CAO 81000

EXHIBIT A
To Permanent Rules of Order of the Board of County Commissioners of Shelby County, Tennessee

SHELBY COUNTY BOARD OF COMMISSIONERS
AGENDA ROUTE SHEET

Referred to Commission Committee (name) Community Services

For Commission Action on (date) 3-31-08

DESCRIPTION OF ITEM: A RESOLUTION APPROVING A CONTRACT IN THE AMOUNT OF $100,000.00 WITH MEMPHIS CITY SCHOOLS DIVISION OF NUTRITION FOR FOOD SERVICES AND THIS ITEM REQUIRES THE EXPENDITURE OF PASS THRU GRANT FUNDS UNDER THE CHILD AND ADULT FOOD CARE PROGRAM (CAFCP) IN THE AMOUNT OF $100,000.00. SPONSORED BY COMMISSIONER GEORGE FLINN.

CHECK ALL THAT APPLY BELOW:

_____ This Action does NOT require expenditure of funds.

___x___ This Item requires/approves expenditure of funds as follows (complete all that apply):

County General Funds: $_____ ; County CIP Funds- $_____

State Grant Funds: $ ~~100,000.00~~ $ 100,000 ; State Gas Tax Funds: $_____

Federal Grant Funds: $_____

Other funds (Specify source and amount): $_____

Other pass-thru funds (Specify source and amount): $ _____

Originating Department: Head Start
APPROVAL:

	(Type your name & phone #.)	(Initials)	(Date)
Dept. Head:	John D. Lovelace 922-0712	JDL	3/11/08
Elected Official:			
Division Director:	Dottie Jones 545-4274	DJ	03/14/08
CIP – A&F Director:			
Finance Dept.	Mike Sniff 545-4269	MAS	3/19/08
County Attorney:	Pamela Skelton 545-4362	PS	3-17-08
CAO/Mayor:	James F. Huntzicker 545-4514	JFH	~~3-20-2008~~

SUMMARY

I. Description of Item

RESOLUTION APPROVING A CONTRACT BETWEEN SHELBY COUNTY GOVERNMENT AND MEMPHIS CITY SCHOOLS DIVISION OF NUTRITION AND FOOD SERVICES UNDER THE CHILD AND ADULT FOOD CARE PROGRAM ("CAFCP") HEAD START ENROLLEES PROGRAM AND APPROPRIATING FUNDS IN THE AMOUNT OF $100,000.00. THIS CONTRACT WILL ALLOW FOR MEAL SERVICES TO 202 HEAD START ENROLLEES AND 22 ADULTS AT SIX (6) MEMPHIS CITY SCHOOL SITES. THE SITES SERVED ARE: DUNBAR ELEMENTARY, GRACELAND ELEMENTARY, LEVI ELEMENTARY, RIVERVIEW ELEMENTARY, SOUTH PARK ELEMENTARY AND SHEFFIELD ELEMENTARY.

II. Source and Amount of Funding

A. Amount Expended/Budget Line Item

Federal Department of Health and Human Services/Administration for Children and Families. $100,000.00.
Appropriations from Head Start FY 2008 budget shown on resolution. 100% grant-funded.

Budget Line Item - Head Start Operations and Maintenance Account 103-480355-6028

All Costs (Direct/Indirect)
Direct Costs as stated above. No Indirect Costs. All Costs to be borne by Grantors.

B. Additional or Subsequent Obligations or Expenses of Shelby County

N/A

III. Contract Items

A. Type of Contract - Services

B. Terms - January 1, 2008 through May 31, 2008.

IV. Additional Information Relevant to Approval of this Item

Administration recommends approval of this Resolution.

ITEM #_____ PREPARED BY: Mattie Harris

COMMISSIONER _____ APPROVED BY: _____

A RESOLUTION APPROVING A CONTRACT IN THE AMOUNT OF $100,000.00 WITH MEMPHIS CITY SCHOOLS DIVISION OF NUTRITION FOR FOOD SERVICES AND THIS ITEM REQUIRES THE EXPENDITURE OF PASS THRU GRANT FUNDS UNDER THE CHILD AND ADULT FOOD CARE PROGRAM (CAFCP) IN THE AMOUNT OF $100,000.00. SPONSORED BY COMMISSIONER GEORGE FLINN.

WHEREAS, the County has the need to provide nutritional food services under the Child and Adult Food Care Program for its Head Start 202 enrollees and;

WHEREAS, the Memphis City Schools Division of Nutrition has the knowledge and expertise to provide such services; and

WHEREAS, the total cost for the contract period is not to exceed $100,000.00 during the period; and

WHEREAS, all monies expended by the County shall be reimbursed by CAFCP grant funds; and

WHEREAS, additional services are needed at the Head Start sites located within the Memphis City Schools; and

WHEREAS, the Parties are desirous of entering into a contract setting forth the terms and conditions under which the Memphis City Schools provide such services; and

WHEREAS, the contract term shall continue through May 31, 2008 and provide for three (3) additional year option to renew.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, that the contract with Memphis City Schools is hereby approved.

BE IT FURTHER RESOLVED, that the option to renew is approved subject to future year's budget appropriations.

BE IT FURTHER RESOLVED, that the funds in the amount of $100,000.00 are hereby appropriated from the approved FY 2008 Operating Budget, Line Item Number 103-480355-6028 Head Start.

BE IT FURTHER RESOLVED, that the County Mayor is hereby authorized to execute the contract for the aforementioned services on behalf of Shelby County Government and executed copies which are to be placed on file in the Purchasing Department.

BE IT FURTHER RESOLVED, that the County Mayor and the Director of Administration and Finance be and they are hereby authorized to issue their warrant(s) in the amount not to exceed $100,000.00 for the purposes contained in this resolution and to take proper credit in their accounting therefor.

_____
A C WHARTON,JR., County Mayor

Date:_____

ATTEST:

_____
Clerk of County Commission

ADOPTED: _____

CA08100

CONTRACT AND ENCUMBRANCE INFORMATION SHEET
AN ORIGINAL AND 1 COPY OF THIS FORM MUST BE SUBMITTED

THIS SHEET MUST BE COMPLETED, SIGNED BY THE DEPARTMENT HEAD AND DIVISION DIRECTOR AND ATTACHED TO ALL CONTRACT AND RESOLUTION PACKETS BEFORE ANY ACTION WILL BE TAKEN.

1. Department Requesting Services: Head Start

2. Preparer's Name, Telephone #, and E-Mail Address:
Mattie Harris, 922-0725, harris-m@scgheadstart.com

3. DESCRIPTION OF ITEM TO BE PURCHASED, BUILT, OR SERVICE TO BE PROVIDED:
Contract for provision of food services

4. NAME, ADDRESS, VENDOR NUMBER/CONSULTANT/AGENCY WITH WHICH SHELBY COUNTY WILL BE CONTRACTING:
Memphis City Schools 3176 Jackson Avenue Memphis, TN 38112 Attn: Ann Terrell, Director, Division of Nutrition Services

VENDOR NO. 30699

5. COST OF ITEM OR SERVICE REQUESTED: $100,000.00

6. TERM OF PROPOSED CONTRACT/AGREEMENT: 01/01/08-05/31/08

7. FUND, ORG, AND ACCOUNT NUMBER (13 DIGITS) **FOR MULTIPLE ACCOUNTS, PLEASE SPECIFY DOLLAR AMOUNT FOR EACH**
103-480355-6028

8. COMMODITY CODE: 393-00

9. VENDOR/CONSULTANT/AGENCY SELECTED BY (CHECK ONE):
PLEASE ATTACH APPROVAL DOCUMENTS

a. ____ Bid/RFP Process - # & Date ____
b. X Emergency/Sole Source

10. LOSB/MBE INFORMATION: Please check the appropriate description

____ MBE (MINORITY OWNED BUSINESS ENTERPRISE)
____ MALE ____ FEMALE
____ WBE (WOMEN OWNED BUSINESS ENTERPRISE)
____ LOSB (LOCALLY OWNED SMALL BUSINESS)
ANNUAL SALES DOES NOT EXCEED $3 MILLION
x N/A

11. SPECIAL INSRUCTIONS (ROUTING, FUNDING, BUDGET TRANSFER IN PROCESS)

REVIEWED AND APPROVED BY:

John D. Larkin 3/11/08
DEPARTMENT HEAD DATE

03/14/08
DIVISION DIRECTOR DATE

CONTRACT

This agreement (the "Contract") entered into this ____ of March 2008, by and between SHELBY COUNTY GOVERNMENT, (hereinafter referred to as "COUNTY") and the MEMPHIS CITY SCHOOLS, DIVISION OF NUTRITION SERVICES, (hereinafter referred to as "CONTRACTOR").

WITNESSETH

WHEREAS, the COUNTY has the need for food services under the CACFP for its Head Start enrollees; and

WHEREAS, the CONTRACTOR has the knowledge and expertise to provide such services; and

WHEREAS, the parties are desirous of entering into a contract setting forth the terms and conditions under which the CONTRACTOR will provide said services.

NOW THEREFORE, for and in consideration of mutual promises and covenants herein contained, the parties hereto agree as follows:

I. SCOPE OF SERVICES

The CONTRACTOR agrees:

1. To deliver or provide meals according to the number, type and location of food service sites attached hereto as "Exhibit A".

2. To maintain such records, supported by invoices, receipts or other evidence, as the COUNTY will need to meet its responsibilities under the CACFP, including menu records which specify the amount of food prepared, and the daily number of meals delivered or provided by type.

3. To have public health certification for the facility in which it prepares meals for use by the COUNTY to; to ensure that public health and sanitation requirements are met at all times; and to allow inspections of its facility and meal delivery process by public health officials or representatives of the Tennessee Department of Human Services or the Agency administrative staff.

4. To serve meals that provide 1/2-2/3 of recommended daily allowance for children ages three to five as per the meal Pattern Guide attached hereto as "Exhibit C" and conform to the menus hereto as "Exhibit B" provided by Shelby County Government Head Start that conform to menu changes agreed upon by the COUNTY and the CONTRACTOR.

5. To allow the inspection and audit of its books and records pertaining to the COUNTY food service operation by representatives of the COUNTY, the Tennessee department of Human Services, the Tennessee Comptroller of the Treasury, the U.S. Department of Agriculture or the U.S. General Accounting Office at any reasonable time and place, for a period of three (3) years from the date of receipt of final payment under this Contract, or in case where an audit requested by the Tennessee Department of Human Service or the U.S. Department of Agriculture, or their representatives remains unresolved, until such time a s the audit is resolved.

6. To provide meals in accordance with the federal regulations attached hereto as "Exhibit C".

7. To deliver or provide meals in accordance with the delivery schedule attached hereto as "Exhibit D".

8. To promptly submit invoices to the Agency for meals delivered, no less frequently than monthly.

9. To prepare a nutritious breakfast, hot lunch and healthy snack daily following Head Start menus for approximately 180 program days for the 2007-2008 school term for 202 Head Start enrollees and 22 staff.

10. To provide necessary staff to prepare meals so that family-style meal service can be facilitated, in classrooms by the education staff, and to perform all involved duties for sanitation and cleanliness, as it pertains to food preparation and service.

11. To furnish appropriate temperature-controlled equipment for holding foods in the kitchen until time of meal service.

12. To have the CONTRACTOR's Nutritionist collaborate with the COUNTY Nutritionist to assure that meals planned and foods served address the nutrient needs of enrollees and provide and promote "the overall high as mandated by the D.H.H.S.-A.C.Y.F. Head Start Performance Standards (45-CFR 1304.23)".

The COUNTY agrees:

13. To reimburse the CONTRACTOR for the meals provided per invoices, subject to the schedule attached hereto as "Exhibit E" no less often than monthly, provided invoices are properly submitted pursuant to section I of the Contract.

14. To furnish serving carts for assembling and transporting meals and to provide the equipment listed in "Exhibit F" to facilitate meal service in each classroom (total two, per site).

15. To furnish appropriate and practical dishes, glasses and eating and serving utensils as per "Exhibit F".

II. TERM AND COMPENSATION

1. The term of this Contract (the "Term") will commence on January 1, 2008 and continue through May 31, 2008 with an option to renew for three (3) additional one (1) year periods (the "Renewal Terms") upon written agreement of both parties.

2. The COUNTY agrees to compensate the CONTRACTOR for the provision of the Services the sum total not to exceed ONE HUNDRED THOUSAND DOLLARS AND 00/100 Dollars ($100,000.00) (the "Fee") during the term of this Contract which shall include all reimbursable expenses. The Fee for any annual renewal period shall not exceed TWO HUNDRED TWENTY THOUSAND AND 00/100 DOLLARS ($220,000.00).

3. The CONTRACTOR shall submit invoices to the COUNTY on a monthly basis for Services performed during the preceding month. Invoices shall be submitted in duplicate to the address set forth in Paragraph 32 of this Contract to the attention of Nutrition Services. The COUNTY shall pay such invoices within thirty (30) days of its receipt and approval of said invoices. The COUNTY is not obligated to pay, and will withhold from payment, any amounts the COUNTY has in dispute with the CONTRACTOR based on CONTRACTOR'S non-performance or negligent performance of any of the Services under this Contract.

III. GENERAL CONDITIONS

The parties further agree as follows:

1. CONTROL

All Services by the CONTRACTOR will be performed in a manner satisfactory to the COUNTY, and in accordance with the generally accepted business practices and procedures of the COUNTY.

2. CONTRACTOR'S PERSONNEL

The CONTRACTOR certifies that it presently has adequate qualified personnel to perform all Services required under this Contract. All work performed during the Term of this Contract will be supervised by the CONTRACTOR. The CONTRACTOR further certifies that all of its employees assigned to serve the COUNTY have such knowledge and experience as required to perform the duties assigned to them. Any employee of the CONTRACTOR who, in the opinion of the COUNTY, is incompetent, or whose conduct becomes detrimental to the work, shall immediately be removed from association with the Services under this Contract.

3. INDEPENDENT STATUS

a. Nothing in this Contract shall be deemed to represent that the CONTRACTOR, or any of the CONTRACTOR's employees or agents, are the agents, representatives, or employees of the COUNTY. The CONTRACTOR will be an independent CONTRACTOR over the details and means for performing the Services under this Contract. Anything in this Contract which may appear to give the COUNTY the right to direct the CONTRACTOR as to the details of the performance of the Services under this Contract or to exercise a measure of control over the CONTRACTOR is solely for purposes of compliance with local, state and federal regulations and means that the CONTRACTOR will follow the desires of the COUNTY only as to the intended results of the scope of this Contract.

b. It is further expressly agreed and understood by CONTRACTOR that neither it nor its employees or agents are entitled to any benefits which normally accrue to employees of the COUNTY; that CONTRACTOR has been retained by the COUNTY to perform the Services specified herein (not hired) and that the remuneration specified herein is considered fees for the Services performed (not wages) and that invoices submitted to the COUNTY by CONTRACTOR for the Services performed shall be on the CONTRACTOR's letterhead.

4. REPORTS

CONTRACTOR shall prepare and submit quarterly reports of its activities, funded under this Contract, to the originating department and the Contract Administration Department of the COUNTY. The reports shall include an itemization of the use of COUNTY's funds, pertinent information pursuant to the applicable Living Wage Ordinance, and shall be inclusive of specific Services delivered. Any such reports provided to the COUNTY shall be prepared with the understanding that the COUNTY may make such reports available to the public. The quarterly reports and all books of account and financial records that are specific to the work performed in accordance with this Contract may be subject to audit by the Director of the Division of Administration and Finance of the COUNTY. The COUNTY shall have the right to withhold

future disbursement of funds under this Contract and any future Contracts until this provision has been met.

5. TERMINATION OR ABANDONMENT

a. It shall be cause for the immediate termination of this Contract if, after its execution, the COUNTY determines that:

i) Either the CONTRACTOR or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has pled nolo contendere, or has pled or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, or any other collusive and illegal activity pertaining to bidding and governmental contracting; or

ii) CONTRACTOR has subcontracted, assigned, delegated, transferred its rights, obligations or interests under this Contract without the COUNTY's consent or approval; or

iii) CONTRACTOR has filed bankruptcy, become insolvent or made an assignment for the benefit of creditors, or a receiver, or similar officer has been appointed to take charge of all or part of CONTRACTOR assets.

b. The COUNTY may terminate the Contract upon five (5) days written notice by the COUNTY or its authorized agent to the CONTRACTOR for CONTRACTOR's failure to provide the Services specified under this Contract.

c. This Contract may be terminated by either party by giving thirty (30) days written notice to the other, before the effective date of termination (the "Termination Date"). In the event of such termination, the CONTRACTOR shall be paid for all Services rendered prior to the Termination Date, provided the CONTRACTOR shall have delivered to COUNTY such statements, accounts, reports and other materials as required under this Contract; however, CONTRACTOR shall not be compensated for any anticipatory profits that have not been earned as of the date of the Termination Date. All Services completed by CONTRACTOR prior to the Termination Date shall be documented and tangible work documents shall be transferred to and become the sole property of the COUNTY prior to payment for the Services rendered.

d. Notwithstanding the above or any section herein to the contrary, CONTRACTOR shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY by virtue of any breach of the Contract by CONTRACTOR and the COUNTY may withhold any payments to CONTRACTOR for the purpose of setoff until such time as the exact amount of damages due the COUNTY from CONTRACTOR is determined.

6. LIMITATION OF LIABILITY

CONTRACTOR'S sole liability to the COUNTY shall be the correction of any errors in the performance of the Services. Except as otherwise provided, CONTRACTOR hereby expressly disclaims any or all actual or consequential damages, whether arising out of express or implied warranty, or strict liability, unless caused by the gross negligence of CONTRACTOR, its employees, or persons for whom CONTRACTOR is by law responsible.

7. SUBCONTRACTING, ASSIGNMENT OR TRANSFER

a. Any subcontracting, assignment, delegation or transfer of all or part of the rights, responsibilities, or interest of either party to this Contract is prohibited unless by written consent of the other party. No subcontracting, assignment, delegation or transfer shall relieve the CONTRACTOR from performance of the Services under this Contract. The COUNTY shall not be responsible for the fulfillment of the CONTRACTOR's obligations to its transferors or subcontractors.

b. Upon the request of the other party, the subcontracting, assigning, delegating or transferring party shall provide all documents evidencing the subcontract, assignment, delegation or transfer.

8. 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 the Services. The CONTRACTOR warrants that no part of the total Contract Fee 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 Contract.

9. CONTINGENT 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 Contract, 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 Contract. 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.

10. EMPLOYMENT OF COUNTY WORKERS

The CONTRACTOR will not engage, on a full, part-time, or any other basis during the Term of the Contract, any professional or technical personnel who are or have been at any time during the Term of the Contract in the employ of the COUNTY.

11. ACCESS TO RECORDS

During all phases of the work and Services to be provided hereunder, CONTRACTOR agrees to permit duly authorized agents and employees of the COUNTY to enter CONTRACTOR's offices for the purpose of inspections, reviews and audits during normal working hours. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places. The CONTRACTOR will maintain all books, documents, papers, accounting records, and other evidence pertaining to the Fee paid under this Contract and make such materials available at their offices at all reasonable times during the Term of this Contract and for three (3) years from the date of payment under this Contract for inspection by the COUNTY or by any other governmental entity or agency participating in the funding of this Contract, or any authorized agents thereof. Copies of said records shall be furnished to the COUNTY upon request.

12. ARBITRATION

Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the CONTRACTOR and the COUNTY will be referred to the Shelby County Contract Administrator or its duly authorized representative, whose decision regarding same will be final.

13. RESPONSIBILITIES FOR CLAIMS AND LIABILITIES

a. The COUNTY has no obligation to provide legal counsel or defense to CONTRACTOR or its subcontractors in the event that a suit, claim or action of any character is brought by any person not a party to this agreement against CONTRACTOR as a result of or relating to performance of the Services under this Contract.

b. Except as expressly provided herein, the COUNTY has no obligation for the payment of any judgment or the settlement of any claims against CONTRACTOR as a result of or relating to performance of the Services under this Contract.

c. CONTRACTOR shall immediately notify the COUNTY of any claim or suit made or filed against CONTRACTOR or its subcontractors regarding any matter resulting from or relating to CONTRACTOR's performance of the Services under this Contract and will cooperate, assist and consult with the COUNTY in the defense or investigation thereof.

14. GENERAL COMPLIANCE WITH LAWS

a. 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 the Services under this Contract.

b. 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 performance of the Services. 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).

c. This Contract will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Contract, the CONTRACTOR agrees that all actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Contract 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 Contract submit to the jurisdiction of the courts of the State of Tennessee located in Shelby County, Tennessee.

15. NON-DISCRIMINATION

The CONTRACTOR hereby agrees, warrants, and assures compliance with the provisions of Title VI and VII of the Civil Rights Act of 1964 and all other federal statutory laws which

provide in whole or in part that no person shall be excluded from participation or be denied benefits of or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the CONTRACTOR on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee State Constitutional or statutory law. The CONTRACTOR shall upon request show proof of such non-discrimination and shall post in conspicuous places available to all employees and applicants notices of non-discrimination.

16. ENTIRE AGREEMENT

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, whether oral or written.

17. AMENDMENT

This Contract may be modified or amended only by written instrument signed by both parties.

18. SEVERABILITY

If any provision of this Contract is held to be unlawful, invalid or unenforceable under any present or future laws, such provision shall be fully severable; and this Contract 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 Contract 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 Contract a legal, valid and enforceable provision as similar in terms to such unlawful, invalid or unenforceable provision as possible.

19. NO WAIVER OF CONTRACTUAL RIGHT

No waiver of any term, condition, default, or breach of this Contract, 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 Contract or of such document. No delay or failure to enforce any provision in this Contract 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 Contract 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.

20. MATTERS TO BE DISREGARDED

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

21. SUBJECT TO FUNDING

This Contract is subject to annual appropriations of funds by the Shelby County Government. In the event sufficient funds for this Contract are not appropriated by Shelby County Government

for any of its fiscal period during the Term hereof, then this Contract 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.

22. TRAVEL EXPENSES

All travel expenses payable under this Contract shall be in accordance with the County Travel Policy and Procedures. This includes advance written travel authorization, submission of travel claims, documentation requirements, and reimbursement rates. No travel advances will be made by the County.

23. PERFORMANCE AND LABOR AND MATERIALS BONDS

The requirement of having a Performance Bond is waived under this Contract. If at anytime during the course of this Contract, the CONTRACTOR is unable to perform the services required by this Contract, the CONTRACTOR agrees to allow COUNTY to contract with another vendor to perform the Services at the Head Start facilities.

24. NON-LIABILITY FOR CONSULTANT EMPLOYEE TAXES

Neither CONTRACTOR nor its personnel are COUNTY's employees, and COUNTY shall not take any action or provide CONTRACTOR's personnel with any benefits and shall have no liability for the following:

a. Withholding FICA (Social Security) from CONTRACTOR's payments;

b. Making state or federal unemployment insurance contributions on behalf of CONTRACTOR or its personnel;

c. Withholding state and federal income tax from payment to CONTRACTOR;

d. Making disability insurance contributions on behalf of CONTRACTOR;

e. Obtaining workers' compensation insurance on behalf of CONTRACTOR or CONTRACTOR's personnel.

25. INCORPORATION OF OTHER DOCUMENTS

a. CONTRACTOR shall provide Services pursuant to this Contract in accordance with the terms and conditions set forth within the Shelby County Request for Proposals/Bids as well as the Response of CONTRACTOR thereto, all of which are maintained on file within the Shelby County Purchasing Department and incorporated herein by reference.

b. It is understood and agreed between the parties that in the event of a variance between the terms and conditions of this Contract and any amendment thereto and the terms and conditions contained either within the Request for Proposals/Bids or the Response thereto, the terms and conditions of this Contract as well as any amendment shall take precedence and control the relationship and understanding of the parties.

26. CONTRACTING WITH LOCALLY OWNED SMALL BUSINESSES

The CONTRACTOR shall take affirmative action to assure that Locally Owned Small Businesses that have been certified by the COUNTY are utilized when possible as sources of supplies and equipment, construction and services.

27. 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 service contract, as defined in the Living Wage Ordinance. Proof of such compensation must be evidenced as required in the Living Wage Ordinance.

28. RIGHT TO REQUEST REMOVAL OF CONTRACTOR's EMPLOYEES

The COUNTY may interview the personnel CONTRACTOR assigns to COUNTY's work. COUNTY shall have the right, at any time, to request removal of any employee(s) of CONTRACTOR, whom COUNTY deems to be unsatisfactory for any reason. Upon such request, CONTRACTOR shall use all reasonable efforts to promptly replace such employee(s) with substitute employee(s) having appropriate skills and training.

29. INCORPORATION OF WHEREAS CLAUSES

The foregoing whereas clauses are hereby incorporated into this Contract and made a part hereof.

30. DISCLOSURE OF REPORTS, DATA OR OTHER INFORMATION

Notwithstanding anything to the contrary contained herein or within any other document supplied to COUNTY by CONTRACTOR, CONTRACTOR understands and acknowledges that COUNTY is a governmental entity subject to the laws of the State of Tennessee and that any reports, data or other information supplied to COUNTY by CONTRACTOR due to Services performed pursuant to this Contract is subject to being disclosed as a public record in accordance with the laws of the State of Tennessee.

31. ORGANIZATION STATUS AND AUTHORITY

a. CONTRACTOR represents and warrants that it is a corporation, limited liability company, partnership, or other entity duly organized, validly existing and in good standing under the laws of the state of Tennessee; it has the power and authority to own its properties and assets and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary.

b. The execution, delivery and performance of this Contract by the CONTRACTOR has been duly authorized by all requisite action and will not violate any provision of law, any order of any court or other agency of government, the organizational documents of CONTRACTOR, any provision of any indenture, agreement or other instrument to which CONTRACTOR is a party, or by which CONTRACTOR's respective properties or assets are bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument,

or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets.

32. NOTICE

Any notices required or permitted to be given under the provisions of this Contract shall be effective only if in writing and delivered either in person to the COUNTY's authorized agent or by First Class or U.S. Mail to the addresses set forth below, or to such other person or address as either party may designate in writing and deliver as herein provided:

COUNTY: Shelby County Head Start
1991 Corporate Ave., Suite 600
Memphis, Tennessee 38132
Attn.: Mr. John D. Lovelace

and

Shelby County Government
Contract Administration
160 N. Main St., Suite 550
Memphis, Tennessee 38103

VENDOR: Memphis City Schools
Attn: Director, Nutrition Services
3176 Jackson Avenue
Memphis, TN 38112

and

Memphis City Schools
Director of Contracts
2597 Avery Ave.
Memphis, TN 38112

IN WITNESS WHEREOF, the parties hereto have set their signatures for the purposes contained herein, on the day and date first above written.

APPROVED:

Contract Administrator/
Assistant County Attorney

SHELBY COUNTY GOVERNMENT

A C Wharton, Jr., Mayor

MEMPHIS CITY SCHOOLS

BY: _____
Monika Johnson
Director of Contracts

MEMPHIS CITY SCHOOLS

BY: _____
Dan Ward, Superintendent

ACKNOWLEDGMENT

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared Dan Ward, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be president or other officer authorized by appropriate Corporate action and/or Resolution to execute the preceding instrument of Memphis City Schools, the within named bargainor, a public school district, and that he as such Superintendent, executed the foregoing instrument for the purpose therein contained, by signing the name of the public entity by himself/herself as Superintendent.

WITNESS my hand and official seal at office this _____ day of March, 2008.

_____
Notary Public

My Commission Expires: _____