

**SERVICES CONTRACT
BETWEEN
HOUSTON INDEPENDENT SCHOOL DISTRICT
AND
CHILDREN AND NEIGHBORS DEFEAT OBESITY**

THIS SERVICES CONTRACT is made and entered into by and between the Houston Independent School District (“HISD”), 4400 West 18th Street, Houston, Texas 77092, and Children and Neighbors Defeat Obesity (CAN DO Houston) “Provider”, 2617 C W. Holcombe, #596, Houston, Texas 77025.

WHEREAS, HISD desires to collaborate with provider to perform services as outlined in the scope section in this Contract;

WHEREAS, HISD has determined that such services are in support of its educational objectives;

NOW THEREFORE, in consideration of the mutual promises herein contained, and other good and valuable consideration, the parties hereto agree as follows:

I. SERVICES TO BE PROVIDED BY PROVIDER:

Provider agrees to provide to HISD:

- Limited equipment to facilitate physical activity – such as soccer balls, soccer goals, hula hoops, basketballs and pedometers
- Training and booklets for teachers on how to incorporate physical activity in the classroom
- Coordinate content experts/speakers to deliver wellness presentations
- Nutrition education sessions, such as grocery store tours and cooking classes designed to enable parents to learn skills to feed their families healthy food on a budget
- Assistance with facilitating school staff wellness committees and activities
- Support after-school programs at Briscoe Elementary School in partnership with Mason Park
- Assistance with coordinating health promotion events such as the “Briscoe Fitness Explosion” and the “Sunnyside Field Day” and the “Lyons Elementary Food Fest and Fitness Zone.”
- Assistance in identifying resources that promote good nutrition, physical activity and healthy minds to school children and their families.

II. SERVICES TO BE PROVIDED BY HISD:

HISD agrees to provide to Provider:

- Provide bus transportation from Briscoe Elementary School to Mason Park
- Provide space to conduct training at campuses

III. TERM OF CONTRACT

The term of this Contract shall be from July 1, 2012 to June 30, 2013; provided, however, this Contract may be terminated prior to the expiration of the term as provided in the Termination Section of this Contract.

IV. TERMINATION

This Contract may be terminated prior to the expiration of the term hereof as follows:

- By HISD upon 3 days notice if the work is not provided in a satisfactory and proper manner as determined by HISD;
- By mutual written reasonably agreement of the parties;
- By HISD without cause, upon thirty (30) days prior written notice to Provider; or
- By HISD immediately if Provider commits a material breach of any of the terms of this Contract.

In the event this contract is terminated because of a violation or breach of the contract terms by the Provider, HISD shall be entitled to all administrative, contractual and legal remedies, including sanctions and penalties as may be appropriate.

V. COMPENSATION

No compensation due.

VI. RELATIONSHIP OF THE PARTIES

It is understood and agreed that Provider is a separate legal entity from HISD and neither it nor any of its employees, volunteers, or agents contracted by it shall be deemed for any purposes to be employees or agents of HISD. Provider assumes full responsibility for the actions of its personnel and volunteers while performing any services incident to this Contract, and shall remain solely responsible for their supervision, daily direction and control, payment of salary (including withholding of income taxes and social security), workers' compensation, disability benefits and like requirements and obligations.

Nothing in this Contract shall be deemed or construed to create any third party beneficiaries or otherwise give any third party any claim or right of action against any party to this Contract.

VII. NO WAIVER OF IMMUNITY

HISD does not waive or relinquish any immunity or defense on behalf of itself, its trustees, officers, employees, and agents as a result of its execution of this Contract and performance of the functions or obligations described herein.

VIII. AUTHORIZATION OF CONTRACT

Each party represents and warrants to the other that the execution of this Contract has been duly authorized, and that this Contract constitutes a valid and enforceable obligation of such party according to its terms.

IX. NO WAIVER

No waiver of a breach of any provision of this Contract shall be construed to be a waiver of any breach of any other provision. No delay in acting with regard to any breach of any provision shall be construed to be a waiver of such breach.

X. NOTICE

Any notice required to be given under the provisions of this Contract shall be in writing and shall be duly served when it shall be hand-delivered to the addressees set out below, or shall have been deposited, duly registered or certified, return receipt requested, in a United States Post Office addressed to the other party at the following addresses:

To: CAN DO Houston
Attn: Sandra Shaw-Austin
Executive Director
2617 C W. Holcombe Blvd, #596
Houston, Texas 77025

To: HISD
Attn: Terry B. Grier, Ed.D.
Superintendent of Schools
4400 West 18th Street
Houston, Texas 77092

Any party may designate a different address by giving the other party ten (10) days prior written notice in the manner provided above.

XI. NO ASSIGNMENT

No assignment of this Contract or of any duty or obligation or performance hereunder, shall be made in whole or in part by either party without the prior written consent of the other party.

XII. SECTION HEADINGS

The headings of sections contained in this Contract are for convenience only, and they shall not, expressly or by implication, limit, define, extend, or construe the terms or provisions of the sections of this Contract.

XIII. GOVERNING LAW

This Contract is made in Texas and shall be construed, interpreted, and governed by the laws of such state. The parties irrevocably consent to the sole and exclusive jurisdiction and venue of the courts of Harris County, Texas, for any action under this Contract.

Provider shall comply with executive order 11246, entitled "Equal Employment Opportunity", as amended by executive order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60).

Provider shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857 (a)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15), which prohibit the use under non-exempt federal contracts, grants, or loans or facilities included on the EPA list of violating facilities. Violations shall be reported to the Texas Education Agency and to the USEPA Assistant Administrator for Enforcement (EN-329).

Provider shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

Provider agrees to comply with all applicable requirements of all federal laws, executive orders, regulations, applicable guidelines, and policies governing this program, particularly relating to nondiscrimination. These include but are not limited to: (i) Title VI of the Civil Rights Act of 1964, as amended; (ii) Title IX of the Education Amendments of 1972; as amended; (iii) Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; and (iv) the American with Disabilities Act, as amended.

XIV. ORIGINALS

This Contract is executed in three (3) counterparts, each of which shall have the full force and effect of the original Contract, and each of which shall constitute but one of the same instruments.

XV. REPORTS

HISD and Provider shall furnish operating reports to designated representatives on a schedule to be mutually agreed upon. No written reports of any kind shall be released to any third parties without prior written approval of HISD.

XVI. INDEMNITY

Provider shall hold HISD and its past and present and future trustees, officers and employees harmless and shall indemnify all such parties against any and all claims, demands, and causes of action of whatever kind or nature asserted by any third

party, occurring or in any way incident to, arising out of, or in connection with any acts of Provider and its agents, employees, and subcontractors done in connection with this Contract.

Nothing in this Contract shall be construed to create a claim or cause of action against the District (HISD) for which it is not otherwise liable, nor to waive any immunity or defense to which the District (HISD) may be entitled nor to create an impermissible deficiency debt of the District (HISD).

XVII. CRIMINAL HISTORY BACKGROUND CHECK

Provider agrees to provide assurance that all employees, subcontractors and volunteers of the Provider who have contact with students have passed a criminal history background check current within the last year.

XVIII. RELEASE OF INFORMATION

Unless required by law, the existence and terms of this Contract may not be disclosed by Provider to any third party without the prior written consent of HISD. Provider may not publish or use any publicity materials relating to this Contract or use HISD's name without the consent of HISD.

XIX. RECORDS RETENTION AND AUDITS

HISD or its authorized representative, shall be afforded unrestricted access to and permitted to inspect and copy all the Provider's records, which shall include but not be limited to accounting records (hard copy as well as computer readable data), correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Contract. The Provider shall preserve all such records for a period of five (5) years, or for such longer period as may be required by law, after final payment under this Contract. If this Contract is funded from contract/grant funds provided by the U. S. Government or the State of Texas, the Contract, books, and records shall be available for review and audit by the Comptroller General of the U.S. and/or the Inspector General of the federal sponsoring agency, or the State of Texas and its duly authorized representatives.

To the extent that Provider will come into possession of student records and information, and to the extent that Provider will be involved in the survey, analysis, or evaluation of students, incidental to this Agreement, Provider agrees to comply with all applicable requirements of the Family Educational Rights and Privacy Act. In the event that HISD is required to furnish information or records pursuant to the Texas Public Information Act, Provider shall furnish all such information and records to HISD and HISD shall have the right to release such information and records.

XVIII. STUDENT RECORDS

To the extent that Provider will come into possession of student records and information, and to the extent that Provider will be involved in the survey, analysis, or

evaluation of students, incidental to this Agreement, Provider agrees to comply with all applicable requirements of the Family Educational Rights and Privacy Act.

XXI. TEXAS PUBLIC INFORMATION ACT

In the event that HISD is required to furnish information or records pursuant to the Texas Public Information Act, Provider shall furnish all such information and records to HISD and HISD shall have the right to release such information and records.

XXII. BUSINESS ETHICS

During the course of pursuing contracts, and the course of contract performance, Provider will maintain business ethics standards aimed at avoiding real or apparent impropriety or conflicts of interest. No substantial gifts, entertainment, payments, loans or other considerations beyond that which would be collectively categorized as incidental shall be made to any employees or officials of HISD, its authorized agents and representatives, or to family members of any of them. At any time Provider believes there may have been a violation of this obligation, Provider shall notify HISD of the possible violation. HISD is entitled to request a representation letter from Provider, its subcontractors or vendors at any time to disclose all things of value passing from Provider, its subcontractors or vendors to HISD's personnel or its authorized agents and representatives.

XXIII. BUSINESS CERTIFICATES / TAXES

All Provider or Professional Services Providers entering into a contract with HISD must adhere to the following applicable Texas laws as they pertain to their individual type of ownership.

Corporations (domestic or foreign *) shall be properly registered with the Texas Secretary of State and the Comptroller of Public Accounts as required by TITLE 34, Part 1, Chapter 3, Subchapter V, Rule 3.546 of the Texas Administrative Code. A current "Certificate of Good Standing" from the Texas Comptroller of Public Accounts shall be made available upon request stating that the corporation charter is current and all Texas Franchise Reports and Taxes are paid.

Partnerships and Joint Stock Companies, and Limited Liability Partnerships (domestic or foreign*) shall be properly registered with the Texas Secretary of State in accordance with TITLE 105--PARTNERSHIPS AND JOINT STOCK COMPANIES, CHAPTER ONE --- PARTNERSHIPS, LIMITED PARTNERSHIPS, TEXAS REVISED LIMITED PARTNERSHIP ACT, Article 6132a-1. "Texas Revised Limited Partnership Act." All partners in a partnership must file a "Certificate of Limited Partnership" with the secretary of state, which shall be made available for inspection upon request.

The provider whether corporate, partnership or sole owner must be current on HISD Property Taxes. If commercial personal property is located in the jurisdiction,

current renditions of these properties must be filed with the Chief Appraiser, as required by Chapter 22, Section 22.01, of the Texas "PROPERTY TAX CODE".

***Note:** Foreign means formed under laws of another state; Domestic means formed under Texas laws.

XXIV. CONFIDENTIAL & PROPRIETARY INFORMATION

The parties may provide technical information, documentation and expertise to each other that is either (1) marked as being confidential or, (2) if delivered in oral form is summarized in writing within 10 working days and identified as being confidential ("Confidential Information"). The receiving party shall for a period of five (5) years from the date of disclosure (i) hold the disclosing party's Confidential Information in strict confidence, and (ii), except as previously authorized in writing by the disclosing party, not publish or disclose the disclosing party's Confidential Information to anyone other than the receiving party's employees on a need-to-know basis, and (iii) use the disclosing party's Confidential Information solely for performance of this Contract. The foregoing requirement shall not apply to any portion of a party's Confidential Information which (a) becomes publicly known through no wrongful act or omission on the part of the receiving party; (b) is already known to the receiving party at the time of the disclosure without similar nondisclosure obligations; (c) is rightfully received by the receiving party from a third party without similar nondisclosure obligations; (d) is approved for release by written authorization of the disclosing party; (e) is clearly demonstrated by the receiving party to have been independently developed by the receiving party without access to the disclosing party's Confidential Information; or (f) is required to be disclosed by order of a court or governmental body or by applicable law, provided that the party intending to make such required disclosure shall promptly notify the other party of such intended disclosure in order to allow such party to seek a protective order or other remedy.

XXV. DATA AND PROPRIETARY RIGHTS

All Work performed by Provider pursuant to Article I of this contract, shall be deemed "Work Made For Hire" as defined by the United States Copyright Law, and HISD retains for itself sole ownership of all proprietary rights in and to all designs, engineering details and other data pertaining to any discoveries, inventions, patent rights, software, improvements and the like made by Provider personnel in the course of performing the Work.

XXVI. DEBARMENT AND SUSPENSIONS

Provider certifies, to the best of its knowledge and belief, that it is not presently debarred, suspended for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency.

XXVII. COMPLETE UNDERSTANDING

This Contract shall constitute the complete understanding of Provider and HISD, and may not be modified in any manner without the express written consent of both parties.

By signing the Contract, the Provider affirms that there is no personal or financial conflict of interest between the Provider or the Provider's family and the District.

This agreement is executed in three (3) counterparts, each of which shall have the full force and effect of an original Agreement, and each of which shall constitute but one and the same instrument.

IN WITNESS THEREOF, HISD and Provider have executed this Contract effective on this 1st day of July, 2012.

HOUSTON INDEPENDENT SCHOOL DISTRICT
REQUESTOR'S SIGNATURE:

Principal or Departmental Manager

Campus or Department Number

