MEMPHIS CITY SCHOOLS PRE-K PROGRAM
AND
SHELBY COUNTY GOVERNMENT HEAD START PROGRAM
COLLABORATIVE AGREEMENT

THIS HEAD START PROGRAM COLLABORATIVE AGREEMENT (the "Agreement"), made this 1st day of June, 2009, by and between **SHELBY COUNTY GOVERNMENT**, a political subdivision of the State of Tennessee, located at 160 N. Main Street, Memphis, Tennessee, 38103, on behalf of **Shelby County Head Start**, located at 1991 Corporate Avenue, Suite 600, Memphis, TN 38132 (the "County") and **MEMPHIS CITY SCHOOLS ("MCS"),** a public school district authorized by the State of Tennessee, having its main office at 2597 Avery Avenue, Memphis, TN 38112, states conditions and covenants for the administration of a portion of the County's Head Start Program (the "Program").

RECITALS

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

WHEREAS, the County has the responsibility to provide County-wide early childhood education and assistance services that serve eligible children and families pursuant to the requirements of the Program (the "Program Services").

WHEREAS, the County is desirous of MCS providing a portion of those services and MCS is desirous of providing such services (the "MCS Program Services") in the manner and according to the terms and conditions provided below.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the County and MCS (hereinafter collectively referred to as "the parties," or, individually, a "party") hereby agree as follows:

PURPOSE AND SCOPE

The purpose of this Agreement is to develop a comprehensive, coordinated, multidisciplinary, interagency service delivery system in MCS and County classrooms for the early childhood education of 5,000 – 7,000 pre-school age children throughout Memphis and Shelby County (the "Joint Program"). In accordance with the Program regulations, MCS and the County may dually enroll eligible students into the Joint Program, whereby each party agrees to provide a portion of the Program Services to an enrolled child (individually, an "Enrolled Child" and collectively, the "Enrolled Children"). This Agreement specifies the roles and responsibilities of MCS and the County in relation to the Joint Program, and provides guidance for implementation of the Joint Program. The Agreement also provides a framework for coordinated efforts to assure a system of continuity of early care and education to eligible children in the metropolitan area.

ARTICLE I
The Programs

Section 1.01. Program Goals. The parties hereby acknowledge and agree that the goals of the Joint Program include increasing future student graduation and improving school readiness of Enrolled Children, as well as improving parents' literacy skills, and increasing parents' involvement in the education and social development of the Enrolled Children.

Section 1.02. Program Description. The Program is a federal government pre-school educational program for four year olds. Additionally, three and five year olds identified with special needs are eligible for pursuant to the Head Start grant. Commencing June 1, 2009, MCS and the County will begin the process required for the County to provide the health, social services and administrative components of the Program Services to dually Enrolled Children receiving the MCS Program Services. The Joint Program will include the 44 existing wrap-

around and Pre-K collaborations, 25 new Pre-K classrooms established for the 2009 school year, and 5 classrooms in existing sites for a total of 74 classrooms included in the Pre-K collaboration. During the course of this Agreement, the number of classrooms may be increased annually.

Section 1.03. Administration and Organization of the Joint Program. The overall administrative responsibility for the operation of the Joint Program will be the shared responsibility of the Executive Director of the County's Head Start Program and the Deputy Superintendent for Memphis City Schools and/or their designees, respectively, consistent with the obligations and responsibilities of the respective parties set forth in the Agreement. MCS will work in conjunction with the County's personnel in the operation and administration of the Joint Program.

Section 1.04. Program Participation. In consideration of the Joint Program goals and the mutual terms and conditions herein, MCS and the County hereby agree to participate in the Joint Program by providing the respective Program Services described in this Agreement.

ARTICLE II
Program Enrollment

Section 2.01. Enrollment. (a) Commencing June 1, 2009, and throughout the term of this Agreement, the County and MCS will jointly recruit, select and enroll eligible children for participation in the MCS Program and the County's Head Start Program, all in accordance with the eligibility, recruitment, selection and enrollment guidelines, requirements and procedures specified in 45 CFR Part 1305. Notwithstanding, MCS shall have the authority to make the final decision regarding the enrollment of any child in the MCS Program. The County will have the final decision regarding Enrolled Children in its Head Start Program. In all instances, priority consideration will be given to age-eligible homeless children.

(b) MCS agrees to take immediate action to fill any slot that becomes vacant in the MCS Program due to a non-returning Enrolled Child. MCS shall, upon three days of unexcused absences of an Enrolled Child from the MCS Program, follow-up with the family of the Enrolled Child to determine whether the Enrolled Child is willing and able to return to the MCS Program. A slot shall be deemed open and must be filled if an Enrolled Child fails to attend for a period of thirty days.

(c) MCS agrees that it will meet and maintain full enrollment in the MCS Program within the first thirty (30) days of the MCS Program school year. MCS and the County will ensure that the families of all Enrolled Children in the MCS Program reside within the school district boundaries of MCS and that the Enrolled Children meet the enrollment and selection criteria provided to MCS by the County.

Section 2.02. Classrooms. MCS, including its Pre-K partners, will provide Pre-K classrooms throughout the four regions of MCS' attendance area. During the term, MCS may, at its sole discretion, relocate classrooms to accommodate its needs. MCS may not, however, reduce the number of classrooms available for the MCS Program without the prior written consent of the County, which consent shall not be unreasonably withheld. MCS will use its best efforts to make classrooms available in zip codes where the County's most recent needs assessment study indicates the highest numbers of eligible, unserved children. In the event agreement cannot be reached on the relocation of a classroom, MCS may remove such classroom(s) from the Joint Program.

Section 2.03. Assessment of Enrolled Children. Prior to the commencement of a school year, MCS and the County will conduct all required diagnostic assessments of each Enrolled Child, which assessments will be used to measure the performance outcomes of each Enrolled Child over the course of the Joint Program.

ARTICLE III
MCS Responsibilities

Section 3.01. Staffing. (a) MCS will provide, at no cost to the County, unless otherwise specifically provided in this Agreement, the administrators and teaching staff to conduct the MCS Program. MCS and its willing Pre-K partners will assume all direct and indirect costs related to the staff it will assign to the MCS Program. All staff shall meet the minimum requirements set out in 45 CFR Part 1306.20(d).

Section 3.02. Facilities. MCS will be responsible, at its cost and expense, for the provision and maintenance of the first 146 classrooms that comprise the MCS Program. The MCS classrooms will be maintained in a safe and clean manner in compliance with the State of Tennessee's Pre-K regulations. Commencing June 1, 2009, the County will provide a facility located at 3435 Ridge Meadows Parkway ("Ridgeway Center") for use by MCS in the Joint Program, at no cost to MCS, for nine wrap-around classrooms. The Ridgeway Center facility will meet the specifications set out in Exhibit A to this Agreement. Any additional facilities may be added in accordance with the mutual agreement of the parties, as evidenced by a writing in the form of Exhibit B, which writing, when fully executed, will be incorporated into and made a part of this Agreement.

Section 3.03. Family Services. MCS will assist the County in providing the parental involvement services specified in 45 CFR Part 1304.40, Subpart C, and 1304.50, Subpart D. Specifically, MCS will:

(i) Assist the County in its effort to develop the Family Partnership Agreement/Family Learning Agreement between the families of Enrolled Children and MCS, which agreements will outline the parent's responsibilities within the MCS Program;

(ii) Facilitate the County in making required Home/Personal visits to the homes of Enrolled Children;

(iii) Assist the County's Program staff in developing a Parent Advisory Committee for the Joint Program and a process for MCS' participation in the Head Start Policy Council; and

(iv) Implement Family Education classes to include Parenting, Child Development and Child Rearing techniques, with the assistance of the County's Program staff.

Section 3.04. Meals. MCS will provide the meals required under the Program to all Enrolled Children in the MCS Program, with the exception of the programs at the Ridgeway Center and those operated by the MCS Community Partners. All meals will be prepared in accordance with the USDA requirements for school nutrition services. MCS will ensure that its staff eats lunch with the Enrolled Children daily, and that it uses mealtime as an opportunity to broaden the experience of the Enrolled Children, including activities that support language development and socialization during mealtime. The County shall provide meals satisfying the requirements of the USDA to the Enrolled Children at the Ridgeway Center facility.

Section 3.05. Records and Reporting. MCS will submit to the County any reports related to the MCS Services that may be required by HHS directives or the County, in accordance with reporting procedures agreed to by the parties. The MCS Office of Research and Evaluation will be used to collect and analyze data generated pursuant to this Agreement, and establish protocols and procedures for data sharing between the parties.

ARTICLE IV
County Responsibilities

Section 4.01. General Responsibilities. Excepting the MCS Program Services, the County will provide the MCS Program the services specified in 45 CFR emphasizing the comprehensive Health and Social Services components of the Head Start requirements, as well as such other services and initiatives agreed to by the parties.

Specifically, County will:

(i) Provide the Health Services as specified in 45 CFR, including immunizations, medical exams, health screenings and evaluations, mental health services, speech services, dental and developmental screenings and appropriate follow-up care for all Enrolled Children;

(ii) Provide social services, mental health, nutrition, disabilities and health services to the families of Enrolled Children to assist them in improving 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;

(iii) Provide facility space, as needed, for a summer, early childhood Program site for a MCS Homeless Initiative;

(iv) Evaluate MCS as it performs its obligations under this Agreement;

(vi) Provide written monthly reports to MCS on enrollment, attendance and parent participation in the MCS Program;

(vii) Provide staff to coordinate services and technical assistance to MCS Program staff, and assist with all other services as needed to ensure success of the MCS Program.

Section 4.02. Compliance with MCS Requirements. The County agrees that it will, at all times while it is on MCS property, adhere to MCS rules and procedures, including, but not limited to, rules and procedures related to health and safety, and MCS' hours of operations.

Section 4.03. Classroom Supplies and Materials. The County, at its cost and expense, will provide MCS, from time to time, with classroom materials for the Enrolled Children. The County may also pay for field trips, educational activities, and parent meetings/activities for classrooms identified as MCS Program sites pursuant to this Agreement. Subject to a written request from MCS and agreement by the County, the County may also pay for any other supplemental services authorized under the Program regulations. (Purchases of all reimbursable materials or supplies must adhere to the County's Division of Purchasing policies and procedures or approved MCS purchasing policies). In addition to classroom supplies and materials, the County will provide an annual supplement to MCS in the amount of Six Hundred Thousand Dollars ($600,000.00) to support the cost of the Joint Program (the "Supplement"). The County will provide the Supplement no later than August 1st of each year this Agreement is in effect, provided that, the obligation to pay the Supplement shall be subject to Shelby County Government's annual appropriation of funds, as more fully set forth in Article IX, Section 9.01.

ARTICLE V
Early Childhood Center of Learning

Section 5.01. MCS and the County will work together to establish an Early Childhood Center of Learning. The Early Childhood Center of Learning will serve as a year-round model center of research-based and high quality practices that will:

- Establish age appropriate and literacy rich classroom environments to optimize access to learning;
- Implement instructional strategies and include materials to meet individual needs;
- Integrate the curriculum through theme based learning;
- Embed assessment in all classroom activities;
- Include dual language learning; and
- Create home and school partnerships.

The Early Childhood Center of Learning will serve a dual role as a service and training center. The first Early Childhood Center of Learning will be established at the Ridgeway Center facility.

ARTICLE VI
Professional Development

Section 6.01. Professional Development. (a) The County will develop a system of professional development that includes a coordinated assessment of the training needs of MCS and County staff. All professional development activities planned and coordinated by the County will be consistent with the highest professional development standards and will support the career development goals of staff.

(b) All MCS and County Program staff will participate in on-site or offsite training arranged periodically by both parties. All MCS and County staff must attend, at a minimum, the annual Pre-Service Training (beginning in 2009), and in-service staff trainings developed by the County and mandated by 45 CFR 1304.52 k (1-3) and 1306.23.

(c) All professional development activities and conferences sponsored or supported by the County will be made available to MCS Program staff. Additionally, Community Partners and Enrolled Children of the MCS Program will be extended all privileges, rights and resources available to parents of the County's Program.

(d) Professional development activities will be jointly designed, implemented, and evaluated by MCS and the County.

(e) An individual professional development plan will be maintained on all instructional staff based on individual needs assessments, performance appraisal results, observations, and on-going monitoring.

(f) MCS staff and the County's staff will participate in cross-agency training.

ARTICLE VII
Joint Responsibilities

Section 7.01. Monitoring. MCS and the County's Program staff will establish an appropriate on-going monitoring process. MCS will permit the County's Program staff to monitor the MCS Program, including but not limited to, scheduled site visits, observations, and collection of child and family data. Extensive communication, group planning, and staffing will occur between the two groups.

Section 7.02. Transition. MCS and the County will collaborate to ensure successful transitioning of all Enrolled Children from early childhood and Pre-K into kindergarten. Both parties will develop a comprehensive Transition Plan to include best practices in transitioning children from home to Pre-K, three year old groups to four year old groups, and Pre-K to Kindergarten. Key elements of the Transition Plan will include:

- Ensuring program continuity by providing a developmentally appropriate curriculum for all children;
- Maintaining on-going communication and cooperation between all teachers (Pre-K, Head Start, Kindergarten) and school administrators;
- Preparing children for transition; and
- Involving parents in the transition process.

Transition requirements and timelines will be aligned between MCS and the County.

Section 7.03. Program Evaluation. All phases of the Joint Program will be evaluated to determine effectiveness and efficacy. Use of both formative (ongoing and documented) and summative (final summary) methods of evaluation will be used to evaluate the Joint Program. Adjustments and revisions will be made based on information generated from the ongoing evaluation process. Data collected for the Program evaluation will include: ECERS, ELLCO, and other assessment results.

Section 7.04. Teacher Certification. MCS and the County will establish collaborative partnerships with local higher education institutions (LeMoyne Owen College,

University of Memphis, Southwest Tennessee Community College, Christian Brothers University, and other qualifying colleges and universities) to create a cadre of teachers who either have an alternative license or have obtained teacher certification, and to assist Child Care Assistants in obtaining Child Development Associate credentials and Associate Degrees. If Shelby County Government creates a Community College Tuition Program for eligible County teachers and child care assistants, the County will endeavor to include the same or comparable assistance for teachers and child care assistants in the MCS Program.

Section 7.05. Quarterly and Annual Reports. The County will prepare a quarterly report every three months and complete an annual report before the end of the Program year. The County agrees to prepare all reports necessary to meet all state and federal reporting requirements applicable to the Joint Program. MCS will provide all data to the County necessary for the compilation of the reports.

Section 7.06. Pre-K Advisory Council. The County, in collaboration with MCS, will create a Pre-K Advisory Council. The purpose of the Council will be to focus on the delivery of quality early care and education services to all Enrolled Children and their families. The Council will be composed of community stakeholders, parents, business leaders, etc. appointed by the MCS Superintendent. The Council will also assist in the recruitment and selection of community partners and assist MCS and the County in obtaining supplemental funding sources for the Joint Program.

ARTICLE VIII
Term of Agreement

Section 8.01. Effective Term. Both parties agree that the effective term of this Agreement shall be three years (the "Term"), commencing June 1, 2009, after which the Agreement may be renewed annually upon mutual agreement of the parties, no later than April 1 of each renewal year. Each renewal shall be evidenced by a writing signed by the parties and approved by the appropriate legislative body of each, if required, which writing shall include the number and locations of facilities for the renewal period.

Section 8.02. Implementation Year. The first year of the Term shall be designated for development and implementation, with operations to commence no later than July 1, 2009.

ARTICLE IX
Funding

Section 9.01. Subject to Funding. This Agreement is subject to annual appropriations of resources for Shelby County Head Start and annual appropriations of local, state, and federal funding for MCS. In the event sufficient funds for this Agreement are not appropriated by Shelby County Government or MCS for any of the fiscal year periods during the Term hereof, the terminating party shall notify the other, and this Agreement will terminate thirty (30) days following receipt of such notice of termination. In the event of termination, MCS shall be entitled to receive a pro-rata share of the Supplement as of the Termination Date.

Section 9.02. Expansion Budget. MCS and the County anticipate that the operation of the Joint Program with dually Enrolled Children will result in substantial savings to the County's Head Start Program. The County agrees that it will invest all or a substantial percentage of such savings into the expansion of the Joint Program. MCS and the County will work jointly to develop and allocate the budget for the expansion ("the Expansion Budget") to maximize the available dollars and the benefit of this joint collaboration. It is the intent of the parties that the Expansion Budget will fund the new classrooms anticipated by this Agreement.

ARTICLE X
Liability

Section 10.01. Liability. Each party shall be liable for losses or damages, including attorney's fees and costs of defense, incurred 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 negligence of its employees, agents, servants, partners, principals or subcontractors.

The parties expressly understand and agree that any insurance protection required by this Agreement or otherwise provided shall in no way limit the responsibility of the parties under this provision for their negligence.

ARTICLE XI
Personnel

Section 11.02. Personnel. (a) MCS represents that it has, or will secure at its own expense, all necessary personnel required to perform the MCS Program Services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the County. The Executive Director of the County's Program shall at all times remain an employee of the County. Notwithstanding, the performance of the Executive Director under the Joint Program shall be subject to an annual evaluation by the County's Division Director of Community Services with input from MCS' Deputy Superintendent of Academic Operations, Technology and Innovation.

(b) All of the MCS Program Services required under this Agreement shall be performed by MCS or under its supervision, and all personnel engaged in performing the MCS Program Services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such MCS Program Services.

(c) MCS and County warrant that all Joint Program Services shall be performed by skilled and competent personnel to the highest professional standards in the field, pursuant to Federal, State and local regulations.

ARTICLE XII
Conflict of Interest

Section 12.01. Conflict of Interest. Each party 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 under this Agreement. Each party warrants that it shall not pay directly or indirectly to any elected official or employee of the other as wages, compensation, or gifts in exchange for acting as an elected official, agent, employee, subcontractor or consultant to such party in connection with any work contemplated or performed relative to this Agreement.

ARTICLE XIII
Civil Rights

Section 13.01. Civil Rights. Each party 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.

Section 13.02. Title VI and VII – Civil Rights Act of 1964. Both parties agree 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 both parties. Each party shall, upon request, show proof of such nondiscrimination, and shall post in conspicuous places available to all employees and applicants notices of non-discrimination. Neither party will 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 XIV
Notices

Section 14.01. Notices. It is understood and agreed between the parties that written notice addressed to the County and MCS mailed or delivered to the addresses appearing in Section 19.11 of this Agreement shall constitute sufficient notice to either party.

ARTICLE XV
Autonomy

Section 15.01. 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 neither party, by virtue of this Agreement, is an agent or instrumentality of the other. Furthermore, neither party's agents nor employees are agents or employees of the other.

ARTICLE XVI
Breach of Agreement

Section 16.01. Excusable Delays. Neither party shall be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of MCS 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.

(b) Upon request, the County or MCS shall consider the facts and extent of any failure to perform the Program Services, and if 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 each party's rights to change, terminate or stop any or all of the work at any time.

Section 16.02. Remedies. If either party breaches this Agreement, the non-breaching party may terminate this Agreement, in whole or in part, and pursue any other remedy available at law or equity.

Section 16.03. Authority to Terminate. The Shelby County Mayor is authorized to terminate this Agreement on behalf of the County. The MCS Superintendent is authorized to terminate this Agreement on behalf of MCS.

ARTICLE XVII
Termination

Section 17.01. Termination. (a) Either party may, with or without cause, terminate the Agreement upon one hundred twenty (120) days written notice by the terminating party, unless there are fewer than one hundred twenty days remaining in the Program school year, in which event the notice period shall be the number of days remaining in the then-current Program school year.

(b) Either party may terminate this Agreement at any time pursuant to the provision of Section 9.01 hereof. In such event, the terminating party will give the non-terminating party no fewer than thirty (30) days' notice to implement a transition of the MCS Program to MCS or the County.

ARTICLE XVIII
Inventory

Section 18.01. (a) At the termination of this Agreement, unless otherwise provided for, MCS agrees to return all items of capital equipment purchased with County funds to the County in the same condition as it was received at the beginning of the Agreement, ordinary wear and tear accepted. MCS shall be responsible to the County for any damage or destruction to said property by MCS employees, and shall reimburse the County for such damage. The County may, in its discretion, allow MCS to retain possession of capital equipment after the expiration of this Agreement as long as MCS continues to provide the MCS Program services or another service that the County determines to be of value and allowable under the Head Start grant, if purchased with the Program grant funds.

(b) The County shall establish and maintain a property control system, and shall request MCS' assistance in 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 MCS. 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).

ARTICLE XIX
Miscellaneous

Section 19.01. Publicity. Each party shall ensure that all publicity, public relations, advertisements and signs recognize the other for the support of all contracted activities and have prior approval of the other. 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 or MCS logo is permissible with prior approval of the County and/or MCS. MCS and the County shall ensure that all media representatives, when inquiring about the Program, are informed of the dual participation as a funding source.

Section 19.02. 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 other, which shall not be unreasonably withheld, and that all sub-contractors or assignees shall be governed by the terms and conditions of this Agreement.

Section 19.03. Agreement Guidelines. MCS and the County agree 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.

Section 19.04. 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.

Section 19.05. Renewal. This Agreement may be renewed for additional one-year periods, subject to approval by the County and MCS.

Section 19.06. 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 the plural shall include the singular, and pronouns shall be read as masculine, feminine or neuter as the context requires.

Section 19.07. Entire Agreement. This Agreement with its attachments as referenced herein contains all the terms and conditions agreed upon by the parties. 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.

Section 19.08. Labor Standards. MCS and the County shall comply with the federal labor laws applicable to the Program Services, including compliance with all applicable standards, orders, or requirements issued by Federal law insofar as those acts apply to the performance of this Agreement.

Section 19.09. Independent Contractor. (a) Each party shall be, in the performance of all Program Services and activities under this Agreement, an independent contractor, and not an employee, agent, or servant of the other. All persons engaged in any of the services performed pursuant to the Agreement shall at all times, and in all places, be subject to the performing party's sole direction, supervision, and control. Neither party shall exercise control over the means and manner in which the other party's and its employees perform the work, and in all respects the parties' relationship and the relationship of their employees shall be that of an independent contractor and not as employees or agents of the other.

(b) Neither party has the power or authority to bind the other in any promise, agreement or representation other than specifically provided for in this Agreement.

Section 19.10. Contingency Fees. Each party warrants that it has not employed or retained any company or person other than its bona fide employees working solely for such party, 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 it any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

Section 19.11. 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:

If sent to the County:

Dottie Jones, Division 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 MCS:

Memphis City Schools
2597 Avery Avenue
Memphis, TN 38112
Attn: Superintendent Kriner Cash

and

Memphis City Schools
2597 Avery Avenue
Memphis, TN 38112
Attn: Chief Contracting Officer

Section 19.12. General Compliance With Laws. (a) If required, MCS 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.

(b) MCS 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).

(c) This Agreement will be interpreted in accordance with the laws of the State of Tennessee. By execution of this Agreement each party 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.

Section 19.13. Background Checks and Fingerprinting. The County hereby acknowledges that it is aware of the provisions of Tennessee Code Annotated §49-5-413 requiring the background check of any employee or subcontractor that works on school grounds at any time when students are present, and prohibiting any person with a history of the criminal offenses cited in the statute from working on a school campus during such times. The County hereby certifies that it has, and will, at all times during the performance of the services under this Agreement, comply with the provisions of this statute and will provide to MCS, upon request, proof of its compliance with this provision. A default by the County of the provisions of this Section 19.13 shall be automatic grounds for termination of this Agreement.

Section 19.14. Right to Audit. Each party's records applicable to the Joint Program shall be open to audit by the other, or its authorized representatives, as well as any state or federal agency providing funding to the Joint Program, during the term of this Agreement and until three years after the expiration or earlier termination of the Agreement.

Section 19.15. Amendment. This Agreement may be modified or amended, only if the amendment is made in writing and is signed by both parties.

Section 19.16. 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.

Section 19.17. 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 (i) such term, condition, default, or breach on any other occasion or (ii) 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.

Section 19.18. 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.

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:

Contract Administrator/
Assistant County Attorney

Dottie Jones, Division Director
Community Services

MEMPHIS CITY SCHOOLS

By: _____
Dr. Kriner Cash, Superintendent

Approved:

_____
Chief Contracting Officer

Approved:

By: _____
Tomeka Hart
President, Board of Commissioners

_____
Office of the General Counsel

Approved: _____ 5/4/2009
Dr. Irving Hamer, Deputy Superintendent