

## **INTERLOCAL AGREEMENT**

This Interlocal Agreement (the “Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_, 2023, between the City of Denton, Texas, a home-rule municipal corporation (hereinafter the “City”) and Texas Woman’s University, an agency of the State of Texas (hereinafter “TWU”) (each, a “party,” collectively, the “parties”).

WHEREAS, both the City and the State of Texas have the authority to enter into this Agreement pursuant to Chapter 791, Texas Government Code; and

WHEREAS, the City agrees to pay to TWU the incremental construction costs of two (2) additional rooms at the facility owned by TWU (the “Facility”) and operated by Bezos Academy (“Operator”); and

WHEREAS, TWU will provide preschool services to qualifying City of Denton residents to nurture the potential in every child to become a creative leader, original thinker, and lifelong learner by increasing access to early childhood education for low-income households; and

WHEREAS, it is mutually beneficial to both parties to execute this Agreement whereby each entity can achieve common objectives relating to the public health and welfare of the residents of the City and students attending TWU.

NOW THEREFORE, in consideration of the mutual representations, terms and covenants hereafter set forth, the parties hereby agree as follows:

1. **STATEMENT OF WORK.** TWU will construct the Facility and act as landlord to the Operator who will provide pre-school services for qualifying students.
2. **PAYMENT BY CITY.** City will pay TWU an amount not to exceed \$1,500,000 within ninety (90) days of the final execution of this agreement. After construction of the Facility is complete, TWU will submit to the City final and actual project costs of the construction of the additional capacity for the City’s pro rata share of the total project costs based on the square footage of the additional capacity. If the final allocated project costs are less than the amount contributed by the City, TWU will remit any overage paid above the actual costs as soon as reasonably possible. The City may request that TWU provide payment applications, invoices, or other records in order to verify the allocation of actual, final project costs.
3. **CAPACITY.** TWU agrees that the payment by the City described herein will result in an increased student capacity of forty (40) student seats in addition to the eighty (80) student seats in the Facility as initially conceptualized by TWU. The increased capacity of forty (40) student seats, or the maximum number of seats for two preschool classrooms permitted under state law if lower than the forty (40), must be maintained for as long as the Facility provides pre-school services on a continuous basis, beginning from the date of the opening of the Facility and lasting no less than 10 years.
4. **REPORTING.** TWU will assist the City in requesting that the Operator provide the City with an annual report that details the performance of the preschool services at the Facility, including, but not limited to (i) the total number of students who are City of Denton residents, (ii) the average daily attendance count of students, (iii) a summary report of household income of students who are City of Denton residents (as collected by the Operator), and (iv) other measures of student success, as determined by the Operator. This report will continue should the preschool services be provided by Operator continue for more than the ten (10) year initial term.
5. **BREACH / OPPORTUNITY TO CURE.** The parties hereto expressly covenant and agree that in the event either party is in default of its obligations herein, the party not in default shall provide to the party

in default at least thirty (30) days written notice to cure said default before exercising any of its rights as provided for in this Agreement.

6. **FORCE MAJEURE.** If either party fails to fulfill its obligations hereunder when such failure is due to an act of God, or other circumstance beyond its reasonable control, then said failure shall be excused for the duration of such event and for such a time thereafter as is reasonable to enable the parties to resume performance under this Agreement.

7. **DISPUTE RESOLUTION.** The City and TWU must use the dispute resolution process provided in Chapter 2260 of the Texas Government Code to attempt to resolve a dispute arising under this Agreement and such process is a required prerequisite to suit in accordance with Chapter 107, Texas Civil Practice and Remedies Code. Nothing in this Agreement waives or relinquishes the right of TWU or the City to claim any exemptions, privileges and immunities as may be provided by law.

8. **GOVERNING LAW AND REMEDIES.** This Agreement shall be construed by and governed by the laws of the State of Texas. Venue for any legal action necessary to enforce the Agreement will be in Denton County, Texas. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power or remedy hereunder shall preclude any other or further exercise thereof.

9. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the parties and supersedes any prior oral or written agreements, commitments, understandings, or communications with respect to the subject matter of the Agreement. No amendments or modification of this Agreement shall be effective unless set forth in writing executed by duly authorized representatives of each party.

10. **WAIVER AND AMENDMENT.** No waiver of any provision hereof or of any right or remedy hereunder shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. No delay in exercising, no course of dealing with respect to, or no partial exercise of any right or remedy hereunder shall constitute a waiver of any right or remedy, or future exercise thereof.

11. **ASSIGNMENT.** This Agreement may not be assigned in whole or in part by any of the Parties without prior written consent of the other Party.

12. **SEVERABILITY.** If any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, the same shall not affect the remaining portions of this Agreement and such remaining portions shall remain in full force and effect.

13. **NOTICE.** Any notice required to be given in connection with this Agreement shall be in writing and shall be deemed effective if hand delivered, or if sent by United States certified mail, return receipt requested, postage prepaid, or if sent by private receipted courier guaranteeing same-day or next-day delivery, addressed to the respective party at its address provided below. If sent by U.S. certified mail in accordance with this Section, such notices shall be deemed given and received on the earlier of (a) actual receipt at the address of the named addressee, or (b) on the third (3rd) business day after deposit with the United States Postal Service. Notice given by any other means shall be deemed given and received only upon actual receipt at the address of the named addressee.

Party:	City	TWU
Name:	Sara Hensley, City Manager	Jason Tomlinson, VP Finance & Administration and CFOO

Attn:	n/a	n/a
Address:	215 E. McKinney Street	304 Administration Dr., Denton, TX 76204
Telephone:	940-349-8200	940-898-3505
Email:	Sara.Hensley@cityofdenton.com	jtomlinson1@twu.edu

14. NO THIRD-PARTY BENEFICIARIES. For purposes of this Agreement, including its intended operation and effect, the parties specifically agree and contract that: (1) the Agreement only affects matters / disputes between the parties to this Agreement, and is in no way intended by the parties to benefit or otherwise affect any third person or entity notwithstanding the fact that such third person or entity may be in contractual relationship with TWU or the City, or both; and (2) the terms of this Agreement are not intended to release, either by contract or by operation of law, any third person or entity from obligations owed by them to either TWU or the City.

15. COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

16. ELECTRONIC RECORDS. The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

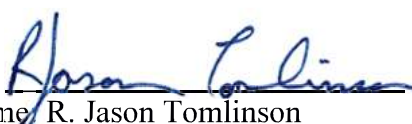
17. **WAIVER OF SOVEREIGN IMMUNITY. TWU AGREES THAT IT IS SUBJECT TO SUIT FOR ANY BREACH OF CONTRACT OF THE OBLIGATIONS UNDER THIS AGREEMENT. TO THE EXTENT THAT TWU MAY BE ENTITLED TO CLAIM SOVEREIGN, GOVERNMENTAL, OR MUNICIPAL IMMUNITY FROM ANY LIABILITY IN SUCH A SUIT BY CITY, TWU HEREBY AGREES NOT TO CLAIM AND THEREBY WAIVES SUCH SOVEREIGN, GOVERNMENTAL, OR MUNICIPAL IMMUNITY.**

The parties have caused this Agreement to be executed by their duly authorized representative.

#### City of Denton

By: \_\_\_\_\_  
Name: Sara Hensley  
Title: City Manager

#### Texas Woman's University

By:   
Name: R. Jason Tomlinson  
Title: Vice President for Finance & Administration and CFOO

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

By: \_\_\_\_\_

THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations  
and business terms.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

By: Marcella Lunn \_\_\_\_\_  
Digitally signed by Marcella Lunn  
DN: dc=com, dc=cityofdenton,  
dc=codad, ou=Department Users  
and Groups, ou=General  
Government, ou=Legal,  
~~cn=Marcella Lunn,~~  
email=Marcella.Lunn@cityofdent  
on.com  
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