

THIRD AMENDATORY AGREEMENT

THIS THIRD AMENDATORY AGREEMENT is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), and **DENVER PRESCHOOL PROGRAM, INC.**, a Colorado not-for-profit corporation authorized to do business in the State of Colorado, whose address is 305 Park Avenue West, Suite B, Denver, Colorado 80205 (hereinafter, "DPP")(together, the “Parties”).

WITNESSETH:

WHEREAS, the Parties entered into an Agreement dated July 3, 2007, as amended by Amendatory Agreements dated October 30, 2007 and August 11, 2009, relating to the funding and administration of preschool program services in Denver (the “Agreement”); and

WHEREAS, the Parties wish to amend the Agreement, to: (i) extend its term, in accordance with the extension of and increase to the Denver Preschool Tax approved by the City’s electors at the general election on November 4, 2014; and (ii) implement changes approved by the City relating to DPP’s corporate structure and its use of Denver Preschool Tax receipts;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and obligations herein set forth, the Parties agree as follows:

1. Effective January 1, 2015, references in the Agreement to the Denver Preschool Tax shall refer to the increased tax approved by the City’s electors at the general election on November 4, 2014.

2. Paragraph 3 of the Agreement, entitled “**TERM**”, is hereby amended to read as follows:

3. **TERM**: The “Term” of this Agreement will commence on May 1, 2007, and terminate on December 31, 2007, subject to unilateral options in the City to renew for nineteen (19) additional one (1) year periods up to a conclusive termination date which shall be the date the DPP has expended all of the distributions received under this Agreement and has reported to the City with respect to such distributions in accordance with Section 6 below, which options shall be exercised by the action of the city council in appropriating distributions of the receipts from the annual Denver Preschool Tax. In the event that such appropriation for this Agreement is not made for a future fiscal year, the City will be deemed to have thereby failed to exercise its option to renew this Agreement for any additional period. The Director shall notify DPP on or about August 1 of each year if the Director does not intend to seek an appropriation of funds for the purposes of this Agreement.

3. Section 4 of the Agreement, entitled “**DPP’S RESPONSIBILITIES,**” is hereby amended to read as follows:

4. **DPP’S RESPONSIBILITIES:** For the Term of the Agreement, in addition to any and all obligations required by law or stated elsewhere in this Agreement or in any attachments hereto, DPP shall comply with the following requirements as conditions for the disbursement pursuant to the Ordinance and as required by the City:

A. Articles of Incorporation/Bylaws. DPP’s articles of incorporation shall provide for a board of directors with a minimum of eleven and a maximum of fifteen members. One member of the board of directors shall be appointed and confirmed by the city council. The remaining members of the board of directors shall be appointed by the mayor and confirmed by the city council. Members of the board of directors shall be appointed to staggered three-year terms of office, and may serve no more than three terms. Members of the board of directors shall serve without compensation, but may be reimbursed for actual and necessary expenses. The articles of incorporation shall provide criteria and qualifications for membership on the board of directors sufficient to ensure a cross-section of representation by early childhood education providers, education advocates and experts, parents, and members of the business and non-profit communities.

B. Open Meetings/Open Records. Meetings of DPP’s board of directors and board of advisors shall be treated as public meetings of a local public body subject to the provisions of the Colorado Open Meetings Law, sections 24-6-401, et seq., CRS, as amended. In addition, DPP’s records shall be treated as public records and subject to the provisions of the Colorado Open Records Act, sections 24-72-201, et seq., CRS, as amended.

C. Limit on administrative expenses. No more than 7% of the Denver Preschool Tax distributions received by DPP from the City in any year shall be spent on administrative expenses. For purposes of this limitation, “administrative expenses” shall mean salaries and office expense related to any staff or employees of the corporation; any expenses reimbursed to members of the board of directors; routine business expenses such as insurance, accounting and legal expenses; and any similar overhead expenses incurred by DPP. The term “administrative expenses” shall not be deemed to include any fees or expenses paid to third-party contractors or consultants to assist in the development or administration of the Denver Preschool Program.

D. Program expenditures. At least 93% of Denver Preschool Tax revenue received by DPP in any year shall be used for the following purposes only:

(i) Tuition credits administered in accordance with the requirements of subsection (E) of this section.

(ii) Outreach to parents and the Denver community, and assistance with enrollment in preschools.

(iii) Technical assistance and direct grants to preschool providers meeting the requirements of subsection (F) of this section, for the purpose of improving the quality of pre-school programs and services.

(iv) Contracting with qualified experts to design and assist with the implementation of a quality improvement system for preschools, including an objective quality rating system for preschools.

(v) Measurement of the performance of the Denver Preschool Program and the preparation of reports to city officials and to the public on the performance of the program.

E. Tuition credit standards. Tuition credits funded pursuant to the Denver Preschool Program shall comply with the following standards and requirements:

(i) Any Denver resident who is a parent or legal guardian of any preschool-aged child who is also a Denver resident shall be eligible for a tuition credit to be used to enroll that child in preschool in the year prior to the year in which the child will be eligible for kindergarten in accordance with state law. Should the board of directors determine that funds are available to expand the program to serve a younger population of Denver residents, it may do so at its discretion through measures the board finds appropriate if such an expansion is permissible under applicable law and can be achieved in accordance with the terms of this contract.

(ii) Tuition credits shall be administered on a sliding scale, with the amount of the credit being inversely related to the family income of the recipient, and with this sliding scale to be more specifically determined by the board of directors.

(iii) Tuition credits shall be administered on a sliding scale, with the amount of the credit being related to the rated quality of the preschool provider with whom the credit is used, and with this sliding scale to be more specifically determined by the board of directors.

(iv) Tuition credits shall be utilized at the discretion of the parent or guardian at any qualified preschool as set forth in subsection (F) of this section.

(v) Other specific criteria and procedures for the disbursement of tuition credits shall be determined by DPP's board of directors.

F. Qualified preschool providers. In order to be qualified for the use of tuition credits and for the receipt of technical assistance or direct grants, a preschool provider shall meet the following minimum requirements:

(i) The preschool shall be a duly licensed under the Colorado Child Care Licensing Act, §§ 26-6-101, et seq., C.R.S., as amended, and the provisions of this chapter 11, or shall be an early childhood education program administered by Denver Public Schools pursuant to the Colorado Preschool Program Act, §§ 22-28-101, et seq., C.R.S., as amended. The preschool is not required to be located in the City, provided the parent or guardian and the preschool-aged child participating in the Denver Preschool Program are Denver residents.

(ii) The preschool provider shall agree to participate in a three-part quality improvement system that includes an introduction to quality, regular and objective quality ratings as prescribed by the board of directors, and development and implementation of a quality improvement plan for the preschool.

(iii) The preschool shall meet such other specific criteria and standards as shall be determined by the DPP's board of directors.

G. Faith-based organizations. DPP in administering the Denver Preschool Program or expending any distributions derived from the Denver Preschool Tax, and any preschool provider participating in the Denver Preschool Program, shall not use tuition credits, grants or technical assistance derived from the Denver Preschool tax to engage in inherently religious activities, such as worship, religious education or instruction, or proselytization. If any preschool provider participating in the Denver Preschool Program engages in such inherently religious activities, the inherently religious activities must be offered separately, in time and location, from the programs, activities, or services supported by the Denver Preschool Tax, unless offering such inherently religious activities in a separate place would not be practicable due to the physical limitations of the facility in which the Denver Preschool Program activities are held. Nothing in this Agreement shall be construed to affect a preschool provider's right to engage in privately funded, inherently religious activity or affect the

independence of preschool providers, including any rights protected by the Colorado and U.S. Constitutions and applicable law.

4. Subsection 5.C of the Agreement, entitled “Budget/Carry Forward,” is hereby amended to read as follows:

C. Budget/Carry Forward. DPP shall expend funds provided under this Agreement during the Term in accordance with the Ordinance and terms of this Agreement. In the event distributions of receipts of the Denver Preschool Tax received by DPP during a particular year are not expended, such unused amount may be carried forward by DPP and used for administrative or programmatic expenditures in a subsequent year or years, subject to the other limitations set forth in the Ordinance and this Agreement. In the event less than 7% of Denver Preschool Tax revenue distributed to DPP during the year is used for administrative expenses in the year the distributions are received by DPP, such unused amount may be carried forward by DPP to a subsequent year or years and added to the funds which may then be used for administrative expenses or program expenditures, in the discretion of DPP. At such time, if ever, that the unexpended funds of DPP, as evidenced by the report(s) referenced in section 6A(iv) below, exceed by 100% the anticipated expenditures of DPP in the ensuing year, the City may (following consultation with DPP) reduce the appropriation for said ensuing year accordingly.

5. As herein amended, the Agreement is affirmed and ratified in each and every particular.

Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Contract Control Number: MOEAI-CE72086-03

Contractor Name: DENVER PRESCHOOL PROGRAM INC

By: Jennifer Landrum

Name: Jennifer Landrum
(please print)

Title: President and CEO
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

