

**FISCAL YEAR 2014
PRE-KINDERGARTEN SCHOLARSHIPS
PROVIDER AGREEMENT**

Between
Valley of the Sun United Way and
Tucson Unified School District

This Contractor Agreement ("Agreement" or) is by and between Valley of the Sun United Way ("VSUW"), a non-profit corporation, located at 1515 East Osborn Road, Phoenix, Arizona 85014 and Wheeler Elementary School ("Provider") located at 1818 Avenida del Sol 85710 Tucson, Az.

AGREEMENTS

I. PURPOSE OF AGREEMENT

The purpose of this Agreement is to specify Provider's responsibilities and procedures to receive reimbursement related to First Things First's Pre-Kindergarten Scholarship Program ("Program"). The Program is administered by VSUW in collaboration with the Arizona Department of Education ("ADE").

II. TERM OF AGREEMENT, TERMINATION AND AMENDMENTS

This Agreement shall become effective as of the later of July 1, 2013, or the date when all required documentation has been received by VSUW (i.e., Provider application, signed Agreement, W-9, ACH form if applicable, and program budget); and shall terminate on the earlier of the date that total Program funds have been expended and June 30, 2014. Allocations are determined by the ADE and provided VSUW. If deemed necessary, changes to your allocations will come directly from the ADE and may affect the terms of this agreement.

III. CERTIFICATION OF PROVIDER ELIGIBILITY

Provider certifies that its Pre-Kindergarten site:

1. Is located within the Region funding the grant; exceptions may be made when two (2) (or more) FTF Regional Council(s) agree that one (1) of the Regional Councils will pay for Pre-Kindergarten Scholarships in the other Region;
2. Complies with requirements of the appropriate certifying, licensing or regulatory authority (State, Federal, Tribal or Military) and remain in good standing;
3. Will provide high quality, early care and education in a center or classroom based setting as outlined in the High Quality Program Guidelines for children ages three (3) to five (5) and not yet eligible for kindergarten; and
4. Will participate in Quality First, either Full Participation or Rating Only and achieve a star rating of 3-5 stars by April 1, 2013.
5. Agrees to abide by the Quality First Scholarships Program Policies and Procedures Manual (Policies and Procedures Manual) that is posted on the Scholarships website: <http://azftfscholarships.org/>.
6. Agrees to participate in annual Fiscal Monitoring, if selected.

IV.

DESCRIPTION OF SERVICES

Provider shall provide the following services to VSUW as approved and summarized below:

1. Scholarship Selection

Provider shall select the scholarship recipients in accordance with the following guidelines and those listed in the Policies and Procedures Manual:

- a. Families with children ages three (3) to five (5) (not enrolled in kindergarten) whose household income is at or below two hundred percent (200%) of the 2013 Federal Poverty Level who are employed, unemployed, seeking employment or advancing their skills to attain or maintain employment are eligible for the scholarships. Families receiving a Department of Economic Security ("DES") subsidy are not eligible for scholarships. Those who qualify for a DES child care subsidy but are on a waiting list also qualify, but they must retain their status on the waiting list and accept the subsidy if offered.
- b. The maximum number of scholarships available to any family is two (2). Families must complete a FY 2014 application form provided by VSUW
- c. Children receiving scholarships must be United States citizens or legal residents.

2. Attendance, Vacancies and Unused Scholarship Management

- a. Unused scholarships are subject to reassignment to another provider by ADE.
- b. Provider shall maintain sign-in sheets to document daily attendance.
- c. Vacancies must be filled within thirty (30) days.

3. Accountability and Compliance

Provider will adhere to the following accountability measures related to implementation of the program as well as those listed in the Policies and Procedures Manual:

- a. Documentation of family eligibility for scholarships is required and must be maintained at the Provider's center/site. Provider should refer to the Policies and Procedures Manual for a detailed explanations of documentation requirements. Documentation must include:
 - i. Documentation of family income; and
 - ii. Documentation of US citizenship or legal residency of child(ren).
- b. Provider is required to receive a new application and supporting documents from all families on an annual basis at the beginning of each fiscal year regardless of child's scholarship enrollment date. Providers are to use the current fiscal year's application provided by VSUW and keep it in the child's file with other documentation.
- c. Scholarships may not be used to replace or supplant other funding sources including, but not limited to, DES, Head Start, Early Childhood Block Grant, or other public or private scholarship programs.
- e. Provider is required to document attendance by eligible children through the on-line monthly reporting system as described in Section IX. Reporting Requirements.

4. Program Coordination and Issue Resolution

Provider will be responsible for handling questions and issues which arise from its parents.

V. SCHOLARSHIPS

1. ADE and First Things First shall determine the number of scholarships funded per provider based upon available funding and will notify each provider of its allocation.
2. VSUW shall award scholarships to Providers at the rate of \$600 per month for full-time children and \$300 per month for part-time children.
3. Providers shall not charge more than their usual and customary rate. The scholarship and parental copayment may add up to, but not exceed, the customary rate.
4. Providers serving families with needs outside of traditional hours will receive the same scholarship benefits as those with traditional hours, with adjustments made to daily rates based on traditional care equivalents (example: a parent working three (3), 12-hour days will benefit from a full scholarship just as a parent working five (5), 8-hour days)
5. Two (2) part-time children may share one (1) scholarship as long as together they do not exceed the hourly equivalent of one (1) scholarship.
6. It is the intent of First Things First that families whenever possible, contribute toward the cost of child care. However, any copayment or contribution should ideally not exceed ten percent (10%) of their gross household income.
7. Scholarships are available on a full-time (more than twenty-eight (28) hours per week or more than ten (10) days per month) or a part-time basis (less than twenty-eight (28) hours per week or less than ten (10) days per month). Less than part-time scholarships will not be considered (e.g. a quarter scholarship, etc.). The part-time rate is one half of the full-time rate.
8. Any exceptions to the scholarship policies or guidelines shall require prior approval from ADE and VSUW, and shall be determined in consultation with First Things First.

VI. FUNDING REQUIREMENTS

1. Payments – VSUW shall pay Provider the allocation amount as determined by the ADE provided that:
 - a. VSUW receives notification from the ADE that Provider is entitled to receive payment, and
 - b. Funding remains in Provider's Regional Partnership Council.

VII. FISCAL RESPONSIBILITY

For any funds received under this Agreement for which expenditure is disallowed by an audit exception by First Things First, the State of Arizona, Federal government, VSUW, or Provider's own auditors, Provider shall reimburse said funds directly to VSUW within thirty (30) days of notice. Provider shall pay VSUW any monies owed resulting from unfilled scholarship slots or as a result of closure of the Provider's business. Provider agrees to allow VSUW to perform on-site reviews and audits of its records and documentation associated with the Program.

VIII. FUNDS MANAGEMENT

Provider shall maintain records of all contracts, papers, correspondence, proofs of payment, ledgers, books, accounts, and other information relating to the payments made to Provider in connection with this Agreement for a period of two (2) years subsequent to the termination of this

Agreement. VSUW or its designees may inspect, examine and review and make copies of such records at reasonable times during normal business hours.

IX. REPORTING REQUIREMENTS

1. Provider shall provide monthly program activity reports through the designated online reporting portal (<http://azftfscholarships.org/>) to VSUW within five (5) business days of the last day of the month in which services are provided. The report shall contain such information as deemed necessary by VSUW.
2. Late reports will result in payments being delayed until the following month. Reports over sixty (60) days late will not be accepted and services will not be reimbursed. Late reports after April 7, 2014 will not be accepted.
3. Final reports for the fiscal year must be submitted by July 7, 2014. Reports received after July 7, 2014 will not be accepted and services will not be reimbursed.
4. Failure of Provider to provide timely and accurate reports may result in termination of the Agreement.

X. ASSIGNMENT AND DELEGATION

Provider may not assign any rights hereunder without the express, prior written consent of both parties.

XI. AMENDMENTS

VSUW may amend this Agreement with written notice to Provider and the mutual agreement by the parties of such amendment. Provider expressly and explicitly understands and agrees that no other method of communication, including any other document, correspondence, act, or oral communication by or from any person, shall be used or construed as an amendment or modification or supplementation to this Agreement.

XII. AGREEMENT RENEWAL

This Agreement shall not bind nor purport to bind VSUW for any contractual commitment in excess of the original Agreement period.

XIII. RIGHT TO ASSURANCE

If VSUW in good faith has reason to believe that Provider does not intend to or is unable to perform or continue performing under this Agreement, VSUW may demand in writing that Provider give a written assurance of intent to perform. Failure by Provider to provide written assurance within the number of days specified in the demand may, at VSUW's option, be the basis for terminating this Agreement under the terms of this Agreement or other rights and remedies available by law.

XIV. CANCELLATION FOR CONFLICT OF INTEREST

This Agreement is subject to the provisions of A.R.S. § 38-511. The state, its political subdivisions or any department or agency of either may, within three (3) years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly

involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

XV. AVAILABILITY OF FUNDS

Every payment obligation of VSUW under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations from First Things First. If the funds are not allocated and available for the continuance of this Agreement, VSUW may terminate this Agreement at the end of the period for which funds are available. No liability shall accrue to VSUW in the event this provision is exercised, and VSUW shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph, including purchases and/or contracts entered into by Provider in the execution of this Agreement.

XVI. FORCE MAJEURE

If either party hereto is delayed or prevented from the performance of any act required in this Agreement due to acts of God, strikes, lockouts, labor disputes, civil disorder, or other causes without fault and beyond the control of the party obligated, performance of or payment for such act will be excused for the period of the delay.

XVII. GOVERNING LAW

Provider warrants that the Programs and Provider's operation of the Programs shall comply with all applicable local, state, and federal laws and regulations. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.

XVIII. ENTIRE AGREEMENT

This Agreement and its Attachments/Exhibits constitute the entire Agreement between the parties hereto pertaining to the subject matter hereof and may not be changed or added to except by a writing signed by all parties hereto in conformity with Section XI Amendments of this Agreement; provided, however, that VSUW shall have the right to immediately amend this Agreement so that it complies with any new legislation, laws, ordinances, or rules affecting this Agreement. All prior and contemporaneous agreements, representations, and understandings of the parties, oral, written, pertaining to the subject matter hereof, are hereby superseded or merged herein.

XIX. LICENSING

Provider, unless otherwise exempted by law, shall obtain and maintain all licenses, permits and authority necessary to perform those acts it is obligated to perform under this Agreement.

XX. SECTARIAN REQUESTS

Funds disbursed pursuant to this Agreement may not be expended for any sectarian purpose or activity, including sectarian worship or instruction in violation of the United States or Arizona Constitutions.

XXI. SEVERABILITY

The provisions of this Agreement are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Agreement.

XXII. ADVERTISING AND PROMOTION OF AGREEMENT

Provider must coordinate closely with VSUW regarding public communications and awareness of the scholarships. First Things First and VSUW will establish all public messaging guidelines for this strategy.

XXIII. RISK AND LIABILITY

1. Indemnification. Each party shall be responsible for any and all liability for its own negligence or the negligence of its officers, employees and agents arising from this Agreement and each shall bear all costs for their own defense of any litigation. The parties to this Agreement agree that VSUW shall be indemnified and held harmless by Provider for the vicarious liability of VSUW as a result of entering into this Agreement. Additionally, Provider indemnifies and holds harmless VSUW for any damages from sexual abuse and/or professional liability resulting from the Provider's negligence. However, the parties further agree that VSUW shall be responsible for its own negligence. Each party to this Agreement is responsible for its own negligence.
2. Insurance Requirements
Requirements for providers anticipating to receive \$50,000 or more per fiscal year from VSUW.

Commercial General Liability – Occurrence Form. Policy shall include bodily injury, property damage, personal injury and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Blanket Contractual Liability – Written and Oral \$1,000,000
- Fire Legal Liability \$ 50,000
- Each Occurrence \$1,000,000
 - The policy shall be endorsed to include coverage for sexual abuse and molestation.
 - The policy shall be endorsed to include the following additional insured language: "Valley of the Sun United Way, its officers, boards, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the provider".
 - Policy shall contain a waiver of subrogation against Valley of the Sun United Way, its officers, boards, and employees for losses arising from work performed by or on behalf of the provider.

Business Automobile Liability - Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

- Combined Single Limit (CSL) \$1,000,000
 - The policy shall be endorsed to include the following additional insured language: "Valley of the Sun United Way, its officers, boards, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the provider, involving automobiles owned, leased, hired or borrowed by the provider".
 - Policy shall contain a waiver of subrogation against Valley of the Sun United Way, its officers, boards, and employees for losses arising from work performed by or on behalf of the provider.

Worker's Compensation and Employers' Liability

- Each Accident \$ 500,000
- Disease – Each Employee \$ 500,000
- Disease – Policy Limit \$1,000,000
 - Policy shall contain a waiver of subrogation against Valley of the Sun United Way, its officers, boards, and employees for losses arising from work performed by or on behalf of the provider.

Professional Liability (Errors and Omissions Liability)

- Each Claim \$1,000,000
- Annual Aggregate \$2,000,000
 - In the event that the professional liability insurance required by the Provider Agreement is written on a claims-made basis, provider warrants that any retroactive date under the policy shall precede the effective date of the Provider Agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under the Provider Agreement is completed.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. VSUW in no way warrants that the minimum limits contained herein are sufficient to protect Provider from liabilities that might arise out of the performance of the work under this Agreement by Provider, its agents, representatives, or employees, and Provider is free to purchase additional insurance.

3. Exceptions. In the event Provider is a public entity, then Provider shall provide a Certificate of Self-Insurance. If Provider is a State of Arizona agency, board, commission, or university, none of the above insurance requirements shall apply.

XXIV. CONFIDENTIALITY OF RECORD

Other than as required by the terms of this Agreement, all written student records shall be kept confidential in accordance with the Family Rights and Privacy Act and regulations adopted pursuant to that Act; the Individuals with Disabilities Education Act and regulations adopted thereunder; the Health Insurance Portability and Accountability Act and regulations adopted thereunder; and applicable state laws regarding the disclosure of personally identifiable information from students' education records.

XXV. TERMINATION

1. VSUW and Provider each reserves the right to terminate the Agreement in whole or in part without cause, provided ten (10) days' written notice is given to the other Party. VSUW may terminate this Agreement due to the failure of Provider to comply with any term or condition of the Agreement, to acquire and maintain all required insurance policies, bonds, licenses and permits or to make satisfactory progress in performing the Agreement. VSUW staff shall provide written notice of the termination for cause and the reasons for it to Provider.
2. VSUW may, upon termination of this Agreement, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Agreement. Provider shall be liable to VSUW for any reasonable excess costs incurred by VSUW in procuring materials or services in substitution for those due from Provider.

XXVI. CONTINUATION OF PERFORMANCE THROUGH TERMINATION

Provider shall continue to perform, in accordance with the requirements of the Agreement, up to the date of termination, as directed in the termination notice.

XXVII. COUNTERPARTS

This Agreement may be executed in any number of counterparts, copies, or duplicate originals. Each such counterpart, copy, or duplicate original shall be deemed an original, and collectively they shall constitute one agreement.

XXVIII. AUTHORITY TO EXECUTE THIS AGREEMENT

Each individual executing this Agreement on behalf of Provider represents and warrants that he or she is duly authorized to execute this Agreement.

XXIX. NOTICES

Any and all notices, requests, demands or communications by either party to this Agreement, pursuant to or in connection with this Agreement shall be in writing and shall be delivered in person or shall be sent by the United States Postal Service, certified mail, return receipt requested, to the respective parties at the following addresses:

Valley of the Sun United Way
Attention: Scholarships
1515 E. Osborn Rd.
Phoenix, Arizona 85014

VSUW shall address all notices relative to this Agreement to the Provider address listed in the first paragraph of the Agreement.

XXX. NON-DISCRIMINATION

Both parties shall comply with all applicable State and Federal employment laws, rules, and regulations, including the Americans with Disabilities Act and Executive Orders 99-4 and 2009-09, which require that all persons shall have equal access to employment opportunities regardless of race, color, religion, sex, age, national origin or political affiliation.

XXXI. IMMIGRATION LAWS

To the extent applicable under A.R.S. § 41-4401, Provider warrants compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). Provider's breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by VSUW. VSUW retains the legal right to randomly inspect the papers and records of Provider to ensure that Provider is complying with the above-mentioned warranty.

XXXII. COMPLIANCE WITH FINGERPRINTING REQUIREMENTS

The parties shall comply with the fingerprinting requirements of A.R.S. §15-512 unless otherwise exempted.

XXXIII. IRAN/SUDAN

Provider certifies that it does not have scrutinized business operations in Iran (A.R.S. § 35-393.06) or Sudan (A.R.S. §35-391.06).

XXXIV. MISCELLANEOUS

Waiver. A waiver by either party of any right contained herein shall not constitute a future or continuing waiver of that right, or any other right. **Survival.** The following provisions shall, by their nature, survive any termination or expiration of this Agreement: VII, X, XVII, XVIII, XXI, XXIII, and XXXIV.

IN WITNESS WHEREOF, the parties hereto agree to execute this Agreement.

FOR AND BEHALF OF

Valley of the Sun United Way

Katherine Cecala

Chief Operating Officer

Date

FOR AND BEHALF OF

Provider

Signature

Name Printed

Title

Date