

**CHILD CARE OPERATIONS
AND MANAGEMENT AGREEMENT
BETWEEN
THE TEXAS FACILITIES COMMISSION
AND
ROSEWOOD OAKS, LLC d/b/a ROSEWOOD OAKS PRIMARY**

The Texas Facilities Commission (hereinafter referred to as "TFC"), a State agency located at 1711 San Jacinto Blvd., Austin, Texas 78701 and Rosewood Oaks, LLC d/b/a Rosewood Oaks Primary (hereinafter referred to as "Rosewood"), located at 2600 Rosewood Avenue, Austin, Texas, 78702, enter into the following contract for day care management and operation services (hereinafter referred to as the "Agreement") pursuant to the Texas Government Code, Chapter 663 (Vernon 2000 & Supp. 2008).

I. SCOPE OF SERVICES AND RESPONSIBILITIES

1.01. **SCOPE OF SERVICES.** (a) Rosewood agrees to operate and manage a State day-care center located at 1507 Lavaca Street, Austin, Texas, 78701, that will be open to the children of all State employees on a first-come, first served basis, five (5) days per week, Monday through Friday, from 6:30 a.m. until 6:30 p.m., except holidays as specified by the State of Texas.

(b) Operation and management of the State day-care center shall be in compliance with the following, and any other applicable State statutes and rules:

- (i) Human Resources Code, Title 2, Chapter 42, Subchapter A;
- (ii) Texas Government Code, Title 6, Chapter 663, Subchapters A and C;
- (iii) Texas Administrative Code, Title 40, Part 19, Chapters 745-746;
- (iv) Texas Health and Safety Code;
- (v) State (including, but not limited to, the Texas Rising Star Accreditation) and the National Association for the Education of Young Children ("NAEYC") or National Child Care Association ("NCCA") safety and performance standards in all respects; and,
- (vi) State (including, but not limited to, the Texas Rising Star Accreditation) and, NAEYC or NCCA licensing and certification requirements in all respects.

(c) Operation and management of the State day-care center shall be in compliance with the Texas Department of Family and Protective Service's ("TDFPS") Day-Care Center Minimum Standards and Guidelines including, but not limited to, compliance with all requirements regarding:

- (i) inspections;
- (ii) establishing a governing body;
- (iii) notification requirements;
- (iv) posting requirements;
- (v) enrollment information and other records requirements;
- (vi) parental communication;
- (v) staff qualifications, responsibilities, training requirements, records maintenance and retention requirements;
- (vi) space requirements, furnishings, and equipment;
- (vii) discipline and guidance;
- (viii) activities including, but not limited to, field trips and water activities;
- (ix) child/staff ratios and groupings;
- (x) requirements for children under 18 months old;
- (xi) transporting children;
- (xii) safety, sanitation, and fire; and,
- (xiii) physical health and well-being including, but not limited to, illness and injury medications, animals, smoking and nutrition.

(d) Operation and management of the State day-care center in a manner that will minimize the risk of contracting infectious diseases between children, including segregation of children in different age groups, and maintenance of an isolated area for quarantine of any child suspected of being ill.

(e) Work in conjunction with the TFC and the Child Care Advisory Committee, as defined under Texas Government Code, Chapter 663, to provide all children with a clean and safe environment, a high quality curriculum appropriate to each age, and a program designed to foster the optimal physical, social, emotional and intellectual development of each child.

(f) Rosewood will be responsible for all direct and indirect costs incurred as a result of operations including, labor, supplies, food and beverages, and overhead. Services rendered and associated costs borne by Rosewood, may include, but are not limited to the following:

- (i) day-to-day management of the day-care center;
- (ii) routine facility maintenance and upkeep per Section 1.03 of this Agreement;
- (iii) accreditation process fees;
- (iv) necessary permits and licenses;
- (v) food purchases, preparation and service, as prescribed by the USDA Food Program;
- (vi) monthly menu;
- (vii) personnel costs of Rosewood's staff, including Social Security costs, salaries and wages, payroll costs, worker's compensation, health insurance, other fringe benefits and staff development including training expenses;
- (viii) furniture, furnishings, equipment, toys, or other materials necessary for the child-care facility;
- (ix) instructional materials;
- (x) supplies;
- (xi) laundry, paper, disposable products, detergents, and other kitchen and office supplies;
- (xii) maintaining first-aid equipment and supplies;
- (xiii) monthly listing of all children and staff injuries;
- (xiv) student/parent public relations costs;
- (xv) all financial accounting responsibility;
- (xvi) annual report and financial statement, and end-of-term report – enrollment and topics of concern;
- (xvii) monthly financial statements and enrollment figures;
- (xviii) inspections;

- (xix) telephone and utility expenses;
- (xx) trash removal;
- (xxi) janitorial services;
- (xxii) insurance, as set forth in Section 7.01 and 7.02 of this Agreement;
- (xxiii) pest control;
- (xxiv) transportation costs; and,
- (xxv) maintenance of any vehicle used for the operation of the State day-care center.

(g) Per TDFPS requirements and standards, obtain and maintain a non-expiring license with the TDFPS as a day-care center during the term of this Agreement.

(h) Maintain a list of day-care applicants who are waiting for enrollment in the day-care center. In addition, give preference in enrollment to the individual whose application date is the earliest, except that the State may permit enrollment due to special circumstance as defined by the state, including financial need or other hardship.

1.02. STAFFING REQUIREMENTS AND QUALIFICATIONS. (a) All State day-care center staff must meet the requirements in TDFPS Rules, 40 Texas Administrative Code Sections 745.601-754.735. In addition, Rosewood is responsible for hiring and managing the following staff members in compliance with the TDFPS Day-Care Center Minimum Standards and Guidelines and NAEYC standards:

(i.) Director. The Director must be at least 21 years of age and have a Bachelors Degree in early child development or education and at least five (5) years experience in managing or directing a day-care center.

(ii.) Assistant Director. The Assistant Director must be at least 21 years of age and have a Bachelors Degree in early child development or education and at least three (3) years experience in a day-care center.

(iii.) Lead Teachers. The Lead Teachers must be at least 18 years of age and have a Child Development Associate (CDA) National Credential or an Associates Degree in early child development or education and at least two (2) years experience in a day-care center.

(iv.) Assistant Teachers. The Assistant Teachers must be at least 18 years of age and have a high school diploma or equivalent certification, and at least one (1) year experience in a day-care center.

(b) Rosewood shall ensure that all State day-care center staff are aware of and comply with their responsibilities as identified in the TDFPS Day-Care Center Minimum Standards and Guidelines and trained in the areas and to the extent required by TDFPS/NAEYC.

(c) Rosewood shall pay salaries and offer health insurance to the staff of the day-care center.

1.03. CHILD-CARE FACILITY DESCRIPTION AND MAINTENANCE. (a) TFC shall provide the 0.7 acre facility located at 1507 Lavaca Street, Austin, Texas, 78701 (hereinafter referred to as the "Property"), rent-free for the operation of the State day-care center. The facility can accommodate approximately 120 children ranging from ages 6 weeks – 5 years. Rosewood agrees to enter into a lease agreement with TFC and abide by all terms and conditions within the lease agreement.

(b) Rosewood shall abide by the terms and conditions stated within the lease agreement, and shall provide for, at its sole cost and expense, the following maintenance items:

(i) all fixtures, equipment, additional facilities, and other improvements required by Rosewood for operation of the State day-care center;

(ii) all security and security monitoring necessary for protection of its staff, property, attendees, clientele, and invitees;

(iii) janitorial services;

(iv) all utility charges; and,

(v) all other general maintenance of the child-care facility

(c) TFC shall provide for, at its sole cost and expense, the following maintenance items:

(i) the child-care facility roof;

(ii) the building exterior;

(iii) the plumbing system;

(iv) the heating system, air conditioning and ventilating equipment;

(v) the fire protection equipment;

(vi) the electrical system; and,

(vii) the parking lot.

1.04. **CONTRACT ADMINISTRATOR.** TFC shall designate a Contract Administrator for the implementation of work under this Agreement who will serve as the point of contact between TFC and Rosewood. The instructions of the Contract Administrator are to be strictly and promptly followed by Rosewood in every case. TFC's Contract Administrator shall have free access to the facility at all times for measuring and inspecting the performance of Rosewood under this Agreement, and Rosewood is to afford the Contract Administrator all necessary facilities and assistance in doing so. The Contract Administrator does not have any express or implied authority to vary the terms of the Agreement, amend the Agreement in any way, or waive strict performance of the terms of conditions or the Agreement.

1.05. **TUITION.** TFC has final approval of all tuition rates and fees to be charged to State employees by Rosewood. If Rosewood seeks approval to increase tuition rates and fees, Rosewood shall submit proposed tuition rates and fees, including the method of calculation and comparability to the private sector. If different fees are to be charged for different age groups or for different options, those fees should be itemized. Fees for additional, optional services (after-school care and summer programs) should also be itemized.

II. TERM

2.01. **DURATION.** This Agreement shall be effective as of June 1, 2009, and shall terminate on August 31, 2013, unless extended by the parties by amendment to this Agreement or terminated earlier, as provided below.

2.02. **EARLY TERMINATION.** (a) TFC may terminate the contract immediately for default by providing written notice to Rosewood of such termination if Rosewood fails to execute the work properly, performs work in an unsatisfactory manner, or fails to perform any provision of the Agreement. In the event of termination for default, TFC shall have against Rosewood all remedies provided by law and equity.

(b) TFC may at its sole option and discretion terminate the Agreement at any time, for any reason whatsoever, by giving a written notice (the "Notice of Termination") to Rosewood at least thirty (30) days prior to the effective date of termination or reduction in the scope of work as set forth in the notice. In the event of termination by TFC, Rosewood shall be governed by the terms and conditions, and shall perform the acts as outlined in the following Subsection below.

(c) Rosewood shall terminate all work under the Agreement to the extent and on the date specified in the Notice of Termination. Until such date, Rosewood shall to the extent stated in the Notice of Termination, do such work (and be compensated only for such work) as may be necessary and determined by the Contract Administrator to preserve the work in progress and to protect materials, buildings, and equipment. In the event of termination by TFC, TFC shall pay Rosewood for all work satisfactorily performed up to the effective date of termination or reduction in the scope of work, in accordance with the prices included in the scope of work.

(d) Rosewood may terminate the Agreement upon providing sixty (60) days written notice to TFC. In the event of termination by Rosewood, Rosewood shall be governed by the terms and conditions, and shall perform the acts as outlined in the preceding subsection. Rosewood will be held responsible for additional cost incurred from the Agreement termination.

III. CONSIDERATION

3.01. **CONTRACT LIMIT AND FEES AND EXPENSES.** (a) There are no payments required from Rosewood or from TFC under the terms of this Agreement. TFC shall, pursuant to TGC § 663.104, equip the Property to the extent of the conditions and equipment on the premises at the date of execution of this Agreement.

(b) Rosewood agrees that TFC's provision of rent free space at the Property constitutes good and adequate consideration for the obligations of Rosewood herein. Rosewood acknowledges and agrees that payments for services that may become due pursuant to an amendment to this Agreement are contingent upon TFC's receipt of funds appropriated by the Texas Legislature. Requests for payment must be supported by such documentation which, in the judgment of TFC, allows for full substantiation of the costs incurred.

(c) Changes in the scope of services affecting the cost of services provided for in this Agreement shall be approved by TFC by amendment to this Agreement. No compensation will be allowed for work performed without such amendment.

IV. GENERAL AFFIRMATIONS

4.01. **FINANCIAL INTERESTS/GIFTS.** Rosewood has not given, offered to give, nor intends to give at anytime hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Agreement. *Texas Government Code § 572.051 and § 2255.001 and Texas Penal Code § 36.09.*

4.02. **PRIOR EMPLOYMENT.** Rosewood certifies that Rosewood knows of no officer or employee of TFC, nor any relative within the second degree of consanguinity or affinity of an officer or employee of TFC, that has a financial interest in Rosewood's firm or corporation. Rosewood further certifies that no partner, corporation, or unincorporated association which employs, retains or contracts with, or which may employ, retain, or contract with any of the above, has a financial interest in any entity with which Rosewood will be dealing on behalf of TFC. *Texas Government Code Ch. 573 and § 2254.032.* Furthermore, Rosewood certifies that if it employs any former employee of TFC, such employee will perform no work in connection with this Agreement during the twelve (12) month period immediately following the employee's last date of employment at TFC.

4.03. **ELIGIBILITY.** Rosewood certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate. *Texas Government Code § 2155.004(b).*

4.04. **FAMILY CODE.** Pursuant to the requirements of Texas Family Code § 231.006, regarding delinquent child support, the undersigned signatory certifies that the individual or business entity named in this Agreement is not ineligible to receive payment under this Agreement and, if applicable, Rosewood has provided the name and Social Security number of each person (sole proprietors, firm owners, partners, or shareholders) with at least 25% ownership of the business entity entering into this Agreement prior to its execution. Rosewood acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

4.05. **DEBTS OR DELINQUENCIES TO STATE.** Rosewood understands and agrees that any payment due under this Agreement may be applied toward payment of any debt that is owed to the State of Texas including, but not limited to, delinquent taxes and child support. *Texas Government Code § 403.055.*

4.06. **BUY TEXAS.** If Rosewood is authorized to make purchases under this Agreement, Rosewood certifies that Rosewood will buy Texas products, services, and materials when available at a comparable price and in a comparable period of time. *Texas Government Code Ch. 2155.*

4.07. **EQUAL OPPORTUNITY.** Rosewood shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. Rosewood shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, sex, religion, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Rosewood agrees to post in conspicuous places, available to employees or applicants for employment, notices to be provided setting forth the provisions of this non-discrimination article. Rosewood shall include the above provisions in all subcontracts pertaining to the work.

4.08. **DECEPTIVE TRADE PRACTICE; UNFAIR BUSINESS PRACTICES.** Rosewood represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under TEX. BUS. & COM. CODE, Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit and that Rosewood has not been found to be liable for such practices in such proceedings. Rosewood certifies that it has no officers who have served as officers of other entities who have been the subject allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

4.09. FELONY CRIMINAL CONVICTIONS. Rosewood represents and warrants that Rosewood and Rosewood's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Rosewood has fully advised TFC as to the facts and circumstances surrounding the conviction.

4.10. AGENCY EXECUTIVE HEAD. Under Texas Government Code § 669.003 relating to contracting with an executive of a state agency, Rosewood represents that no person who, in the past four years served as an executive of TFC or any other State agency, was involved with or has any interest in this Agreement or any contract resulting from this Agreement. If Rosewood employs or has used the services of a former executive head of TFC or any other State agency, then Rosewood shall provide the following information : the Name of the former executive, the name of the State agency, the date of separation from State agency, the position held with Rosewood, and the date of employment with Rosewood.

V. STATE FUNDING

5.01. STATE FUNDING. (a) This Agreement shall not be construed as creating any debt on behalf of the State of Texas and/or TFC in violation of TEX. CONST. Art. III, § 49. In compliance with TEX. CONST. Art. VIII, § 6, it is understood that all obligations of TFC hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, this Agreement may be terminated. In that event, the parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests accrued up to the date of termination.

(b) Furthermore, any damages due under this Agreement should not exceed the amount of funds appropriated for payment under this Agreement, but not yet paid to Rosewood, for the fiscal year budget in existence at the time of the breach; **provided, however, the foregoing shall not be construed as a waiver of sovereign immunity.**

VI. RECORDS, AUDIT, PROPRIETARY INFORMATION, AND PUBLIC DISCLOSURE

6.01. BOOKS AND RECORDS. Rosewood shall keep and maintain under Generally Accepted Accounting Principles full, true and complete records, as are necessary to fully disclose to TFC or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with the terms and conditions of this Agreement and all state and federal regulations and statutes.

6.02. INSPECTION & AUDIT. Rosewood agrees that all relevant records related to this Agreement or any work product under this Agreement, including practices of its subcontractors, shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Rosewood where such records may be found, with or without notice by the Texas State Auditor's Office ("SAO"), the contracting agency or its contracted examiners, or the Texas Attorney General's Office, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect the requirements of this section. In addition, pursuant to Texas Government Code, Section 2262.003, SAO may

conduct an audit or investigation of any entity receiving funds under this Contract, including direct payments to the Rosewood and indirect payments under a subcontract to this Contract; acceptance of such monies acts as acceptance of SAO authority, under legislative audit committee direction, to audit and investigate related to those funds and the entity subject to the audit or investigation must provide SAO with access to any information SAO considers relevant to the scope of the audit or investigation.

6.03. PERIOD OF RETENTION. All records relevant to this Agreement shall be retained a minimum four (4) years. The retention period runs from the date of payment for the relevant goods or services by TFC, or from the date of termination of the Agreement, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative proceeding or litigation which may ensue.

6.04. CONFIDENTIALITY. Rosewood shall keep confidential all information, in whatever form, produced, prepared, observed or received by Rosewood to the extent that such information is:

- (a) confidential by law;
- (b) marked or designated "confidential" (or words to that effect) by TFC; or
- (c) information that Rosewood is otherwise required to keep confidential by this Agreement.

Furthermore, Rosewood will not advertise that it is doing business with TFC or use this Agreement as a marketing or sales tool without the prior written consent of TFC.

6.05. PUBLIC RECORDS. Pursuant to Chapter 552 of the Texas Government Code, the "Texas Public Information Act", information or documents received from Rosewood may be open to public inspection and copying. TFC will have the duty to disclose unless a particular record is made confidential by law or exempted from the Act. Rosewood may clearly label individual documents as a "trade secret" provided that Rosewood thereby agrees to indemnify and defend TFC for honoring such a designation. The failure to so label any document that is released by TFC shall constitute a complete waiver of any and all claims for damages caused by any release of the records. If a public records request for a labeled document is received by TFC, TFC will notify Rosewood of the request in accordance with the Act.

VII. INSURANCE AND LEGAL OBLIGATIONS

7.01. INSURANCE. Prior to the commencement of work under this Agreement, Rosewood agrees to carry and maintain insurance in the following types and amounts for the duration of this Agreement, and furnish certificates of insurance and make available copies of policy declaration pages and policy endorsements as evidence thereof:

(a) Workers' Compensation and Employers' Liability coverage with minimum policy limits for employers Liability of \$250,000.00 bodily injury per accident, \$500,000.00 bodily injury disease policy limit and \$250,000.00 per disease, per employee. Certification in writing from the contractor and subcontractors shall be provided to TFC in accordance with Texas Labor Code §406.096.

(b) Commercial General Liability with a combined single limit of \$500,000.00 per occurrence for coverage AB&C including products/completed operations, where appropriate, with a separate aggregate of \$500,000.00. The policy shall contain the following provisions:

(i) Blanket contractual liability coverage for liability assumed under the Agreement and all contracts relative to the Project;

(ii) Independent Contractors coverage;

(iii) State of Texas, TFC, listed as an additional insured;

(iv) Thirty (30) day Notice of Cancellation in favor of TFC; and

(v) Waiver of Transfer Right of Recovery Against Others in favor of TFC.

(c) Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000.00 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000.00 bodily injury per person, \$500,000.00 bodily injury per occurrence and at least \$100,000.00 property damage liability per accident. The policy shall contain the following endorsements in favor of TFC:

(i) Waiver of Subrogation endorsement;

(ii) Thirty (30) day Notice of Cancellation endorsement; and

(iii) Additional Insured endorsement.

7.02. GENERAL REQUIREMENTS FOR INSURANCE. (a) Rosewood shall be responsible for deductibles and self-insured retention, if any, stated in policies. All deductibles or self-insured retention shall be disclosed on the certificate of insurance required above. If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with the date of this Agreement and the certificate of insurance shall state that the coverage is claims made and the retroactive date.

(b) Rosewood shall maintain coverage for the duration of this Agreement. Rosewood shall, on at least an annual basis, provide TFC with an insurance certificate as evidence of such insurance. The premium for this extended reporting period shall be paid by Rosewood.

(c) If insurance policies are not written for amounts specified above, Rosewood shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

(d) Rosewood shall not commence work under this Agreement until they have obtained the required insurance and until such insurance has been reviewed by TFC. Rosewood shall not allow any sub-consultants to commence work until the required insurance has been obtained and approved. Approval of insurance by TFC shall not relieve or decrease the liability of Rosewood hereunder.

(e) Insurance shall be written by a company licensed to do business in the State of Texas at the time the policy is issued and shall be written by a company with an A.M. Best rating of A- or better.

(f) TFC shall be an additional insured as its interests may apply on the Commercial General Liability and Business Automobile Liability Policies.

(g) Rosewood shall produce endorsements upon TFC's request to each affected policy:

(i) Naming TFC, P.O. Box 13047, Austin, Texas 78711 as additional insured (except Workers' Compensation).

(ii) That obligates the insurance company to notify the Contract Administrator, TFC - Leasing, P.O. Box 13047, Austin, Texas 78711, of any non-renewal, cancellations or material changes at least thirty (30) days prior to change or cancellation.

(iii) That the "other" insurance clause shall not apply to the State where TFC is an additional insured shown on the policy. It is intended that policies required in this Agreement, covering both TFC and Rosewood, shall be considered primary coverage as applicable.

(iv) TFC shall be entitled, upon request and without expense, to receive copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies and if such request for deletions, revisions, or modifications are commercially available.

(h) Rosewood shall not cause any insurance required under this Agreement to cancel nor permit any insurance to lapse during the term of this Agreement.

(i) TFC reserves the right to review the insurance requirements of this section during the effective period of the Agreement and to make reasonable adjustments to insurance coverage and their limits when deemed necessary and prudent by TFC based upon changes in statutory law, court decisions or the claims history of the industry as well as Rosewood (such adjustments shall be commercially available to Rosewood).

(j) All certificates shall include a clause to the effect that the policy shall not be canceled, reduced, restricted or limited until thirty (30) days after TFC has received written notice.

(k) Rosewood shall provide TFC thirty (30) days written notice of erosion of the aggregate limit.

(l) Actual losses not covered by insurance as required by this Agreement shall be paid by Rosewood.

(m) Rosewood's insurance shall include a waiver of subrogation to TFC for the Workers' Compensation and Employers' Liability, Commercial General Liability, and Business Automobile Liability policies.

7.03. **LEGAL OBLIGATIONS.** Rosewood shall procure and maintain for the duration of this Agreement any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Rosewood to provide the goods or services required by this Agreement. Rosewood will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Rosewood agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Agreement.

VIII. MISCELLANEOUS PROVISIONS

8.01. **INDEMNITY. ROSEWOOD SHALL INDEMNIFY AND HOLD HARMLESS TFC AND THE STATE OF TEXAS, THEIR AGENTS AND EMPLOYEES, FROM ALL LIABILITY AND DAMAGES FOR ANY AND ALL INJURIES OR DAMAGES SUSTAINED BY ANY PERSON OR PROPERTY TO THE EXTENT CAUSED BY ANY NEGLIGENCE IN THE PERFORMANCE OF THE SERVICES REFERENCED HEREIN AND FROM ANY CLAIMS OR AMOUNTS ARISING OR RECOVERABLE UNDER BOTH FEDERAL AND STATE WORKERS COMPENSATION LAWS, TEXAS TORT CLAIMS ACT (CHAPTER 101, TEX. CIVIL PRACTICE AND REMEDIES CODE), OR ANY OTHER SUCH LAWS. ROSEWOOD SHALL FURTHER SO INDEMNIFY AND BE RESPONSIBLE FOR ALL DAMAGES OR INJURY TO PROPERTY OF ANY CHARACTER TO THE EXTENT CAUSED BY ANY NEGLIGENT ACT, OMISSION OR MISCONDUCT OF SURVEYOR, SURVEYOR'S AGENTS OR EMPLOYEES, IN THE MANNER OR METHOD OF EXECUTION OF THE SERVICES HEREIN TO BE PERFORMED; OR FROM FAILURE TO PROPERLY PERFORM THE SERVICES TO THE REQUIRED STANDARD STATED HEREIN; OR FROM DEFECTIVE WORK OR MATERIALS; OR FROM BREACH OF ANY REPRESENTATION OR WARRANTY HEREIN. THESE REQUIREMENTS SHALL SURVIVE THE TERM OF THIS AGREEMENT UNTIL ALL CLAIMS HAVE BEEN SETTLED OR RESOLVED AND SUITABLE EVIDENCE TO THAT EFFECT HAS BEEN FURNISHED TO TFC.**

8.02. ASSIGNMENT AND SUBCONTRACTS. Rosewood shall neither assign, transfer, nor delegate any rights, obligations, or duties under this Agreement without the prior written consent of TFC. Notwithstanding this provision, it is mutually understood and agreed that Rosewood may subcontract with others for some or all of the services to be performed. In any approved subcontracts, Rosewood shall legally bind such subcontractor to perform and make such subcontractor subject to all the duties, requirements, and obligations of Rosewood specified herein. Nothing herein shall be construed to relieve Rosewood of the responsibility for ensuring that the goods delivered and/or the services rendered by Rosewood and/or any of its subcontractor comply with all the terms and provisions of this Agreement. Rosewood will provide written notification to TFC of any such subcontractor performing work under this Agreement, including the name and taxpayer identification number of subcontractor, the task(s) being performed, and the number of subcontractor employees expected to work on the task.

8.03. HISTORICALLY UNDERUTILIZED BUSINESSES (HUBS). In accordance with State law, it is TFC's policy to assist HUBs, whether minority or women-owned, whenever possible, to participate in providing goods and services to the agency. TFC encourages those parties with whom it contracts for the provision of goods and services to adhere to this same philosophy in selecting subcontractors to assist in fulfilling Rosewood's obligations with TFC. If Rosewood subcontracts with others for some or all of the services to be performed under this Agreement, Rosewood shall comply with all HUB requirements pursuant to Texas Government Code, Ch. 2161 and file with TFC a HUB Subcontracting Plan.

8.04. IMMIGRATION REFORM. The Immigration Reform and Control Act of 1986, as amended, requires that all employees hired since 1986 provide proof of identity and employment eligibility before they can work in the United States. TFC is committed to complying with all applicable immigration laws of the United States and requires compliance by its contractors and subcontractors. Rosewood shall not place any employee of Rosewood at a worksite, nor shall Rosewood permit any employees, nor any employee of its subcontractor to perform any work on behalf of, or for the benefit of, TFC without first ensuring said employee's authorization to lawfully work in the United States.

8.05. RELATIONSHIP OF THE PARTIES. Rosewood is associated with TFC only for the purposes and to the extent specified in this Agreement, and with respect to performance of the contracted services pursuant to this Agreement, Rosewood is and shall be an independent contractor. Subject only to the terms of this Agreement, Rosewood shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for TFC whatsoever with respect to the indebtedness, liabilities, and obligations of Rosewood or any other party. Rosewood shall be solely responsible for, and TFC shall have no obligation with respect to:

- (i) withholding of income taxes, FICA or any other taxes or fees;
- (ii) industrial or workers compensation insurance coverage;

- (iii) participation in any group insurance plans available to employees of the State of Texas;
- (iv) participation or contributions by the State to the State Employees Retirement System;
- (v) accumulation of vacation leave or sick leave; or
- (vi) unemployment compensation coverage provided by the State.

8.06. COMPLIANCE WITH OTHER LAWS. In the execution of this Agreement, Rosewood shall comply with all applicable federal, state, and local laws, including laws governing labor, equal employment opportunity, safety, and environmental protection. Rosewood shall make itself familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances, and regulations which in any manner affect performance under this Agreement.

8.07. NOTICES. Any notice required or permitted to be delivered under this Agreement shall be deemed delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the TFC or Rosewood, as the case may be, at the address set forth below:

For TFC: Texas Facilities Commission
 1711 San Jacinto Blvd., Room 400
 Austin, TX 78701
 Attention: Legal Services Division
 Phone: (512) 475-2400
 Fax: (512) 236-6171

For Rosewood: Rosewood Oaks, LLC d/b/a Rosewood Oaks Primary
 2600 Rosewood Avenue
 Austin, Texas 78702
 Attn: Avis J. Wallace, Ph.D.
 Phone: (512) 236-0596
 Fax: (512) 236-0597

Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. Either party may change its address for notice by written notice to the other party as herein provided.

8.08. GOVERNING LAW AND VENUE. This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Agreement shall be in a court of competent jurisdiction in Travis County, Texas. Rosewood irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Agreement or any document related

hereto. **Nothing in this section shall be construed as a waiver of sovereign immunity by TFC.**

8.09. SEVERABILITY. If any provision contained in this Agreement is held to be unenforceable by a court of law or equity, this Agreement shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.

8.10. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Agreement on behalf of each party has full power and authority to enter into this Agreement. Rosewood acknowledges Agreement is effective for the period of time specified in the Agreement. Any services performed by Rosewood before this Agreement is effective or after it ceases to be effective are performed at the sole risk of Rosewood.

8.11. FORCE MAJEURE. (a) Any delays in or failure of performance by either party, except in respect of the obligation of payments under this Agreement, shall not constitute default hereunder if and to the extent such delays or failure of performance are caused by occurrence(s) beyond the reasonable control of the party affected, and which by the exercise of due diligence such party is unable to prevent, herein called "Force Majeure" including acts of God or the public enemy, sabotage, war, mobilization, revolution, civil unrest, riots, strikes, lockouts, fires, accidents breakdowns, or floods, earthquakes, hurricanes or any other natural disaster or governmental actions. In any such event, the party claiming Force Majeure shall promptly notify the other party of the Force Majeure event in writing and, if possible, such notice shall set forth the extent and duration thereof. The party claiming Force Majeure shall exercise due diligence to prevent, eliminate, or overcome such Force Majeure event where it is possible to do so and resume performance at the earliest possible date. However, if non-performance continues for more than thirty (30) days, TFC may terminate this Agreement immediately upon written notification to Rosewood.

(b) Changes in the schedule or in the design or scope of the Project as a result of any Force Majeure which affect the cost of the Rosewood's services under this Agreement shall be approved by TFC by amendment to this Agreement.

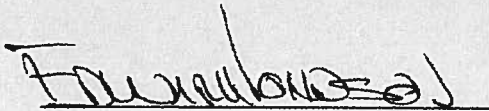
8.12. DISPUTE RESOLUTION. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by the parties to attempt to resolve all disputes arising under this Agreement.

8.13. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be an original, and each such counterpart shall together constitute but one and the same agreement.

8.14. **ENTIRE CONTRACT & MODIFICATION.** This Agreement and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed consistently with the terms of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement, no modification, renewal, extension or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

TEXAS FACILITIES COMMISSION



**ROSEWOOD OAKS, LLC d/b/a
ROSEWOOD OAKS PRIMARY**




Edward L. Johnson

Executive Director

Date of execution: 5-20-2009

GC 
DED 



Print: Avis J. Wallace

Title: General Manager

Date of execution: 5-11-09

**AMENDMENT NO. 1
TO THE
CHILD CARE OPERATIONS
AND MANAGEMENT AGREEMENT
BETWEEN
THE TEXAS FACILITIES COMMISSION
AND
ROSEWOOD OAKS, LLC d/b/a ROSEWOOD OAKS PRIMARY**

THIS AMENDMENT NO. 1 is entered into by and between the State of Texas, acting by and through the Texas Facilities Commission (hereinafter referred to as "TFC"), a state agency located at 1711 San Jacinto Blvd., Austin, Texas 78701 and Rosewood Oaks, LLC d/b/a Rosewood Oaks Primary (hereinafter referred to as "Rosewood"), located at 2600 Rosewood Avenue, Austin, Texas, 78702, to amend the Child Care Operations and Management Agreement (hereinafter referred to as the "Agreement").

WHEREAS, changed circumstances require mutually desirable alterations in the term of the Agreement; and

WHEREAS, the parties desire to amend certain terms to their mutual benefit to reflect the changed circumstances;

NOW, THEREFORE, the parties agree to amend the original Agreement as follows:

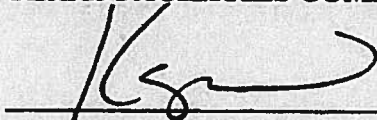
1. The parties hereby agree to modify ARTICLE II – TERM, SECTION 2.01. – DURATION, by deleting the paragraph in its entirety and substituting it with the following:

"This Agreement shall be effective as of June 1, 2009, and shall terminate on December 31, 2013, unless extended by the parties by amendment to this Agreement or terminated earlier, as provided below."

Except as expressly amended above, all provisions of the Agreement remain in full force and effect.

In Witness Whereof, the parties hereto have made and executed this Amendment No. 1 to the Agreement to be effective as of the date of the last party to sign.

TEXAS FACILITIES COMMISSION



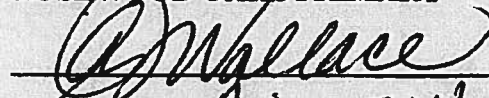
Printed Name: Kay Molina

Title: General Counsel

Date: 7/24/13

 Dir.
D.E.D.

**ROSEWOOD OAKS, LLC d/b/a
ROSEWOOD OAKS PRIMARY**



Printed Name: Avis J. Wallace

Title: Owner / Director

Date: 7/24/2013

**AMENDMENT NO. 2
TO THE
CHILD CARE OPERATIONS
AND MANAGEMENT AGREEMENT
BETWEEN
THE TEXAS FACILITIES COMMISSION
AND
ROSEWOOD OAKS, LLC d/b/a ROSEWOOD OAKS PRIMARY**

THIS AMENDMENT NO. 2 is entered into by and between the State of Texas, acting by and through the Texas Facilities Commission (hereinafter referred to as "TFC"), a state agency located at 1711 San Jacinto Blvd., Austin, Texas 78701 and Rosewood Oaks, LLC d/b/a Rosewood Oaks Primary (hereinafter referred to as "Rosewood"), located at 2600 Rosewood Avenue, Austin, Texas, 78702, to amend the Child Care Operations and Management Agreement (hereinafter referred to as the "Agreement").

WHEREAS, changed circumstances require mutually desirable alterations in the term of the Agreement; and

WHEREAS, the parties desire to amend certain terms to their mutual benefit to reflect the changed circumstances;

NOW, THEREFORE, the parties agree to amend the original Agreement as follows:

1. The parties hereby agree to modify ARTICLE II – TERM, SECTION 2.01. – DURATION, by deleting the paragraph in its entirety and substituting it with the following:

"This Agreement shall be effective as of June 1, 2009, and shall terminate on December 31, 2014, unless extended by the parties by amendment to this Agreement or terminated earlier, as provided below."

Except as expressly amended above, all provisions of the Agreement remain in full force and effect.

In Witness Whereof, the parties hereto have made and executed this Amendment No. 2 to the Agreement to be effective as of the date of the last party to sign.

TEXAS FACILITIES COMMISSION




Kay Molina

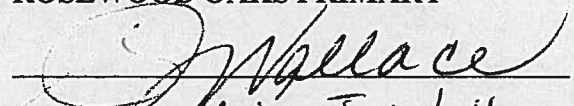
General Counsel

Date: 1/16/14

 Dir.

 D.E.D.

ROSEWOOD OAKS PRIMARY



Printed Name: Avis J. Wallace, Ph.D.

Title: Owner

Date: 1/16/14