

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON AUTHORIZING AN AGREEMENT BETWEEN THE CITY OF DENTON, TEXAS AND FRED MOORE DAY NURSERY SCHOOL; AUTHORIZING THE EXPENDITURE OF FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Denton hereby finds that the Agreement between the City and Fred Moore Day Nursery School, attached hereto and made a part hereof by reference (the "Agreement"), serve a municipal and public purpose and is in the public interest; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings set forth in the preamble of this Ordinance are incorporated by reference into the body of this Ordinance as if fully set forth herein.

SECTION 2. The City Manager, or his designee, is hereby authorized to execute the Agreement and to exercise all rights and duties of the City under the Agreement, including authorizing and ratifying the expenditure of funds.

SECTION 3. This Ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the _____ day of _____, 2016.

CHRIS WATTS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

BY:  _____

**SERVICE AGREEMENT
BETWEEN THE CITY OF DENTON, TEXAS AND
FRED MOORE DAY NURSERY SCHOOL**

This Agreement is hereby entered into by and between the City of Denton, Texas, a home rule municipal corporation, hereinafter referred to as "City", and Fred Moore Day Nursery School, a not for profit corporation, hereinafter referred to as "School".

WHEREAS, City has determined that the proposal for services merits assistance and can provide needed services to citizens of City and has provided funds in its budget for the School's general expenses; and

WHEREAS, this Agreement serves a valid municipal and public purpose and is in the public interest;

NOW, THEREFORE, the parties hereto mutually agree as follows:

I. SCOPE OF SERVICES

School shall, in a satisfactory and proper manner, perform the following tasks, for which the monies provided by City may be used: the funds being provided will be used for general expenses.

II. OBLIGATIONS OF SCHOOL

In consideration of the receipt of funds from City, School agrees to the following terms and conditions:

A. One Thousand, Five Hundred Dollars and no/100 (\$1,500.00) shall be paid to School by City to be utilized for the purposes set forth in Article I.

B. School will maintain adequate records to establish that the City funds are used for the purposes authorized by this Agreement.

C. School will permit authorized officials of City to review its books at any time.

D. Upon request, School will provide to City its By Laws and any of its rules and regulations that may be relevant to this Agreement.

E. School will not enter into any contracts that would encumber City funds for a period that would extend beyond the term of this Agreement.

F. School will appoint a representative who will be available to meet with City officials when requested.

III. TIME OF PERFORMANCE

The services funded by City shall be undertaken and completed by School within the following time frame:

The term of this Agreement shall commence on the effective date and terminate September 30, 2016, unless the contract is sooner terminated under Section VII "Suspension or Termination".

IV. PAYMENTS

A. **PAYMENTS TO SCHOOL.** City shall pay to School the sum specified in Article II after the effective date of this Agreement.

B. **EXCESS PAYMENT.** School shall refund to City within ten (10) working days of City's request, any sum of money which has been paid by City and which City at any time thereafter determines:

- 1) has resulted in overpayment to School; or
- 2) has not been spent strictly in accordance with the terms of this Agreement; or
- 3) is not supported by adequate documentation to fully justify the expenditure.

V. EVALUATION

School agrees to participate in an implementation and maintenance system whereby the services can be continuously monitored. School agrees to make available its bank statements for review by City at City's discretion. In addition, School agrees to provide City the following data and reports, or copies thereof:

- A. An explanation of any major changes in program services.
- B. To comply with this section, School agrees to maintain records that will provide accurate, current, separate, and complete disclosure of the status of funds received and the services performed under this Agreement. School's record system shall contain sufficient documentation to provide in detail full support and justification for each expenditure. School agrees to retain all books, records, documents, reports, and written accounting procedures pertaining to the services provided and expenditure of funds under this Agreement for five years.
- C. Nothing in the above subsections shall be construed to relieve School of responsibility for retaining accurate and current records that clearly reflect the level and benefit of services provided under this Agreement.

VI. MEETINGS

Minutes of all meetings of School's governing body shall be available to City within ten (10) working days of approval.

VII. TERMINATION

The City may terminate this Agreement for cause if School violates any covenants, agreements, or guarantees of this Agreement, the School's insolvency or filing of bankruptcy, dissolution, or receivership, or the School's violation of any law or regulation to which it is bound under the terms of this Agreement. The City may terminate this Agreement for other reasons not specifically enumerated in this paragraph.

VIII. EQUAL OPPORTUNITY AND COMPLIANCE WITH LAWS

A. School shall comply with all applicable equal employment opportunity and affirmative action laws or regulations.

B. School will furnish all information and reports requested by City, and will permit access to its books, records, and accounts for purposes of investigation to ascertain compliance with local, State and Federal rules and regulations.

C. In the event of School's noncompliance with the nondiscrimination requirements, the Agreement may be canceled, terminated, or suspended in whole or in part, and School may be barred from further contracts with City.

IX. WARRANTIES

School represents and warrants that:

A. All information, reports and data heretofore or hereafter requested by City and furnished to City, are complete and accurate as of the date shown on the information, data, or report, and, since that date, have not undergone any significant change without written notice to City.

B. Any supporting bank statements heretofore requested by City and furnished to City, are complete, accurate and fairly reflect the financial conditions of School on the date shown on said report, and the results of the operation for the period covered by the report, and that since said data, there has been no material change, adverse or otherwise, in the financial condition of School.

C. No litigation or legal proceedings are presently pending or threatened against School.

D. None of the provisions herein contravenes or is in conflict with the authority under which School is doing business or with the provisions of any existing indenture or agreement of School.

E. School has the power to enter into this Agreement and accept payments hereunder, and has taken all necessary action to authorize such acceptance under the terms and conditions of this Agreement.

F. None of the assets of School are subject to any lien or encumbrance of any character, except for current taxes not delinquent, except as shown in the bank statements furnished by School to City.

Each of these representations and warranties shall be continuing and shall be deemed to have been repeated by the submission of each request for payment.

X. CHANGES AND AMENDMENTS

A. Any alterations, additions, or deletions to the terms of this Agreement shall be by written amendment executed by both parties, except when the terms of this Agreement expressly provide that another method shall be used.

B. It is understood and agreed by the parties hereto that changes in the State, Federal or local laws or regulations pursuant hereto may occur during the term of this Agreement. Any such modifications are to be automatically incorporated into this Agreement without written amendment hereto, and shall become a part of the Agreement on the effective date specified by the law or regulation.

C. School shall notify City of any changes in personnel or governing board composition.

XI. INDEMNIFICATION

To the extent authorized by law, the School agrees to indemnify, hold harmless, and defend the CITY, its officers, agents, and employees from and against any and all claims or suits for injuries, damage, loss, or liability of whatever kind or character, arising out of or in connection with the performance by the School or those services contemplated by this Agreement, including all such claims or causes of action based upon common, constitutional or statutory law, or based, in whole or in part, upon allegations of negligent or intentional acts of School, its officers, employees, agents, subcontractors, licensees and invitees.

XII. CONFLICT OF INTEREST

A. School covenants that neither it nor any member of its governing body presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. School further covenants that in the performance of this Agreement, no person having such interest shall be employed or appointed as a member of its governing body.

B. School further covenants that no member of its governing body or its staff, subcontractors or employees shall possess any interest in or use his/her position for a purpose that is

or gives the appearance of being motivated by desire for private gain for himself/herself, or others; particularly those with which he/she has family, business, or other ties.

C. No officer, member, or employee of City and no member of its governing body who exercises any function or responsibilities in the review or approval of the undertaking or carrying out of this Agreement shall participate in any decision relating to the Agreement which affects his personal interest or the interest in any corporation, partnership, or School in which he has direct or indirect interest.

XIII. NOTICE

Any notice or other written instrument required or permitted to be delivered under the terms of this Agreement shall be deemed to have been delivered, whether actually received or not, when deposited in the United States mail, postage prepaid, registered or certified, return receipt requested, or via hand-delivery or facsimile, addressed to School or City, as the case may be, at the following addresses:

CITY

City of Denton, Texas
Attn: City Manager
215 E. McKinney
Denton, TX 76201

SCHOOL

Wendy McGee
Executive Director
821 Cross Timber
Denton, TX 76205

Either party may change its mailing address by sending notice of change of address to the other at the above address by certified mail, return receipt requested.

XIV. MISCELLANEOUS

A. School shall not transfer, pledge or otherwise assign this Agreement or any interest therein, or any claim arising thereunder to any party or parties, bank, trust company or other financial institution without the prior written approval of City.

B. If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the remaining provisions shall remain in full force and effect and continue to conform to the original intent of both parties hereto.

C. In no event shall any payment to School hereunder, or any other act or failure of City to insist in any one or more instances upon the terms and conditions of this Agreement constitute or be construed in any way to be a waiver by City of any breach of covenant or default which may then or subsequently be committed by School. Neither shall such payment, act, or omission in any manner impair or prejudice any right, power, privilege, or remedy available to City to enforce its rights hereunder, which rights, powers, privileges, or remedies are always specifically preserved. No representative or agent of City may waive the effect of this provision.

D. This Agreement, together with referenced exhibits and attachments, constitutes the entire agreement between the parties hereto, and any prior agreement, assertion, statement, understanding, or other commitment occurring during the term of this Agreement or subsequent thereto, have any legal force or effect whatsoever, unless properly executed in writing, and if appropriate, recorded as an amendment of this Agreement.

E. This Agreement shall be interpreted in accordance with the laws of the State of Texas and venue of any litigation concerning this Agreement shall be in a court of competent jurisdiction sitting in Denton County, Texas.

IN WITNESS WHEREOF, the parties do hereby affix their signatures and enter into this Agreement as of the _____ day of _____, 2016.

CITY OF DENTON

HOWARD MARTIN,
INTERIM CITY MANAGER

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

BY:  _____

FRED MOORE DAY NURSERY SCHOOL

BY:  _____
WENDY MCGEE
EXECUTIVE DIRECTOR