the services or operate the facilities outlined in the Scope of Services, the Contractor shall furnish a copy of all required current licenses or certificates. Examples of services or operations requiring such licensure or certification include but are not limited to childcare, day care, nursing homes, and boarding homes.

If the Contractor fails to furnish the County with the licenses or certificates required under this Section, the County shall not disburse any funds until it is provided with such licenses or certificates. Failure to provide the licenses or certificates within sixty (60) days of execution of this Agreement may result in termination of this Agreement.

b. Background Screening. In accordance with Tennessee State Statutes, only employees and subcontracted personnel with a satisfactory background check through an appropriate screening agency may work in direct contact with children.

If the Contractor fails to furnish the County with proof of the satisfactory background screening required under this Section, the County shall not disburse any funds until it is provided with documented proof that the required background screening was initiated and satisfactory.

6.2 Personnel. The Contractor represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the County. The Contractor must comply with provision of CFR 1305.

6.3 All of the Services required herein under shall be performed by the Contractor or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

6.4 The Contractor warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field, pursuant to Federal, State and local regulations.

6.5 Prohibited Activities: Contractor is prohibited from using funds provided herein or personnel employed in the administration of the Program for political activities, sectarian or religious activities, lobbying, political patronage and nepotism activities.

ARTICLE VII

Conflict of Interest

7.1 Conflict of Interest. The Contractor covenants that it has no public or private interest, and will not acquire directly or indirectly any interest which would conflict in any manner with the performance of its services. The Contractor warrants that no part of the total Agreement amount provided herein shall be paid directly or indirectly to any officer or employee of the County as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to the Contractor in connection with any work contemplated or performed relative to this Agreement.

ARTICLE VIII

Civil Rights

8.1 The Contractor warrants and represents that all of its employees are selected and treated equally during employment without regard to race, color, religion, disability, sex, age or national origin, ancestry, marital status or sexual orientation.

8.2 Civil Rights. Title VI and VII – Civil Rights Act of 1964. The Contractor agrees that no person on the grounds of handicap, age, race, color, religion, sex, or national origin, shall be excluded from participation or denied benefits of, or be otherwise subject to discrimination in the performance of this Agreement, or in the employment practices of the Contractor. The Contractor shall upon request show proof of such nondiscrimination, and shall post in conspicuous places available to all employees and applicants notices of non-discrimination. Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability, or other handicap, age marital status or status with regard to public assistance.

ARTICLE IX

Notices

9.1 Notices. It is understood and agreed between the parties that written notice addressed to the County and mailed or delivered to the address appearing on page one (1) of the Agreement and written notice addressed to the Agreement and mailed or delivered to the address appearing on page one (1) of this Agreement shall constitute sufficient notice to either party.

ARTICLE X

Autonomy

10.1 Autonomy. Both parties agree that this Agreement recognizes the autonomy of and stipulates or implies no affiliation between the contracting parties. It is expressly understood and intended that the Contractor is only a recipient of funding support and is not an agent or instrumentality of the County. Furthermore, the Contractor's agents and employees are not agents or employees of the County.

ARTICLE XI

Breach of Agreement

11.1 Breach. A breach by the Contractor shall have occurred under this Agreement if: (1) the Contractor fails to provide the services outlined in the Scope of Services within the effective term of this Agreement; (2) the Contractor ineffectively or improperly uses the governmental funds allocated under this Agreement; (3) the Contractor does not furnish the Certificates of Insurance required by this Agreement or as determined by the County's Risk Management Division; (4) the Contractor does not furnish proof of licensure and certification required by this Agreement; (5) the Contractor fails to submit, or submits incorrect or incomplete, proof of expenditures to support disbursement requests or fails to submit or submits incomplete or incorrect detailed reports of expenditures or final expenditure reports; (6) the Contractor does not submit or submits incomplete or incorrect required reports; (7) the Contractor refuses to allow the County access to records or refuses to allow the County to monitor, evaluate and review the Contractor's program; (8) the Contractor

discriminates under any of the laws outlined in Section VIII of this Agreement; (9) the Contractor falsifies or violates the provisions of the Drug Free Workplace Affidavit; (10) the Contractor attempts to meet its obligations under this Agreement through fraud, misrepresentation or material misstatement; (11) the Contractor fails to correct deficiencies found during a monitoring, evaluation or review within the specified time; (12) the Contractor fails or refuses to return all items of capital improvement in the same condition as received at the beginning of the Agreement, except for ordinary wear and tear; (13) the Contractor fails to reach full enrollment within the first 30 days of school; or (14) the Contractor fails to fulfill in a timely and proper manner any and all of its obligations, covenants, agreements and stipulations in this Agreement. Waiver of breach of any provisions of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

11.2 Excusable Delays. The Contractor shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the Contractor or its subcontractors and without fault or negligence. Such causes include, but are not limited to: acts of God; natural or public health emergencies; labor disputes; freight embargoes; and abnormally severe and unusual weather conditions.

Upon the Contractor's request, the County shall consider the facts and extent of any failure to perform the work and, if the Contractor's failure to perform was without it or its subcontractor's fault or negligence, the Agreement Schedule and/or any other affected provision of this Agreement shall be revised accordingly; subject to the County's rights to change, terminate or stop any or all of the work at any time.

11.3 County Remedies. If the Contractor breaches this Agreement, the County may pursue any or all of the following remedies:

1. The County may terminate this Agreement be giving written notice to the Contractor of such termination and specifying the effective date thereof at least (30) days before the effective date of termination. In the event of termination, the County may: (a) request the return of all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports prepared, and capital equipment secured by the Contractor with County funds under this Agreement; (b) seek reimbursement of County funds allocated to the Contractor under this Agreement; (c) terminate or cancel any other contracts entered into between the County and the Contractor. The Contractor shall be responsible for all direct and indirect costs associated with such termination, including attorney's fees.

2. The County may suspend payment in whole or in part under this Agreement by providing written notice to the Contractor of such suspension and specifying the effective date thereof, at least five (5) days before the effective date of suspension. If payments are suspended, the County shall specify in writing the actions that must be taken by the Contractor as condition precedent to resumption of payments and shall specify a reasonable date for compliance. The County may also suspend any payments in whole or in part under any other contracts entered into between the County and the Contractor. The Contractor shall be responsible for all direct and indirect costs associated with such suspension, including attorney's fees.

3. The County may seek enforcement of this Agreement including but not limited to filing an action with a Court of appropriate jurisdiction. The Contractor shall be responsible for all direct and indirect costs associated with such enforcement, including attorney's fees.

4. The County may debar the Contractor from future County contracting.

5. If, for any reason, the Contractor should attempt to meet its obligations under this Agreement through fraud, misrepresentation or material misstatement, the County shall, whenever practicable terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof at least thirty (30) days before the effective date of such termination. The County may terminate or cancel any other contracts which such individual or entity has with the County. Such individual or entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees. Any individual or entity who attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years.

6. The County may decrease the number of contracted Head Start Program Children slots if the Contractor does not reach full enrollment within the first 30 days of the school year, unless the justification has been proven to be beyond the delegate agency's control. Funding shall be reduced in accordance with each

contracted Head Start Program Children slot that is subtracted from Contractor's program.

7. Any other remedy available at law or equity.

11.4 The County Mayor is authorized to terminate this Agreement on behalf of the County.

11.5 Damages Sustained. Notwithstanding the above, the Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Agreement, and the County may withhold any payments to the Contractor until such time as the exact amount of damages due the County is determined. The County may also pursue any remedies available at law or equity to compensate for any damages sustained by the breach. The Contractor shall be responsible for all direct and indirect costs associated with such action, including attorney's fees.

ARTICLE XII

Termination

12.1 The COUNTY may, with or without cause, terminate the Agreement upon thirty (30) days written notice by the COUNTY or its authorized agent to the Contractor.

12.2 Either party may terminate this Agreement by giving thirty (30) days written notice to the other, before the effective date of termination. In the event of such termination, the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work performed under scope of services as of the termination date; however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned as of the date of termination.

12.3 All work accomplished by the Contractor prior to the date of such termination shall be recorded and tangible work documents shall be transferred to and become the sole property of the COUNTY prior to payment for services rendered.

12.4 Notwithstanding the above, the Contractor shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY by virtue of any breach of the Agreement by the Contractor and the COUNTY may withhold any payments to the Contractor for the purpose of setoff until such time as the exact amount of damages due the COUNTY from the Contractor is determined.

ARTICLE XIII

Prohibited Use of Funds

13.1 Adverse Actions or Proceedings. The Contractor shall not utilize County funds to retain legal counsel for any action or proceeding against the County or any of its agents, instrumentalities, employees or officials. The Contractor shall not utilize County funds to provide legal representation, advise or counsel to any client in any action or proceeding against the County or any of its agents, instrumentalities, employees or officials.

13.2 Religious Purposes. County funds shall not be used for religious purposes.

13.3 Commingling of Funds. The Contractor shall not commingle funds provided under this Agreement with funds received from any other funding source. The Contractor must be able to identify Head Start funds (receipts and disbursements) either by separate general ledger accounts or by a subsidiary ledger that is reconciled to the bank account.

ARTICLE XIV

Inventory

14.1 Inventory-Capital Equipment and Real Property. All capital items acquired for the project by the Contractor with funds allocated under this Agreement, shall be considered County fixed assets and shall be inventoried as County property. A capital item shall be an item that: (1) has a service life in excess of one year; (2) is either complete within itself or is a major component of another item of property; (3) by definition cannot be described either as supplies or materials; (4) will not be consumed or lose its identity; and (5) has a unit cost of $500.00 or more. All computer equipment regardless of cost shall be considered county fixed assets and shall be inventoried as county property. The Contractor shall open for inspection and verification any, and all locations containing items purchased under Section 14.1 of this agreement.

At the termination of this Agreement, unless otherwise provided for, the Contractor agrees to return all items of capital equipment to Shelby County in the same condition as it was received and purchased with County funds at the beginning of the Agreement, ordinary wear and tear accepted. The Contractor shall be responsible to the County for any damage or destruction to said property, and shall reimburse the County for such damage. The County may, in its discretion, allow the Contractor to retain possession of capital equipment after the expiration of this Agreement as long as the Contractor continues to provide the service described in the Scope of Services or another service that the County determines to be of value. If the Contractor disbands, becomes defunct or in any

way ceases to exist or if the Contractor ceases to provide the service described in the Scope of Services or another service of value, the County shall reclaim the items of capital equipment.

The Contractor shall establish and maintain a property control system, and shall be responsible for maintaining a current inventory on all capital items purchased with County funds on forms provided by the County or on forms mutually agreed upon by the County and the Contractor. This will include listing on a property record by description, model, serial number, and date of acquisition and cost. Such property shall be inventoried annually, and an inventory report shall be submitted to the County twice yearly (January and July). Records for capital items shall be retained for three (3) years after its disposition.

ARTICLE XV

Records, Reports, Audits, Monitoring and Review

15.1 Certificate of Corporate Status. The Contractor must submit to the County, within thirty (30) days from the date of execution of this Agreement, a certificate of status in the name of the Contractor, which certifies the following: that the Contractor is organized under the law of the State of Tennessee; that all fees and penalties have been paid; that the Contractor's most recent annual report has been filed; that its status is active; and that the Contractor has not filed an Article of Dissolution.

15.2 Board of Director Requirements. The Contractor shall insure that the Board of Directors is apprised of the fiscal administrative and agreement obligations of the project funded through the County by passage of a formal resolution authorizing execution of the agreement with the County. A copy of the resolution must be forwarded with the Agreement.

15.3 Proof of Tax Status. The Contractor is required to submit to the County the following documentation: (a) The I.R.S. tax exempt status determination letter; (b) the most recent I.R.S. form 990; (c) the annual submission of I.R.S. form 990 within six (6) months after the Contractor's fiscal year end; (d) I.R.S. 941 – Quarterly Federal Tax Return Reports within thirty (30) days after the quarter ends and if the 941 reflects a tax liability, proof of payment must be submitted within sixty (60) days after the quarter ends.

15.4 Office of Shelby County Finance and Administration. The Contractor understands that it may be subject to an audit, random or otherwise, by the Office of Finance and Administration or an independent private Certified Public Accountant retained by the Office of Finance and Administration.

15.5 Independent Certified Public Accountant Reviews. Pursuant to Shelby County Administrative Order, the Contractor is aware that the County has the right to retain the services of an independent private Certified Public Accountant (hereinafter "Accountant"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the Accountant retained by the County, all requested records and documentation pertaining to this Agreement for inspection and copying. The County shall be responsible for the payment of these accounting services and under no circumstances shall the Contractor's budget and any changes thereto approved by the County be inclusive of any charges relating to these accounting services.

The terms of this provision herein, apply to the Contractor, its officers, agents, employees, sub consultants and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigation of the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Section shall not impose any liability on the County by the Contractor or any third party.

15.6 Client Records. The Contractor shall maintain a separate individual case file for each client/family served. This case file shall include all pertinent information regarding case activity. At a minimum, the case file will contain referral and intake information, treatment plans, and case notes documenting the dates services were provided and the kind of service provided. These files shall be subject to the audit and inspection requirements under Article XV, Sections 15.7 and 15.9 of this Agreement.

15.7 Accounting Records. The Contractor shall keep accounting records which conform with generally accepted accounting principles. All such records will be retained by the Contractor for not less than three (3) years from the submission to the County of the final Financial Status Report (SF-269) for the Agreement period. The final FS 269 is due to the County the last working day of February, annually.

15.8 Financial Audit. The Contractor must have an annual certified public accountant's opinion and related financial statements, as required by the Federal OMB Circular A-133 (for non-profit organizations). The Contractor agrees to provide these documents and any auditor's management letter to the County no later than one hundred twenty (120) calendar days following the end of the Contractor's fiscal year, for each year during which this Agreement remains in force or until all funds earned from this Agreement have been so audited, whichever is later. The Contractor must submit (six months after the program year ends) a copy of its latest audit report, in compliance with OMB A-133, and any management letters to the County. All audit findings must have a corrective action plan prepared with dates of implementation and status on all findings, which must be forwarded to the County. If this is not submitted to the County by

the date specified, funds may be withheld until the requirements are met. Repeat findings may cause termination of funding.

15.9 Access to Records: Audit. The Contractor understands that it may be subject to an audit. The Contractor shall provide access to all of its records, which relate to this Agreement at its place of business during regular business hours. The Contractor agrees to provide such assistance as may be necessary to facilitate their review of audit by the County to insure compliance with applicable accounting and financial standards.

15.10 Progress Reports. The Contractor shall furnish the County with written quarterly progress reports on the achievement of its goals as outlined in the Scope of Services. The reports shall explain the Contractor's progress including comparisons of actual versus planned progress for that quarterly period. The data should be quantified when appropriate. Said reports are due by the 25th day of the month following the end of each quarter. A final report shall be due thirty (30) days after the termination of this Agreement.

15.11 Monitoring: Management Evaluation and Performance Review. The Contractor agrees to permit County personnel to monitor, review and evaluate the program which is the subject of this Agreement. The County shall monitor both fiscal and programmatic compliance with all the terms and conditions of the Agreement. The Contractor shall permit the County to conduct site visits, client assessment surveys, and other techniques deemed reasonably necessary to fulfill the monitoring function. A report of the County's findings will be delivered to the Contractor and the Contractor will rectify all deficiencies cited within the period of time specified in the report. If such deficiencies are not corrected within the specified time, the County may suspend payments or terminate this Agreement. County and the U.S. Department of Health and Human Services shall conduct one or more formal management evaluation and performance reviews of the Contractor within the Agreement period. Continuation of this Agreement of future funding is dependent upon satisfactory evaluation conclusions.

15.12 Disclosure and Ownership of Documents. The Contractor shall deliver to the County's representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the County under this Agreement.

All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the County or at its expense will be kept confidential by the Contractor and will not be disclosed to any other party, directly or indirectly, without the County's prior written consent unless required by a lawful order. All drawings, maps, sketches, programs, data base, reports and other data developed or purchased under this Agreement for or at the County's expense shall be and remain the County's property and may be reproduced and reused at the discretion of the County.

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to, any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

ARTICLE XVI

Miscellaneous

16.1 Publicity. It is understood and agreed between the parties hereto that this Agreement is funded by Shelby County Government. Further, by the acceptance of these funds, the Contractor agrees that events funded by this Agreement shall recognize the County as a funding source. The Contractor shall ensure that all publicity, public relations, advertisements and signs recognizes the County for the support of all contracted activities and have prior approval of the County. This is to include, but is not limited to, all posted signs, pamphlets, wall plaques, cornerstones, dedications, notices, flyers, brochures, news releases, media packages, promotions and stationary. All signs to be posted that relate to the County activities must have prior approval and must meet the standard specifications as established by the County. The use of the official County logo is permissible. The Contractor shall ensure that all media representatives, when inquiring about the activities funded by this Agreement, are informed that the County is its funding source.

16.2 Sub-Contracts. The parties agree that no assignment or sub-Agreement will be made or let in connection with this Agreement without the prior written approval of the County, which shall not be unreasonably withheld, and that all sub-contractors or assignees shall be governed by the terms and conditions of this Agreement.

16.3 Subcontractors and Supplies. If this Agreement involves the expenditure of $50,000.00 or more by the Contractor and the Contractor intends to use subcontractors to provide the services listed in the Scope of Service (Section 1.1) or suppliers to supply the materials, the Contractor shall provide the names of the subcontractors and suppliers. RFPs and/or bids must be obtained on contracts in excess of $50,000.00.

16.4 Agreement Guidelines. The Contractor agrees to comply with all applicable federal, state and county laws, rules and regulations, which are incorporated herein by reference or fully set forth herein. This Agreement is made in the State of Tennessee and shall be governed according to the laws of the State of Tennessee. Proper venue for this Agreement shall be Shelby County, Tennessee.

16.5 Modifications. Any alterations, variations, modifications, extensions or waivers of provisions of this Agreement including but not limited to amount payable and effective term shall only be valid when they have been reduced to writings, duly approved and signed by both parties and attached to the original of this Agreement.

16.6 Renewal. This Agreement may be renewed for additional one-year periods, subject to approval by the County and Contractor.

16.7 Payment Procedures. The County agrees to pay the Contractor for services rendered under this Agreement based on the payment schedule, as specified in Section 1.2(c) of this Agreement.

16.8 No Payment of Subcontractors. In no event shall County funds be advanced directly to any subcontractor hereunder.

16.9 Headings, Use of Singular and Gender. Paragraph headings are for convenience only and are not intended to expand or restrict the scope or substance of the provisions of this Agreement. Wherever used herein, the singular shall include the plural and plural shall include the singular, and pronouns shall be read as masculine, feminine or neuter as the context requires.

16.10 Totality of Agreement. This 25 page Agreement with its attachments as referenced below contain all the terms and conditions agreed upon by the parties:

Attachment A – Grant Submission Budget as amended

No other Agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind any of the parties hereto. If any provision of this Agreement is held invalid or void, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

16.11 Labor Standards. Contractor shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and subgrants for construction or repair).

Compliance with the Davis-Bacon Act 40 U.S.C. 276a to a-7 as supplemented by the Department of Labor regulations CFR Part 5) (Construction contracts in excess of $2,000 awarded by grantees and subgrantees when required by Federal grant program legislation).

Compliance with Sections 103 and 107 of the Agreement Work Hours and Safety Standards Act (40 U.S.C. 327 - 330) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts awarded by grantees and

subgrantees in excess of $2,000, which involve the employment of mechanics or laborers).

Compliance with all applicable standards, orders, or requirements issued by Federal law insofar as those acts apply to the performance of this Agreement.

16.12 Arrears. The DELEGATE AGENCY shall not pledge the County's credit or make it a guarantor of payment or surety for any Agreement, debt, obligation, judgment, lien or any form of indebtedness. The DELEGATE AGENCY further warrants and represents that it has no obligation of indebtedness that would impair its ability to fulfill the terms of this Agreement.

16.13 Independent Contractor. The DELEGATE AGENCY is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to the Agreement shall at all times, and in all places, be subject to the DELEGATE Agency's sole direction, supervision, and control. The DELEGATE AGENCY shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the DELEGATE Agency's relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

The DELEGATE AGENCY does not have the power or authority to bind the COUNTY in any promise, agreement or representation other than specifically provided for in this Agreement.

16.14 Contingency Fees. The Contractor warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the COUNTY will have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

16.15 Notice. All notices required in this Agreement shall be sent by certified mail, return receipt requested, and if sent to the County shall be mailed to:

Dottie Jones, Director
Division of Community Services
160 N. Main Street, Suite 801
Memphis, TN 38103

and Shelby County Government
Contract Administration
160 N. Main Street, Suite 550
Memphis, TN 38103

If sent to the Contractor:

Goodwill Homes Community Services, Inc.
P.O. Box 161282
Memphis, TN 38186-1282

16.16 General Compliance With Laws. If required, the Contractor certifies that it is qualified or will take steps necessary to qualify to do business in the State of Tennessee and that it will take such action as, from time to time, may be necessary to remain so qualified and it shall obtain, at its expense all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Agreement.

The Contractor is assumed to be familiar with and agrees that at all times it will observe and comply with all federal, state, and local laws, ordinances, and regulations in any manner affecting the conduct of the work. The preceding shall include, but is not limited to, compliance with all Equal Employment Opportunity laws, the Fair Labor Standards Act, Occupational Safety and Health Administration (OSHA) requirements, and the Americans with Disabilities Act (ADA).

This Agreement will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Agreement the Contractor agrees that all actions, whether sounding in Agreement or in tort, relating to the validity, construction, interpretation and enforcement of this Agreement will be instituted and litigated in the courts of the State of Tennessee, located in Shelby County, Tennessee, and in no other. In accordance herewith, the parties to this Agreement submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

16.17 Entire Agreement. This Agreement contains the entire Agreement of the parties and there are no other promises or conditions in any other Agreement whether oral or written. This Agreement supersedes any prior written or oral Contracts between the parties.

16.18 Amendment. This Agreement may be modified or amended, only if the amendment is made in writing and is signed by both parties.

16.19 Severability. If any provision of this Agreement is held to be unlawful, invalid or unenforceable under any present or future laws, such provision shall be fully

severable; and this Agreement shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such unlawful, invalid or unenforceable provision or by its severance here from. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such unlawful, invalid or unenforceable provision as may be possible, and be legal, valid and enforceable.

16.20 Waiver of Contractual Right. No waiver of any term, condition, default, or breach of this Agreement, or of any document executed pursuant hereto, shall be effective unless in writing and executed by the party making such waiver; and no such waiver shall operate as a waiver of either (a) such term, condition, default, or breach on any other occasion or (b) any other term, condition, default, or breach of this Agreement or of such document. No delay or failure to enforce any provision in this Agreement or in any document executed pursuant hereto shall operate as a waiver of such provision or any other provision herein or in any document related hereto. The enforcement by any party of any right or remedy it may have under this Agreement or applicable law shall not be deemed an election of remedies or otherwise prevent such party from enforcement of one or more other remedies at any time.

16.21 Matters to be Disregarded. The titles of the several sections, subsections, and paragraphs set forth in this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

16.22 Living Wage Ordinance. In accordance with Ordinance Number 328, commonly referred to as the Living Wage Ordinance, all persons/entities engaged in service contracts with the County, including but not limited to both prime and subcontractors, shall pay a Living Wage to employees for all work performed on said contract, as defined in the Living Wage Ordinance. Proof of such compensation must be evidenced as required in the Living Wage Ordinance.

IN WITNESS WHEREOF, The parties have caused this Agreement to be executed by their respective and duly authorized officers the day and year first written above.

SHELBY COUNTY GOVERNMENT

A C Wharton, Jr., Mayor

APPROVED AS TO FORM
AND LEGALITY

Contract Administrator/
Assistant County Attorney

DIVISION OF COMMUNITY SERVICES

Dottie Jones, Director

GOODWILL HOMES
COMMUNITY SERVICES, INC.
HEAD START PROGRAM

Delegate Agency Name

BY: Cindy J. Reaves
Name

Signature: Cindy J. Reaves
Chairman of the Board of Directors