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STATE OF NEW HAMPSHIRE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DIVISION OF ECONOMIC STABILITY

Lori A. Weaver
Commissioner

Karen E. Hebert
Director

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July 22, 2024

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

1) Authorize the Department of Health and Human Services, Division of Economic Stability, to enter into provider agreements with eligible New Hampshire Child Care Providers statewide to support child care provider business and facility improvements based on Business Health Assessments completed by the providers; and

2) Contingent on approval of Request #1, authorize the Department of Health and Human Services, Division of Economic Stability, to make unencumbered payments to participating Child Care Providers in amounts to be determined based on documentation for allowable expenses incurred by providers back to January 1, 2024, and/or allowable planned uses of the funds through June 30, 2025, not to exceed $5,250,000 in total for all eligible providers.

Both requests shall be effective upon Governor and Council approval through June 30, 2025. 100% Federal Funds.

Funds are available in the following account for State Fiscal Year 2025, with the authority to adjust budget line items within the price limitation through the Budget Office, if needed and justified.

05-095-042-421110-24290000 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVCS, HHS: HUMAN SERVICES, CHILD DEVELOPMENT, ARPA CHILD CARE CCDF

State Fiscal Year	Class / Account	Class Title	Job Number	Total Amount
2025	102-500731	Contracts for Prog Svc	TBD	$5,250,000
			Total	**$5,250,000**

EXPLANATION

The purpose of this request is to allow the Department to provide Opportunities to Succeed grant funding to Child Care Providers statewide to support business and facility improvements based on Business Health Assessments completed by the providers. The Department previously presented an amendment to the Governor and Council on September 6, 2023 (Item #17) to add this Opportunities to Succeed funding to an existing contract to administer the grant program. However, that contract will terminate early effective August 30, 2024. The Department is therefore presenting this request to directly administer Opportunities to Succeed grant funding to eligible providers.

The funding amount that each eligible Child Care Provider receives will be determined based on the received applications and supporting documentation for allowable expenses incurred back to January 1, 2024, and/or documentation demonstrating allowable planned uses of the funds through June 30, 2025. This Opportunities to Succeed grant program is supported by ARPA-Discretionary funding from the federal Office of Child Care and part of the Department's Child Care Strengthening Plan to support long-term sustainable solutions to strengthen child care in New Hampshire. Allowable uses for the funding include:

- Purchase of materials for play and learning, safe sleeping, diapering or toileting.
- Purchase of office equipment necessary for child care center operations, such as computers, printers, and office furniture.
- Purchase of office supplies and other smaller items necessary for child care center operations and to be used within a year of purchase.
- Expenses for operational enhancements relating to business technology, software, business automation, training and support services, and facility updates, such as touch-free faucets or light switches.
- Professional services, including working with professional experts in human resources, marketing, legal and compliance, taxes, professional coaching, strategic planning, and operational areas.
- Expenses relating to expansions, relocations, mergers, or consolidations.
- Certain facility improvements relating to maintenance/repairs or minor improvements, construction and construction management, code zoning, inspections, permitting, and special education considerations for indoor facilities and outdoor facilities.
- Drinking water testing and remediation.
- Professional development expenses, such as recommended training.

The Department is also requesting authority to make unencumbered payments to participating New Hampshire Child Care Providers that enter into the attached Provider Agreement template. The Department is making this request because the participating Child Care Providers and funding associated with each Child Care Provider cannot be determined in advance of this request. This will allow the Department to efficiently enter into these agreements with eligible Child Care Providers and promptly provide funding to support these critical business improvements, which in turn support efforts to maintain and increase child care capacity in the state. All providers will be required to submit a final report, including an expense report of how funds were used, and return any funds that were unused or not utilized for the allowable purposes.

Should the Governor and Council not authorize this request, New Hampshire Child Care Providers statewide will not receive this funding to support business improvements that will strengthen the child care industry in New Hampshire.

Source of Federal Funds: Assistance Listing Number # 93.575; FAIN # 2101NHCDC6.

Area served: Statewide.

Respectfully submitted,

Lori A. Weaver
Commissioner

Opportunities to Succeed
Provider Grant Agreement

This OPPORTUNITIES TO SUCCEED GRANT AGREEMENT is entered into by and between the State of New Hampshire Department of Health and Human Services ("DHHS") and the Grantee identified in Subsection 1.3. below. The Department and Grantee may be referred to herein singularly as the "Party" or collectively as the "Parties." In consideration of the mutual promises and covenants contained herein, the Parties hereby agree as follows:

1. IDENTIFICATION OF PARTIES; DEFINITIONS.

1.1. State Agency Name: New Hampshire Department of Health and Human Services

1.2. State Agency Address: 129 Pleasant Street, Concord, NH 03301

1.3. Grantee Business Name:

1.4. Grantee Contact Name:

1.5. Grantee Business Address:

1.6. Grantee Business Phone Number:

1.7. State Vendor Number:

1.8. Completion Date (the "Completion Date"): June 30, 2025

1.9. Grant Amount (the "Grant Award"): **$TBD**

1.10. Contact for the Department: Jessie Davis
Bureau Chief

1.11. Department Telephone Number: (603) 491-1234

1.12. Grantee Signature: Designated Signing Authority

Signature: Date:

Print Name: Title:

1.13. State of New Hampshire Signature:

Signature: Date:

Print Name: Karen E. Hebert Title: Director

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2. PURPOSE; ALLOWABLE USE OF GRANT AMOUNT.

2.1. The funding for the Opportunities to Succeed grant program is to address child care provider business and facility improvements identified in the Child Care Provider Business Health Assessment or Family Child Care Provider Business Health Assessment completed by the Grantee. The funds designated for this use in New Hampshire's Child Care Strengthening Plan and are 100% Federal funds (ARPA (American Rescue Plan Act) Discretionary Funds - ALN # 93.575; FAIN # 2101NHCDC6).

2.2. The Grantee must only use the Grant Award for allowable expenses incurred between January 1, 2024 and June 30, 2025, for child care provider business and facility improvement activities in the state of New Hampshire based on the Grantee's Child Care Provider Business Health Assessment or the Family Child Care Provider Business Health Assessment. Allowable child care provider business and facility improvement activities are subject to Department approval and include as follows (each, an "Allowable Use"):

- 2.2.1. Purchase of materials for play and learning, safe sleeping, diapering or toileting.
- 2.2.2. Purchase of office equipment that will last and be used longer than a year in the operation of the child care center, such as computers, printers, and office furniture.
- 2.2.3. Purchase of office supplies and other smaller items to be used within a year of purchase.
- 2.2.4. Operational enhancements expenses relating to business technology, software, business automation, training and support services, and facility updates, including, but not limited to, touch-free faucets or light switches.
- 2.2.5. Approved professional services expenses incurred by working with experts and licensed professionals, such as human resources, marketing, legal and compliance, tax, coaching, strategic planning and operational areas.
- 2.2.6. Expenses incurred relating to business expansions, relocations, mergers, or consolidations. Cannot be applied to purchase cost of new business.
- 2.2.7. Certain facility improvements relating to maintenance/repairs or minor improvements, construction and construction management, code zoning, inspections, permitting, and special education considerations for indoor facilities, such as classroom design, restroom configurations, storage areas, technology workstations, and outdoor facilities, such as entrance and exit locations, playground areas, pick up and drop off areas.
- 2.2.8. Drinking water testing and remediation, including expenses relating to drinking water testing, remediation planning, and completion of remediation services.
- 2.2.9. Professional development expenses such as training, training materials, and/or memberships in certain industry specific professional organizations.

2.3. The following expenses are not allowable:

- 2.3.1. Any expenses incurred prior to January 1, 2024.
- 2.3.2. Activities ordinarily provided at no cost by the Department or partner entities.
- 2.3.3. Expenses covered by other grants or funding sources.
- 2.3.4. Tuition for families.
- 2.3.5. Current college tuition.
- 2.3.6. Staff parties or outings.
- 2.3.7. Income losses or debt repayment.

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2.3.8. Center programming.
2.3.9. Back payments for rent, mortgage, or taxes.
2.3.10. Salaries, wages, or benefits.
2.3.11. Sign-on and/or retention incentives and/or wage increases.
2.3.12. Payment towards a physical, background check, or other expenses related to hiring and onboarding of a child care position.
2.3.13. Child care tuition assistance or discount.
2.3.14. Student loan repayment.
2.3.15. Telemedicine coverage.

2.4. Notwithstanding the foregoing, the Department may recoup from Grantee any part of the Grant Amount that the Department determines, in its sole and absolute discretion, were not used for an Allowable Use and/or in accordance with the terms and conditions of this Grant Agreement and/or applicable federal requirements.

3. TERM.

3.1. Notwithstanding any terms and conditions set forth herein to the contrary, this Agreement, and all obligations of the parties hereunder, shall become effective upon signature by DHHS, as shown in Paragraph 1.13., above ("the Effective Date") through June 30, 2025 (the "Completion Date").

3.2. The Grantee must expend the entire Grant Award by the Completion Date and submit all of the reports as required by Paragraph 8 of this Agreement. In the event that Grantee has not expended any part of the Grant Award by the Completion Date, then Grantee shall return all such sums to the Department no later than 5:00 p.m. on July 10, 2025.

4. PAYMENT OF GRANT AWARD; LIMITATION ON AMOUNT.

4.1. DHHS shall have no liabilities to the Grantee other than the determined Grant Award Amount. The Grant Award shall be the only payment to the Grantee under the terms and conditions of this Agreement, and DHHS shall have no obligation to Grantee in excess of the Grant Award. For the purpose of this Agreement, the indirect cost rate is 0%.

4.2. The Grantee shall receive awarded funds by check or electronic transfer, in one (1) increment upon approval of the Grant Provider Agreement and any supporting documentation as required by DHHS.

5. WARRANTIES AND REPRESENTATIONS OF GRANTEE.

5.1. The Grantee warrants and represents that it and its principals:

5.1.1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

5.1.2. Have not within a three-year period preceding this Grant Award been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or a contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or

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destruction of records, making false statements, or receiving stolen property;

5.1.3. Are not presently indicted for otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 5.1.2. of this certification; and

5.1.4. Have not, within a three-year period preceding this Grant, had one or more public transactions (Federal, State, or local) terminated for cause or default.

5.2. The Grantee warrants and represents that it will cooperate with DHHS and shall comply with any requests from DHHS reasonably related to this Agreement, including, without limitation, request for the following:

5.2.1. Submission of any and all records, data, and information to substantiate and verify the use, impact, and outcomes of the Grant Award on the Grantee's child care program, including, without limitation, invoices as well as responses to progress inquiries, surveys, and any other reports.

5.2.2. Confirmation, through documentation of expenses and any requested self-attestations, of compliance with this Agreement and the appropriate use(s) of the Grant Award as defined in Paragraph 2 of this Agreement, including any requests from DHHS for the review of Grantee's files and/or to conduct on-site audits.

5.3. The Grantee warrants and represents that, throughout the term of this Agreement, the Grantee will maintain and update its program profile on NH Connections Information System on or before January 31, 2025.

5.4. If a corporation, limited liability company, or any other entity, the Grantee warrants and represents to DHHS that it is (a) duly organized, validly existing, and in good standing under the laws of the state of its formation and the laws of the State of New Hampshire, (b) have paid all franchise and other taxes, if any, required to maintain its legal existence (c) is not the subject of voluntary or involuntary proceedings for its dissolution; and (d) the Grantee's Designated Signing Authority identified in box 1.12., above has full right, power and authority to enter into this Agreement.

5.5. Throughout the term of this Agreement, the Grantee must comply with all applicable statutes, laws, regulations, and orders of federal, state, county, or municipal authorities, including, without limitation, all applicable labor laws, and workers compensation requirements and the acquisition of all necessary permits.

5.6. The Grantee agrees to comply with the provisions of Section 319 of Public Law 101-121, Government wide Guidance for New Restrictions on Lobbying, and Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), and further certifies that:

5.6.1. No Federal appropriated funds have been paid or will be paid by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract,

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continuation, renewal, amendment, or modification of any Federal contract, loan, or cooperative agreement (and by specific mention sub-contractor).

5.6.2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, loan, or cooperative agreement (and by specific mention sub- contractor), the Grantee shall complete and submit Standard Form LLL, (Disclosure Form to Report Lobbying, in accordance with its instructions, see https://omb.report/icr/201009-0348-022/doc/20388401

6. COMPLIANCE BY GRANTEE WITH GRANT REQUIREMENTS.

6.1. In consideration of the Grant Award, the Grantee shall comply with all terms and conditions of this Agreement. The Grantee acknowledges and agrees that any failure to comply with the terms and conditions set forth herein may result in recoupment of the Grant Award, in whole or in part.

7. RECORDS AND ACCOUNTS.

7.1. Between the Effective Date and the date three (3) years after the Completion Date, at any time during the Grantee's normal business hours, or as often as DHHS requests, the Grantee shall make available to DHHS all records pertaining to matters covered by this Agreement. The Grantee shall permit DHHS, to audit, examine, and reproduce such records, and to make audits of all contracts, invoices, materials, payrolls, and records of personnel, data, and other information relating to all matters covered by this Agreement. As used in this paragraph, "Grantee" includes all persons affiliated with, controlled by, or under common ownership with, the entity identified as the Grantee in Paragraph 1.3., of this Agreement.

7.2. The Grantee shall keep detailed accounts of all reimbursed expenses received in connection with this Agreement. The Grantee shall also keep record and documentation on the use of the funds and impact on their child care business.

8. REPORTING.

8.1. The Grantee shall complete and submit a Final Report by June 30, 2025, regarding the impacts and outcomes of funding on their program. A template will be provided by DHHS, Bureau of Child Development and Head Start Collaboration (BCDHSC). The report must include detail of the expenditures, supporting documentation for all expenditures, the impact of the funding on their program operations and staff, changes in child capacity, basics statistics, and a description of any future needs.

8.2. DHHS shall recoup any portion of the Grant Award that was unspent or expended for any purpose other than an Allowable Use. Furthermore, DHHS shall recoup any expenditures traceable from the Grant Award that, in DHHS's sole and absolute discretion, are not adequately substantiated by Grantee's production of invoices, receipts, purchase orders, account ledgers, or any other business records.

9. LIMITATION OF LIABILITY.

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9.1. To the fullest extent permitted by law, the maximum aggregate liability of DHHS shall not exceed the sum of the Grant Award. In addition, Grantee agrees that in no event will DHHS, together with its officials, agents, and employees, be liable for any indirect, incidental, special, or consequential damages, including, without limitation, lost profits, even if DHHS had been advised, knew, or should have known of the possibility of such damages. The terms and conditions of this Paragraph 9 shall survive the termination of this Agreement.

10. INDEMNIFICATION.

10.1. For the purpose of this Paragraph 10, the term "Indemnified Parties" shall mean DHHS, and DHHS's officials, employees, agents together with the successors and assigns of any of them; the term "Indemnified Party" shall mean any one of the Indemnified Parties.

10.2. The Grantee shall indemnify, defend (with counsel acceptable to DHHS), and hold the Indemnified Parties from and against, and to reimburse the Indemnified Parties for, any and all liabilities, penalties, judgments, claims predicated upon any legal theory whatsoever, demands, debts, obligations, fines, damages, losses, costs, fees, attorneys' fees and expert witness' fees (including, without limitation, attorneys' fees, expert witness' fees, and costs incurred by the Indemnified Parties in enforcing the terms and conditions of this Paragraph 10), and expenses of any kind or nature suffered or incurred by any of the Indemnified Parties which are in any way related to the Grantee's use of the Grant Award.

10.3. The terms and conditions of this Paragraph 10, shall survive the termination of this Agreement.

11. SOVEREIGN IMMUNITY PRESERVED. Notwithstanding any terms and conditions set forth herein to the contrary, this Agreement shall not be construed as a waiver of DHHS's sovereign immunity, which is hereby reserved by DHHS. The terms and conditions of this Paragraph 11, shall survive the expiration or termination of this Agreement.

12. CONDITIONAL NATURE OR AGREEMENT. Notwithstanding anything in this Agreement to the contrary, all obligations of DHHS hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability or continued appropriation of funds, and in no event shall DHHS be liable for any payments hereunder in excess of such available or appropriated funds. In the event of a reduction or termination of those funds, DHHS shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Grantee notice of such termination.

13. EVENT OF DEFAULT: REMEDIES.

13.1. Any one or more of the following acts or omissions of the Grantee shall constitute an event of default hereunder (each, an "Event of Default"):

13.1.1. Failure to submit any report required hereunder;

13.1.2. Failure to maintain, or permit access to, the records required hereunder;

13.1.3. Failure to maintain any required licenses, permits, or approvals that result in a change to Grantee's program operational status, including, but not limited to, child care or camp

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licenses and any other licenses or permits as may be required for Grantee to continue with the operation of its child care program;

13.1.4. Failure to notify DHHS, in writing, prior to or at the time of the implementation of significant changes that impact the operational status of Grantee's child care program, including, without limitation, any voluntary closure, merger, reduction in number of children served by more than 50%, and any material changes in the program's services or populations being served; or

13.1.5. Failure to perform any of the other covenants and conditions of this Agreement.

13.2. Upon the occurrence of any Event of Default, DHHS may take any or all of the following actions:

13.2.1. Recoup from the Grantee, including by withholding any other payment of funds that becomes due to Grantee from the State, any payments under this Agreement that have been used in a manner contrary to the terms of this Agreement.

13.2.2. Treat the Agreement as breached and pursue any of its remedies available at law or in equity.

14. TERMINATION. Notwithstanding anything in this Agreement to the contrary, DHHS may terminate this Agreement without cause upon thirty (30) calendar days written notice to the Grantee.

15. GRANTEE'S RELATION TO DHHS. In the performance of this Agreement the Grantee, its employees, and any subcontractor of the Grantee are in all respects Beneficiaries of the Grant Award and are neither agents nor employees of the State of New Hampshire or DHHS. Neither the Grantee nor any of its officers, employees, agents, members, subcontractors, shall have authority to bind DHHS nor are they entitled to any of the benefits, workmen's compensation or emoluments provided by the State to its employees.

16. PUBLIC DISCLOSURE NOTIFICATION. The name, business addresses of all Grantees and the names, business addresses and amount of any award actually made to all Applicants/Grantees will be public information, subject to disclosure under RSA 91-A and may be posted on DHHS's website.

17. Governing Law. The Grantee acknowledges and agrees that this Agreement and the rights, obligations, and liabilities of the parties hereunder, including matters of construction, validity, and performance, shall be exclusively governed by the laws of the State of New Hampshire without regard to any choice of law or conflict of law, rules, or provisions (whether of the State of New Hampshire or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New Hampshire.

18. Consent to Jurisdiction and Venue. Grantee hereby irrevocably and unconditionally (a) submits to exclusive personal jurisdiction in the State of New Hampshire over any suit, action, or proceeding arising out of or relating to this Agreement, and (b) waives any and all personal rights under the laws of any other state to object to jurisdiction within the State of New Hampshire. Grantee agrees that the only proper venue for any suit, action, or proceeding arising out of or related to this Agreement shall be in the Merrimack County Superior Court.

19. Assignment. The Grantee shall not assign this Grant Agreement without written approval from

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DHHS.

20. NO THIRD PARTIES. There are no other parties to this agreement. No obligations to third parties are provided herein, whether by the express or implied terms and conditions. Neither party shall be liable to any third party based upon this agreement, its terms and conditions, or a party's actions taken hereunder.

21. Severability. If any term or condition of this Agreement or the application thereof to any party or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or condition to the parties or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and condition of this Agreement shall be valid and enforceable to the maximum extent permitted by law.

22. Merger. This Agreement is intended by the parties as the final, complete, and exclusive understanding of the Parties hereto. All prior or contemporaneous promises, agreements, and understandings, whether oral or written, are deemed to be superseded by this Agreement, and no party is relying on any promise, agreement, or understanding not set forth in this Agreement. This Agreement may not be amended or modified except by a written instrument describing such amendment or modification executed by the parties hereto, subject to approval by the Governor and Executive Council

23. Counterparts; Facsimile and Electronic Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. A facsimile or portable document format (PDF) signature on this Agreement shall be equivalent to, and have the same force and effect as, an original signature. In accordance with the New Hampshire Uniform Electronic Transactions Act, RSA 294-E:1 et seq., the parties hereby agree that this Agreement may be signed electronically, including any exhibits, schedules, addenda, or other attachments referenced herein.

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