RESOLUTION NO. 09-128

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA ACCEPTING A GRANT AWARD FROM THE CHILDREN'S TRUST IN THE AMOUNT OF $1,224,656 FOR AFTERCARE AND LITERACY PROGRAMS FOR THE ONE-YEAR COMMENCING ON AUGUST 1, 2009 THROUGH JULY 31, 2010, WITH ONE ANNUAL RENEWAL, AND AUTHORIZING THE MAYOR AND THE CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO NEGOTIATE AND ENTER INTO A GRANT AGREEMENT, IN SUBSTANTIAL FORM AS ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1" AND EXECUTE ANY AND ALL DOCUMENTS IN FURTHERANCE THEREOF.

WHEREAS, in 2002, Miami-Dade County voters approved a dedicated revenue source to fund programs for children through the mechanism of The Children's Trust; and

WHEREAS, The Children's Trust encourages creative approaches, through public-private partnerships, to improve services and access to children and families; and

WHEREAS, in 2006, the City of Hialeah was awarded a grant to provides after-school/ camp programs through The Children's Trust and entered into a one-year grant agreement in furtherance thereof; and

WHEREAS, pursuant to Hialeah, Fla., Resolution 07-30 (Mar. 30, 2007), the City of Hialeah accepted a grant award from The Children's Trust and entered into a one-year grant agreement in furtherance thereof; and

WHEREAS, pursuant to Hialeah, Fla., Resolution 08-107 (Aug. 28, 2008), the City of Hialeah accepted a grant award from The Children's Trust and entered into a one-year grant agreement in furtherance thereof; and

WHEREAS, the City of Hialeah finds it in the best interest of the health, safety and welfare of the community to accept the grant award to benefit its children and residents and enter into a new grant agreement accordingly.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The foregoing facts and recitations contained in the preamble to this resolution are hereby incorporated and adopted by reference as if fully set forth herein.

Section 2: The City of Hialeah, Florida hereby accepts a grant award from the Miami-Dade County Children's Trust in the amount of $1,224,656 for aftercare and literacy programs and further authorizes the Mayor and the City Clerk, as attesting witness, on behalf of the City, to negotiate and enter into a grant agreement, in substantial form as attached hereto and made a part hereof as Exhibit "1" and execute any and all documents in furtherance thereof.

PASSED AND ADOPTED this 25th day of August, 2009

Carlos Hernandez
Council President

Attest:

Approved on this 26th day of August, 2009.

Rafael E. Granado, City Clerk

Mayor Julio Robaina

Approved as to form and legal sufficiency:

William M. Grodnick, City Attorney

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Resolution was adopted by a unanimous vote with Councilmembers, Caragol, Casals-Muñoz, Cue, Garcia-Martinez, Gonzalez, Hernandez, and Yedra voting "Yes".

Yellow highlighted text is **NEW** for **FY 09-10**

CONTRACT NO. ###-###
BETWEEN THE CHILDREN'S TRUST
AND [AGENCY NAME]
FOR [P&P, etc.] 2009-10

THIS CONTRACT, made and entered into by and between The Children's Trust whose address is 3150 S.W. 3rd Avenue, 8th Floor, Miami, Florida 33129 and [**Agency Name**] hereinafter referred to as the "Provider" whose address is _____, Miami, Florida 331__, states the conditions and covenants for the rendering of services to children and families (hereafter referred to as "Services") for The Children's Trust.

In consideration of the mutual covenants herein, The Children's Trust and the Provider (sometimes hereafter referred to as "**Parties**") agree as follows:

A. EFFECTIVE TERM

The effective term of this Contract shall be from _____ through_____, subject to funding availability and Provider's performance.

B. TERMS OF RENEWAL, if applicable

In the sole discretion of The Children's Trust this Contract may be renewed twice and with the acknowledgement of the Provider. Renewal may not exceed a term equal to the term of the initial contract, for a total maximum of three (3) terms. In considering the exercise of any contract renewal, The Children's Trust in its sole discretion will consider, but is not limited to, the following:

1. Provider meeting the performance requirements specified in this Contract.
2. Continued demonstrated and documented need for the services funded.
3. Program performance, and fiscal performance and compliance by the Provider that is deemed satisfactory in The Children's Trust's sole discretion.
4. The availability of funds from The Children's Trust. The Children's Trust is prohibited from creating obligations in anticipation of budgeted revenues from one fiscal year to another without year to year extension provisions in the contract.
5. If applicable, The Children's Trust in its sole discretion will initiate re-negotiation of this Contract before the contract term expires.

C. SCOPE OF SERVICES

1. Provider agrees to render services in accordance with the Scope of Services, Attachment A, to this Contract. Provider shall implement the Scope of Services, Attachment A, in a manner deemed satisfactory to The Children's Trust. Any modification to the Scope of Services shall not be effective until approved, in writing, by The Children's Trust and the Provider.

2. The Scope of Services' activities and performance measures, as well as complete and accurate data and programming information will be used in the evaluation of the Provider's overall performance.

3. Provider agrees that all funding provided by The Children's Trust, pursuant to this Contract will be used exclusively for Services in and for the benefit of Miami-Dade County residents.

D. TOTAL FUNDING

Subject to the availability of funds, the maximum amount payable for Services rendered under this Contract shall not exceed **$[dollar amount]**. The Parties agree that should available funding to The Children's Trust be reduced, the amount payable under this Contract will be reduced at the sole option of The Children's Trust. Provider agrees to adhere to the Budget and Method of Payment outlined in Attachment B to this Contract.

Yellow highlighted text is **NEW** for **FY 09-10**

E. FISCAL MANAGEMENT

1. Double Billing and Payments

Provider costs or earnings claimed under this Contract may not also be claimed under another contract or grant from The Children's Trust or, unless such claim is denied by The Children's Trust, from any other agency. Any claim for double payment by Provider shall be a material breach of this Contract.

2. No Supplanting of Existing Public Funds

The Children's Trust funding may not be used by any provider as a substitute for existing resources or for resources that would otherwise be available for children's services, or to replace funding previously provided by and currently available from local and state funding sources for the same purpose. Government agencies must certify that they have maintained their previous funding level when applying for additional funding from The Children's Trust. A violation of this section shall be considered a material breach of this Contract.

3. Capital Equipment

Capital equipment is included in the definition of "property" under Florida Statutes, Chapter 274, and Florida Administrative Code, Section 69I-73.001, and is defined for purposes of this Contract as individual items with a value of $1,000 or greater which have a life expectancy of more than one year. Capital equipment purchased with Trust funds by Provider become assets of The Children's Trust; are intended for The Children's Trust funded programs; are owned by The Children's Trust; and must be tagged at the time of purchase as an asset of The Children's Trust. The Children's Trust will work with Provider to tag the asset and receive all information regarding the capital equipment. Provider must maintain a record of any capital equipment purchased with funds provided by The Children's Trust. When Provider is no longer funded by The Children's Trust, the equipment will be returned to The Children's Trust for use by another funded program unless it is fully depreciated. Provider must initiate return of such capital equipment to The Children's Trust. Ownership of capital equipment will be transferred to Provider and removed from The Children's Trust's fixed asset system if the capital equipment is fully depreciated and in the possession of Provider.

4. Assignments and Subcontracts

Neither Provider nor The Children's Trust shall assign this Contract to another party. Provider shall not subcontract any Services contemplated under this Contract without prior written approval of The Children's Trust. Provider shall incorporate appropriate language form The Children's Trust contract into its subcontracts and shall require that all subcontractors providing services shall be governed by the terms and conditions of this contract. Provider shall submit a copy of said agreement to The Children's Trust within 30 days of its execution. All sub-contracted providers must agree to be monitored by or on behalf of The Children's Trust in the same manner as Provider under the terms of this contract. Provider and Subcontractor must be qualified to do business in the state of Florida.

Provider shall be responsible for all services performed and all expenses incurred with this Contract, including services provided and expenses incurred by any and all subcontractors. It is understood by Provider that The Children's Trust shall not be liable to a subcontractor for any expenses or liabilities incurred under any subcontract and Provider shall be solely liable under the subcontract. Provider agrees, at Provider's sole expense, to hold harmless and defend The Children's Trust against any such claims, demands or actions related to any subcontract.

In no event shall The Children's Trust directly provide funds to any subcontractor. All payments to any authorized subcontractor shall be paid directly by Provider to the subcontractor.

5. Religious Purposes

Organizations and their faith-based community partners shall not use funds provided under this Contract to support inherently religious activities, such as religious instruction, worship, or proselytization.

6. Lobbying
Provider shall not use any funds provided under this Contract or any other funds provided by The Children's Trust for lobbying any federal, state or local government or legislators.

7. Adverse Action or Proceeding
Provider shall not utilize the funds provided under this Contract or any other funds provided by The Children's Trust to retain any legal counsel for any action or proceeding against The Children's Trust or any of its agents, employees or officials.

F. INDEMNIFICATION BY PROVIDER

1. Government Entity
Subject to the limitations and sovereign immunity provisions of Florida Statute, Sec. 768.28, Provider shall indemnify and hold harmless The Children's Trust and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which 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, relating to or resulting from the performance of this Contract by Provider or its employees, agents, servants, partners, principals or subcontractors.
Subject to the limitations and sovereign immunity provisions of Florida Statutes, Sec. 768.28, Provider 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 Children's Trust, where applicable, including appellate proceedings, and shall pay all costs, judgments, and reasonable attorney's fees which may issue thereon.

2. All Other Providers
Provider shall indemnify and hold harmless The Children's Trust and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including reasonable attorneys' fees and costs of defense, which The Children's Trust or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of action or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Contract by the Provider or its employees, agents, servants, partners, principals or sub contractors, except to the extent arising from The Children's Trust's willful or wanton acts or omissions, or those of its employees or principals.

To the extent arising from a liability that is covered by the foregoing indemnification, Provider 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 Children's Trust, where applicable, including appellate proceedings, and shall pay all costs, judgments, and reasonable attorney's fees which may issue thereon. Provider expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by Provider shall in no way limit the responsibility to indemnify, keep and save harmless and defend The Children's Trust or its officers, employees, agents as herein provided.

The provisions of this section on indemnification shall survive the expiration or termination of this Contract.

G. COPYRIGHTS AND RIGHT TO DATA/MATERIALS

Where activities supported by this Contract produce original writing, data, sound recordings, pictorial reproductions, drawings or other graphic representations and works of similar nature, The Children's Trust has a license to reasonably use, duplicate and disclose such materials in whole or in part in a manner consistent with the purposes and terms of this Contract, and to have others acting on behalf of The Children's Trust to do so, provided that such use does not compromise the validity of any copyright, trademark or patent. If the data/materials so developed are subject to copyright, trademark or patent, legal title and every right, interest, claim or demand of any kind in and to any patent, trademark or copyright, or application for the same, will vest in the Provider or with any applicable third party who has licensed or otherwise permitted the Provider to use the same. Provider agrees to allow

The Children's Trust and others acting on behalf of The Children's Trust to have reasonable use of the same consistent with the purposes and terms of this Contract, at no cost to The Children's Trust, provided that such use does not compromise the validity of such copyright, trademark or patent.

H. OWNERSHIP AND LICENSING OF INTELLECTUAL PROPERTY

The Parties understand that this Contract is subject to the provisions, limitations and exceptions of Chapter 119, Florida Statutes, regarding public records. Accordingly to the extent permitted by Chapter 119, Florida Statutes, the–Provider retains sole ownership of intellectual property developed under this Contract. It is the responsibility of the Provider to pay all required licensing fees if intellectual property owned by other parties is incorporated by the Provider into the services required under this Contract. Such licensing should be in the exclusive name of the Provider. Payment for any such licensing fees or costs arising from the use of others' intellectual property shall be at the expense of the Provider.

As applicable under Fla. Stat. Section 768.28, and to the extent permitted by and within the limitations of Fla. Stat. Section 768.28, the Parties shall indemnify and hold each other harmless from liability of any nature or kind, including costs and expenses for or on account of third party allegations that use of any intellectual property owned by the third party and provided, manufactured or used by the indemnifying Party in the performance of this Contract violates the intellectual property rights of that third party.

I. BREACH OF CONTRACT AND REMEDIES

1. **Breach**
   A material breach by the Provider shall have occurred under this Contract if the Provider through action or omission causes any of the following:
   a. Fails to provide the Services outlined in the scope of services (Attachment A) within the effective term of this Contract;
   b. Fails to correct an imminent safety concern or take acceptable corrective action;
   c. Ineffectively or improperly uses The Children's Trust funds allocated under this Contract;
   d. Does not furnish the certificates of insurance required by this Contract or as determined by The Children's Trust;
   e. Does not meet or satisfy the conditions of award required by this Contract;
   f. Fails to submit or submits incorrect or incomplete proof of expenditures to support disbursement requests or advance funding disbursements, or fails to submit or submits incomplete or incorrect detailed reports of requests for payment, expenditures or final expenditure reports;
   g. Does not submit or submits incomplete or incorrect required reports pursuant to the scope of Services in this Contract;
   h. Refuses to allow The Children's Trust access to records or refuses to allow The Children's Trust to monitor, evaluate and review the Provider's program, including required client data;
   i. Fails to comply with child abuse and incident reporting requirements;
   j. Attempts to meet its obligations under this Contract through fraud, misrepresentation or material misstatement;
   k. Fails to correct deficiencies found during a monitoring, evaluation or review within a specified reasonable time;
   l. Fails to meet the terms and conditions of any obligation or repayment schedule to The Children's Trust or any of its agencies;
   m. Fails to maintain the confidentiality of client files, pursuant to Florida and federal laws;
   n. Fails to fulfill in a timely and proper manner any and all of its obligations, covenants, contracts and stipulations in this Contract;
   o. Fails to comply with Background Screening, as required under this Contract.

   Waiver of breach of any provisions of this Contract 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 Contract.

2. Remedies

If the Provider breaches this Contract, and fails to cure such breach within thirty (30) days after receiving written notice from The Children's Trust identifying the breach, The Children's Trust may pursue any of the following remedies:

a. The Children's Trust may, at its sole discretion, enter into a written performance improvement plan with the Provider to cure any breach of this Contract as may be permissible under state or federal law. (Attachment F, if applicable). Any such remedial plan shall be an addition to this Contract and shall not affect or render void or voidable any other provision contained in this Contract, costs, and any judgments entered by a court of appropriate jurisdiction.

b. The Children's Trust may suspend payment in whole or in part under this Contract by providing written notice to the Provider of such suspension and specifying the effective date thereof, at least five business days before the effective date of suspension. On the effective date of suspension the Provider may (but shall not be obligated to) continue to perform the services provided for in this Contract, but the Provider shall promptly cease using The Children's Trust's logo and any other reference to The Children's Trust in connection with such services. All payments to the Provider as of this date shall cease, except that The Children's Trust shall continue to review and pay requests for payment for services that were performed and/or for deliverables that were substantially completed at the sole discretion of The Children's Trust, prior to the effective date of such suspension. If payments are suspended, The Children's Trust must specify in writing the actions that must be taken by the Provider as condition precedent to resumption of payments and shall specify a reasonable date for compliance. The Children's Trust may also suspend any payments in whole or in part under any other contracts entered into between The Children's Trust and the Provider by providing separate written notice to the Provider of each such suspension and specifying the effective date thereof, which must be at least five business days before the effective date of such suspension, in any event The Children's Trust shall continue to review and pay requests for payment as provided for in such other contracts for services that were performed and/or for deliverables that were substantially completed at the sole discretion of The Children's Trust prior to the effective date of such suspension. The Provider shall be responsible for all direct and indirect costs associated with such termination including reasonable attorney's fees.

c. The Children's Trust may terminate this Contract by giving written notice to the Provider of such termination and specifying the date thereof at least five (5) business days before the effective date of termination. In the event of such termination, The Children's Trust may (a) request the Provider to deliver to The Children's Trust clear and legible copies of all finished or unfinished documents, studies, surveys, reports prepared and secured by the Provider with Trust funds under this Contract subject to the rights of the Provider thereto as provided for in Paragraphs G and H above; (b) seek reimbursement of any Trust funds which have been improperly paid to the Provider under this Contract; (c) terminate further payment of Trust funds to the Provider under this Contract, except that The Children's Trust shall continue to review and pay requests for payment for services that were performed and/or deliverables that were substantially completed at the sole discretion of The Children's Trust prior to the effective date of such termination; and/or (d) terminate or cancel any other contracts entered into between The Children's Trust and the Provider by providing separate written notice to the Provider of each such termination and specifying the effective date thereof, which must be at least five business days before the effective date of such termination, in which event The Children's Trust shall continue to review and pay requests for payment as provided for in such other contracts for services that were performed and/or for deliverables that were substantially completed at the sole discretion of The Children's Trust prior to the effective date of such termination. The Provider shall be responsible for all direct and indirect costs associated with such termination, including reasonable attorney's fees.

d. The Children's Trust may seek enforcement of this Contract including but not limited to filing an action with a court of appropriate jurisdiction. The Provider shall be responsible for all direct and indirect costs associated with such enforcement, including reasonable attorney's fees, costs, and any judgments entered by a court of appropriate jurisdiction, including all direct and indirect costs and reasonable attorneys' fees through conclusion of all appellate proceedings, and including any final settlement.

e. The provisions of this Paragraph I shall survive the expiration or termination of this Contract.

J. INSURANCE REQUIREMENTS

Provider shall have their insurance agent(s) provide to The Children's Trust within 30 days of contract execution, Certificates of Insurance or, as applicable, a letter of self-insurance indicating coverage applicable to a Florida municipal corporation or written verification (binders) required under this section or as determined by The Children's Trust, except as required by Florida law for government entities. It is the Provider's responsibility to comply with this requirement. The Children's Trust shall be named as an additional insured as their interest may appear on all applicable policies, and all applicable policies shall be maintained in full force for the term of this contract. As a condition of the execution of the contract, The Children's Trust will not disburse any funds until The Children's Trust is provided with the necessary Certificates of Insurance, letter of self-insurance or written verification (binders) and The Children's Trust has approved such documents. The Children's Trust shall have the rights to review said certificates or letters and, if applicable, reasonably require updating of types and amounts of coverage provided upon any renewal of this Contract.

Provider will carry insurance policies in the amounts and with the requirements indicated below:

1. Worker's Compensation Insurance for all employees and **non-incorporated** independent contractors and **non-incorporated** consultants of the Provider, as required by Florida Statutes, Chapter 440. The employer's liability portion will be $500,000/$500,000/$500,000 as a minimum.

2. Comprehensive General Liability insurance in an amount not less than $500,000 combined single limit per occurrence and $1,000,000 aggregate in a policy year. Deductibles exceeding $ 1,000 are discouraged, unless Provider can provide financials to support a higher deductible. The Children's Trust must be designated and shown as an "Additional Insured as Their Interest May Appear" with respects to this coverage. The general liability policy must contain coverage for the following:

    a. Bodily Injury;
    b. Property Damage;
    c. No exclusions for Abuse, Molestation or Corporal Punishment;
    d. No endorsement for premises only operations.

3. Automobile liability coverage for all owned and/or leased vehicles of the Provider and non-owned coverage for their employees and/or sub-contractors **transporting program participants**. The amount of coverage is $1,000,000 combined single limit per occurrence for bodily injury and property damage. The Children's Trust must be designated and shown as an "Additional Insured as Their Interest May Appear" with respects to this coverage. Coverage can be purchased as non-owned without hired auto coverage, but rental cars can not be used in the course of the Provider's regular operations. Rental cars may be used for travel to attend conferences outside the tri-county area.

4. Automobile liability coverage for all owned and/or leased vehicles of the Provider and non-owned coverage for their employees and /or sub-contractors **not transporting program participants**. The minimum amount of coverage is $300,000 combined single limit per occurrence for bodily injury and property damage. The Children's Trust must be designated and shown as an "Additional Insured as Their Interest May Appear" with respects to this coverage. Coverage can be purchased as non-owned without hired auto coverage, but rental cars can not be used in the

course of the Provider's regular operations. Rental cars may be used for travel to attend conferences outside the tri-county area.

5. If applicable, Special Events Coverage, as determined by The Children's Trust. The liability coverage will be the same as the coverage and limits required for comprehensive general liability and The Children's Trust must be designated and shown as "Additional Insured as Their Interest May Appear." Special Events policies are for short term functions and not meant to replace annual liability policies. The coverage is for the day or days of the event and must provide coverage the day prior and the day following the event.

6. If applicable, Professional Liability insurance, as determined by The Children's Trust, with coverage amounts determined by The Children's Trust but not less than $250,000 per claim and in the aggregate. Defense costs may be inside the limits of liability and the policy can be written on claims made form. The Children's Trust is not required to be named as an Additional Insured.

7. If applicable, Proof of Property Coverage is required when the Provider has capital equipment paid for by The Children's Trust and said capital equipment is under the care custody and control of the Provider. The Children's Trust must be shown on the evidence of property coverage as a Loss Payee.

Certificate holder must read:
The Children's Trust
3150 SW 3rd Avenue, 8th Floor
Miami, Florida 33129

Classification and Rating
All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

> The company must be rated no less than "B" as to management, and no less than "Class V" as the 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 reasonable approval of The Children's Trust's Risk Management Division, or the company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

The Provider shall notify The Children's Trust, in writing, of any material changes in insurance coverage, including, but not limited, to any renewals of existing insurance policies, not later than thirty (30) days prior to the effective date except for ten (10) days for lack of payment changes.

In the event of any change in the Provider's Scope of Services, Attachment A, The Children's Trust may increase, waive or modify, in writing any of the foregoing insurance requirements. Any request by a Provider to decrease, waive or modify any of the foregoing insurance requirements shall be approved, in writing, by The Children's Trust prior to any such decrease, waiver or modification.

In the event that an insurance policy is canceled during the effective period of this Contract, The Children's Trust shall withhold all payments from the Provider until a new Certificate of Insurance or written verification (binders) of insurance required under this section is submitted and approved by The Children's Trust. The new insurance policy shall cover the time period commencing from the date of cancellation of the prior insurance policy.

The Children's Trust may require the Provider to furnish additional and different insurance coverage, or both, as may be required from time to time under applicable federal or state laws. Provision of insurance by Provider, in no instance, shall be deemed to be a release, limitation, or waiver of any claim, cause of action or assessment that The Children's Trust may have against the Provider for any liability of any nature related to performance under this Contract or otherwise.

All insurance required hereunder may be maintained by the Provider pursuant to a master or blanket policy or policies of insurance.

K. PROOF OF TAX STATUS

Provider is required to keep on file the following documentation for review by The Children's Trust.

- The Internal Revenue Service (I.R.S.) tax status determination letter;
- The most recent (two years) I.R.S. form 990 or applicable tax return filing within six (6) months after the Provider's fiscal year end or other appropriate filing period permitted by law;
- If required by applicable law to be filed by the Provider, IRS 941 - quarterly federal tax return reports within thirty-five (35) calendar days after the quarter ends and if the 941 reflects a tax liability, proof of payment must be submitted within sixty (60) calendar days after the quarter ends.

L. NOTICES

All notices pursuant to this Contract shall be in writing and sent by certified mail to the addresses for each Party appearing on the first page of this Contract, and in the case of notices to The Children's Trust, marked to the attention of its President and CEO. It is each Party's responsibility to advise the other Party in writing of any changes in name, address and/or telephone number.

M. AUTONOMY

Both Parties agree that this Contract recognizes the autonomy of, and stipulates or implies no affiliation between, the contracting parties. It is expressly understood and intended that Provider is only a recipient of funding support and is not an agent or instrumentality of The Children's Trust, and that Provider's agents and employees are not agents or employees of The Children's Trust.

N. RECORDS, REPORTS, AUDITS AND MONITORING

1. Accounting records

Provider shall keep accounting records which conform to generally accepted accounting principles. All such records will be retained by Provider for not less than five years beyond the last date that all applicable terms of this Contract have been complied with and final payment has been received and appropriate audits have been submitted to and accepted by the appropriate entity. However, if any audit, claim, litigation, negotiation or other action involving this Contract or Modification hereto has commenced before the expiration of the retention period, the records shall be retained until completion of the action and resolution of all issues which arise from it or until the end of the regular retention period, which ever is later.

2. Financial audit and Program Specific Audit

Within 180 days of the close of its fiscal year, Provider agrees to submit to The Children's Trust an Annual Financial Audit, performed by an independent certified audit firm who is registered to do business with the Florida State Department of Business Regulation, of all its corporate activities and any accompanying management letter(s) or report(s) on other matters related to internal control, for each year during which this Contract remains in force and until all funds expended from this Contract have been audited. If no management letter or report or other matters related to internal control is prepared by the independent audit firm, Provider must confirm in writing to The Children's Trust that no such report was submitted to the Provider. This audit shall be conducted in accordance with auditing standards generally accepted in the United States of America and standards contained in the Government Auditing Standards issued by the Comptroller General of the United States.

Providers that are required to have a single audit conducted under OMB Circular A-133, Audit of States, Local Government and Non-Profit Organizations or the Florida Single Audit Act, Florida Statutes 215.97 agree to submit the schedule of expenditures pertaining to awards, summary schedule of prior audit findings, applicable auditor's reports and the corrective action plan when the schedule of findings and questioned costs prepared by the independent auditor discloses audit findings. In the event that the independent auditor does not disclose audit findings, Provider shall submit written notification to The Children's Trust that an audit of Provider was conducted in accordance with applicable laws and regulations and that the findings and questioned costs disclosed no audit findings related to this Contract; and, that the summary schedule of prior audit findings did not report on the status of any audit findings relating to awards that The Children's Trust provided.

Within 180 days of the close of its fiscal year, a Provider who is contracted for a combined total of $300,000 or more from The Children's Trust from this or any other The Children's Trust contract(s), related to the fiscal year under audit, the Provider agrees to have a program-specific audit relating to The Children's Trust contract(s), in addition to the annual financial audit of the Provider's entire organization. This program-specific audit is to encompass an audit of The Children's Trust contract(s) as specified in Attachment D: Program Specific Audit Requirements.

A Provider that does not meet the program-specific audit threshold requirement of a combined total contract amount of $300,000 or more from The Children's Trust, will be exempt from the program-specific audit requirement in.

Audit extensions may be granted in writing by The Children's Trust, after proper approval has been obtained from The Children's Trust's Finance Department, upon receipt in writing of such request with appropriate justification by the Provider.

The financial audit and other financial information will be used in the evaluation of the Provider's performance and the Provider's overall fiscal health soundness.

3. Access to records

Provider shall provide access to all records including subcontractor(s) which relate to this Contract at its place of business during regular business hours. Provider agrees to provide such assistance as may be necessary to facilitate their review or audit by The Children's Trust to insure compliance with applicable accounting, financial, and programmatic standards. This would include access by The Children's Trust or its designee, to Provider's independent auditor's working papers for complying with federal, state and local requirements. The Children's Trust reserves the right to require Provider to submit to an audit by an auditor of The Children's Trust's choosing at The Children's Trust's expense.

4. Monitoring

Provider agrees to permit The Children's Trust personnel or contracted agents to perform random scheduled and/or unscheduled monitorings, reviews, and evaluations of the program which is the subject of this Contract, including any subcontracts under this Contract, using The Children's Trust approved monitoring tools. The Children's Trust or contracted agents shall monitor both fiscal/administrative and programmatic compliance with all the terms and conditions of the Contract. Provider shall permit The Children's Trust or contracted agents to conduct site visits, client interviews, client assessment surveys, fiscal/administrative review and other techniques deemed reasonably necessary in The Children's Trust's sole discretion to fulfill the monitoring function. A report of monitoring findings will be delivered to Provider and Provider will rectify all deficiencies cited within the period of time specified in the report.

5. Client Records

Pursuant to Florida Statute 119.071(5), The Children's Trust collects the social security numbers of child participants of funded programs and services for the following purposes: (a) to research, track and measure the impact of The Children's Trust funded programs and services in an effort to maintain and improve such programs and services for the future (individual identifying information will not be disclosed); (b) to identify and match individuals and data within and among various systems and other agencies for research purposes. The Children's Trust does not collect social security numbers for adult participants.

Provider shall maintain a separate file for each child/family served. This file shall include all pertinent information regarding program enrollment and participation. At a minimum, the file will contain enrollment information (including parent registration consents and child demographics), service plans, outcome measures (as set forth in Attachment A), and notes documenting referrals, special needs, or incident reports. These files shall be subject to the audit and inspection requirements under this Contract, subject to applicable confidentiality requirements. All such records will be retained by the Provider for not less than five calendar years after the participant is no longer enrolled. Provider agrees to comply with all applicable state and federal laws on privacy and confidentiality.

6. Internal Documentation/Records Retention
Provider agrees to maintain and provide for inspection to The Children's Trust, during regular business hours the following as may be applicable, subject to applicable confidentiality requirements: (1) personnel files of employees which include hiring records, background screening affidavits, job descriptions, and evaluation procedures; (2) authorized time sheets, records, and attendance sheets to document the staff time billed to provide Services pursuant to this Contract; (3) daily activity logs and monthly calendars of the provision of Services pursuant to this Contract; (4) training modules; (5) pre and post session questionnaires; (6) all participant attendance records; (7) participant consent and information release forms; (8) agency policies and procedures; and (9) such other information related to Service provision as described in Attachment A; all upon request by The Children's Trust. Provider shall retain all records for not less than five years beyond the last date that all applicable terms of this Contract have been complied with and final payment has been received, and appropriate audits have been submitted to and accepted by the appropriate entity.

7. Confidentiality
Provider and The Children's Trust understand that during the course of performing the Services hereunder, each party may have access to certain confidential and proprietary information and materials of the other party in order to further performance of the Services. The Parties shall protect confidential information and comply with applicable federal and state laws on confidentiality to prevent unauthorized use, dissemination or publication of confidential information as each party uses to protect its own confidential information in a like manner. The Parties shall not disclose the confidential information to any third party (except that such information may be disclosed to such Party's attorneys), or to any employee of such Party who does not have a need to know such information, which need is related to performance of a responsibility hereunder. However, this Contract imposes no obligation upon the Parties with respect to confidential information which (a) was lawfully known to the receiving party before receipt from the other, (b) is or becomes a matter of public knowledge through no fault of the receiving party, (c) is rightfully received by the receiving party from a third party without restriction on disclosure, (d) is independently developed by or for that party, (e) is disclosed under operation of law, (f) is disclosed by the receiving party with the other party's prior written approval or (g) is subject to Chapter 119 of the Florida Statutes or is otherwise required to be disclosed by law. The confidentiality provision of this Contract shall remain in full force and effect after the termination of this Contract.

8. Security Obligation
Provider shall maintain an appropriate level of data security for the information Provider is collecting or using in the performance of this Contract. This includes, but is not limited to, approving and tracking all Provider employees who request system or information access and ensuring that user access has been removed from all terminated employees of Provider.

9. Withholding of payment
At the sole discretion of The Children's Trust, payment may be withheld for non-compliance of contractual terms. The Children's Trust will provide payment upon satisfactory compliance of the contractual terms as solely determined by The Children's Trust.

O. MODIFICATIONS

Any alterations, variations, modifications, extensions or waivers of provisions of this Contract including but not limited to amount payable and effective term shall only be valid when they have been reduced to writing, duly approved and signed by both Parties.

P. GOVERNING LAW & VENUE

This Contract shall be interpreted and construed in accordance with and governed by the laws of the State of Florida without regard to its conflicts of laws provisions. Any controversies or legal problems arising out of the terms of this Contract and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the state courts of the Eleventh Judicial Circuit, in and for, Miami-Dade County, Florida.

Yellow highlighted text is **NEW** for **FY 09-10**

Q. EMPLOYEE BACKGROUND SCREENING

In accordance with Sections 943.0542, 984.01, Chapter 435, 402, 39.001, and 1012.465 Florida Statutes, as applicable, employees, volunteers and subcontracted personnel who work in direct contact with children or who come into direct contact with children must complete a satisfactory Level 2 background screening. Level 2 Background screenings must be completed through the Florida Department of Law Enforcement (FDLE), VECHS Program. Satisfactory background screening documentation will be accepted for those agencies that already conduct business with either the Department of Children and Families (DCF) or the Department of Juvenile Justice (DJJ) or the Miami Dade County Public School System (MDCPS). A clearance letter from MDCPS Office of Employment Standards indicating the person has successfully completed a Level 2 screening will be accepted. An Attestation of Good Moral Character must be completed annually for each employee, volunteer, and subcontracted personnel who work in direct contact with children. The Provider shall re-screen each employee, volunteer and/or subcontractor every five years. Provider shall keep Attachment E "Affidavit for Level 2 Background Screenings" in the Provider's personnel, volunteers, and/or sub-contractors files.

R. CHILDREN WITH DISABILITIES AND THEIR FAMILIES

Provider understands that The Children's Trust expects Provider to meet the federal standards under the Americans with Disabilities Act. By policy of The Children's Trust, providers must also implement reasonable programmatic accommodations to include children with disabilities and their families, whenever possible. Notwithstanding anything to the contrary, the Provider shall not be required to make any alteration to any public school building or other building or structure which is not owned by the Provider.

S. REGULATORY COMPLIANCE

1. Non-discrimination and Civil Rights

Provider shall not discriminate against an employee, volunteer, or client of the Provider on the basis of race, color, gender, pregnancy, marital status, familial status, sexual orientation, religion, ancestry, national origin, disability, or age, except that programs may target services for specific target groups as may be defined in the competitive solicitation.

Provider shall demonstrate that it has standards, policies, and practices necessary to render services in a manner that respects the worth of the individual and protects and preserves the dignity of people of diverse cultures, classes, races, religions, sexual orientation, and ethnic backgrounds.

Provider agrees to abide by Chapter 11A of the Code of Miami-Dade County ("County Code"), as amended, which prohibits discrimination in employment, housing and public accommodations; Title VII of the Civil Rights Act of 1968, as amended, which prohibits discrimination in employment and public accommodation; the Age Discrimination Act of 1975, 42 U.S.C. Section 6101, as amended, which prohibits discrimination in employment because of age; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, as amended, which prohibits discrimination on the basis of disability; and the Americans with Disabilities Act, 42 U.S.C. §12101 et seq., which prohibits discrimination in employment and public accommodations because of disability.

It is expressly understood that upon receipt of evidence of discrimination under any of these laws, The Children's Trust shall have the right to terminate all or any portion of this Contract. If Provider or any owner, subsidiary, or other firm affiliated with or related to Provider, is found by the responsible enforcement agency or the courts to be in violation of these laws, said violation will be a material breach of this Contract and The Children's Trust will conduct no further business with Provider.

2. Public Entities Crime Act

Provider will not violate the Public Entities Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a Provider, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to The Children's Trust,

may not submit a bid on a contract with The Children's Trust for the construction or repair of a public building or public work, may not submit bids on leases of real property to The Children's Trust, may not be awarded or perform work as a Provider supplier, sub Provider, or consultant under a contract with The Children's Trust, and may not transact any business with The Children's Trust in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in cancellation of this Contract and recovery of all monies paid hereto, and may result in debarment from The Children's Trust's competitive procurement activities.

3. Conflict of Interest
Provider represents that the execution of this Contract does not violate Miami Dade County's Conflict of Interest and Code of Ethics Ordinance, www.miamidade.gov/ethics/library/Ethics-Brochure-2005.pdf and Florida Statutes §112 as amended, which are incorporated herein by reference as if fully set forth herein. Provider agrees to abide by and be governed by these conflict of interest provisions throughout the course of this Contract and in connection with its obligations hereunder.

4. Compliance with Sarbanes-Oxley Act of 2002
Provider shall comply with the following provisions of the Sarbanes-Oxley Act of 2002:

- Provider agrees not to alter, cover up, falsify, or destroy any document that may be relevant to an official investigation.
- Provider agrees not to punish whistleblowers or retaliate against any employee who reports suspected cases of fraud or abuse.

5. Licensing
The Provider (and subcontractor, as applicable,) shall obtain and maintain in full force and effect during the term of this Contract any and all licenses, certifications, approvals, insurance, permits and accreditations, required by the State of Florida, Miami-Dade County, relevant municipalities, The Children's Trust or the federal government. The Provider must be qualified and registered to do business in the State of Florida both prior to and during the contract term with The Children's Trust.

6. Incident Reporting
Provider shall immediately report knowledge or reasonable suspicion of abuse, neglect, or abandonment of a child, aged person, or disabled adult to the Florida Abuse Hotline on the statewide toll-free telephone number (1-800-96-ABUSE). As required by Chapters 39 and 415, Florida Statutes, this is binding upon both the Provider and its employees.

Provider shall complete an incident report in the event of any serious bodily injury to anyone within the scope of this Contract or arising out of the performance of this Contract. Provider shall provide written notification of the incident together with a copy of the incident report to The Children's Trust within three (3) working days after Provider is informed of such incident. Provider shall provide written notification to The Children's Trust, within seven (7) days, if any legal action which is filed as a result of such an injury.

7. Sexual Harassment
Provider shall complete an incident report in the event a client or employee makes an allegation of sexual harassment, sexual misconduct or sexual assault by a Provider employee arising out of the performance of this Contract and the Provider has knowledge thereof. Provider shall provide written notification to The Children's Trust within three (3) business days after Provider is informed of such an allegation. Provider shall provide written notification to The Children's Trust, within seven (7) business days, if any legal action which is filed as a result of such an alleged incident.

8. Proof of Policies
Provider and subcontractor, as applicable, shall keep on file copies of its policies including but not limited to confidentiality, incident reporting, sexual harassment, non-discrimination, equal opportunity and/or affirmative action, Americans with Disabilities Act, and drug-free workplace.

T. CONSENT
Provider must obtain parental/legal guardian consent for all minor participants and/or for adult participants in the program for services; and to share information with The Children's Trust for monitoring and evaluation purposes.

Provider will ask participants to sign a voluntary Consent to Photograph form. The form is available in English, Spanish, and Creole and can be downloaded from www.thechildrenstrust.org. The signed consent form for photography will be maintained at the program site, with a copy filed in the participant's record. The consent shall be part of the participants' registration form. Any refusal of consent must be properly documented and signed by the parent or legal guardian on the consent form.

U. PROGRAMMATIC DATA REPORTING
Demographic and service information on program participants will be provided to The Children's Trust as part of The Children's Trust's research mission. Provider agrees to comply and participate in any data collection reporting, including participant data as required by The Children's Trust and described in **Attachment C** to this contract, Programmatic Data and Reporting Requirements, subject to confidentiality requirements. In addition, Provider agrees to furnish The Children's Trust with complete and accurate reports in the timeframe and format to be reasonably specified by The Children's Trust, and as described in Attachment C.

Provider must participate and provide agency (agency profile) and site(s) information to Switchboard of Miami 2-1-1, The Children's Trust 24 hour helpline, as applicable and as defined in Attachment C: Programmatic Data Reporting Requirements.

V. PUBLICITY

Provider agrees that activities, services and events funded by this Contract shall recognize The Children's Trust as a funding source. Provider shall ensure that all publicity, public relations, advertisements and signs within its control recognize The Children's Trust for the support of all contracted activities. The use of the official Children's Trust logo is permissible.

Provider shall use its best efforts to ensure that all media representatives, when inquiring with the Provider about the activities funded by this Contract, are informed that The Children's Trust is a funding source. Provider shall, if it possesses the appropriate technology, provide a link between the website and The Children's Trust's website.

W. PUBLICATIONS

Provider agrees to supply The Children's Trust, without charge, up to three copies of any publication developed in connection with implementation of programs addressed by this Contract. Such publications will state that the program is supported by The Children's Trust. Provider agrees that The Children's Trust will have use of copyrighted materials developed under this Contract to the extent provided in, and subject to, the provisions of Paragraphs G and H above.

To the extent permitted by the applicable journal or other publication source, Provider shall include The Children's Trust logo and the following paragraph in all materials featuring programs funded by The Children's Trust, including but not limited to newsletters, press releases, brochures, fliers, homepage of websites or any other materials for dissemination to the media or general public:

> English:
> (**Provider Organization and Program Name**) is funded by The Children's Trust.
> The Children's Trust is a dedicated source of revenue established by voter referendum to improve the lives of children and families in Miami-Dade County.

Spanish:
(**Provider Organization and Program Name**) está financiado por El Fidecomiso de los Niños (The Children's Trust). El Fidecomiso de los Niños es una fuente de financiación, establecida por referendum para mejorar las vidas de niños y familias en el Condado de Miami-Dade.

Kreyol:
(**Provider Organization and Program Name**) finanse pa "The Children's Trust". Trust la, se yon sous lajan ke gouvenman amerikin vote an referandom pou ke' li investi byen nan pwogram kap ameliore la Vi Ti Moun ak fanmi yo nan Myami Dade.

Note: In cases where funding by The Children's Trust represents only a percentage of the Provider's overall funding, the above language can be altered to read "The (organization) is funded in part by The Children's Trust..."

X. 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 Contract. 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.

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Yellow highlighted text is **NEW** for **FY 09-10**

Y. TOTALITY OF CONTRACT/SEVERABILITY OF PROVISIONS

This Contract with its attachments as referenced below contains all the terms and conditions agreed upon by the parties:

Attachment A: Scope of Services
Attachment B: Fiscal Requirements, Budget and Method of Payment
Attachment C: Programmatic Data and Reporting Requirements
Attachment D: Program Specific Audit Requirements
Attachment E: Affidavit for Level 2 Background Screenings
Attachment F: Performance Improvement Plan, if applicable

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

[Provider Name]
MIAMI-DADE COUNTY, FLORIDA

By: _____
(Signature of Authorized Representative)

_____
Type or Print Name

_____
(Type/Print Title)

Date: _____

The Children's Trust

by: _____
(signature)

Modesto E. Abety

President and CEO

Date_____

Approved as to form and legal sufficiency

_____
County Attorney

Date: _____

This contract is not valid until signed by both parties

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