

LEASE AGREEMENT
BETWEEN
CITY OF PALO ALTO
AND
PALO ALTO COMMUNITY CHILD CARE – VENTURA

This lease agreement (herein "lease") is made and entered into on _____, by and between the City of Palo Alto, a California chartered municipal corporation (herein "City") and Palo Alto Community Child Care, a California non-profit corporation (herein "Lessee"). City and Lessee may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Lease." The City Manager serves as Contract Administrator for this lease on behalf of the City Council.

RECITALS

- A. These recitals are a substantive portion of this lease.
- B. On January 9, 1981, City purchased the Ventura School site to provide a park, a child care center, and a community center for meetings.
- C. On February 10, 1981, City entered into a Lease with Lessee for the Ventura School site.
- D. On July 22, 1986, City entered into a five-year lease with Lessee for the continued use of the Ventura School site.
- E. On June 19, 2000, City entered into a ten-year lease for the purpose of continued use of the Ventura School site.
- F. On July 28, 2011, City entered into a two-year lease with Lessee for the continued use of the Ventura School site.
- G. On August 10, 2013, City entered into a three-year lease with Lessee for the continued use of the Ventura School site.
- H. On July 1, 2016, City entered into a three-year lease with Lessee for the continued use of the Ventura School site; the lease terminated June 30, 2019, and Lessee has continued use of the Ventura School site since that time, under the terms and conditions of the lease, on a hold-over basis.
- I. City and Lessee now desire to enter into a lease for the purpose of continuing to provide full-service community child care centers and administrative offices at the Ventura School site.

Now, therefore, in consideration of these recitals and the following covenants, terms, and conditions, Lessee and City mutually agree as follows:

LEASE PROVISIONS

1. PREMISES.

City hereby leases to Lessee, certain real property located at 3990 Ventura Court in the City of Palo Alto, County of Santa Clara, State of California, commonly referred to as the Ventura School site (herein the "Property"), and more particularly described in Exhibit A attached hereto and incorporated herein by reference. The Property consists of approximately Twenty-One Thousand (21,000) square feet of the former Ventura Elementary School Building set forth in Exhibit A attached hereto and incorporated herein by reference. Unless specifically provided, Lessee accepts the Property "as-is" on the date of execution of this Lease.

2. TERM.

2.1 Original Term. The term of this Lease shall commence on January 1, 2024 and end on December 31, 2028. Lessee shall, at the expiration of the term of this Lease, or upon its earlier termination, surrender the Premises in as good condition as it is now at the date of this Lease. The Parties expect reasonable wear and tear.

2.2 Early Termination by City. If City in its sole discretion determines that it requires the Premises for any public purpose, City may terminate this Lease upon sixty (60) days written notice.

3. RENT.

3.1 Base Rent. The rent to be paid by Lessee shall be in the amount of Four Hundred Sixty One Thousand Eight Hundred Sixty dollars (\$540,559.20), payable in monthly installments of Thirty Eight Thousand Four Hundred Ninety One dollars Thirty Three cents (\$45,046.60). City shall waive the Base Rent in accordance with Section 4 below. Rent shall be payable on the first day of each and every month commencing on the Delivery Date, at a place (or places) as may be designated in writing from time to time by City.

3.2 Annual Increase. During the Term of this Lease, the Base Rent shall be increased 3% effective on each July 1st. The sum shall be adjusted annually resulting in a compound rate of increase.

3.3 Late Charge. Lessee acknowledges late payment of rent will cause City to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing, accounting and late charges that may be imposed on City. Therefore, if City does not receive any installment of rent due from Lessee postmarked within ten (10) days after the date such rent is due, Lessee shall pay to City an additional sum of five percent (5%) of the overdue rent as a late charge. The parties agree this late charge represents a fair and reasonable estimate of the costs City will incur by reason of late payment by Lessee. Acceptance of any late charge shall not constitute a waiver of Lessee's default with respect to the overdue amount, nor prevent City from exercising any of the other rights and remedies available to City.

3.4 Rent Payment Procedures. Lessee's obligation to pay rent shall commence upon the commencement of this Lease. Rent payment for any fractional calendar month shall be prorated. Rent payments shall be delivered to City's Revenue Collections Division, 250 Hamilton Avenue, PO Box 10250, Palo Alto, CA 94303. The designated place of payment may be changed at any time by City upon ten (10) days' written notice to Lessee. Lessee specifically agrees that acceptance of any late or incorrect rentals submitted by Lessee shall not constitute an acquiescence or waiver by City and shall not prevent City from enforcing Section 3.3 (Late Charge) or any other remedy provided in this Lease. Acceptance of rent shall not constitute approval of any unauthorized Lease or use, nor constitute a waiver of any non-monetary breach. Payments shall be effective upon receipt. City may apply any payment received from Lessee at any time against any obligation due and owing by Lessee under this Lease, regardless of any statement appearing on or referred to in any remittance from Lessee or any prior application of such payments.

3.5 Partial Payment. The receipt by City of a partial payment of any amount due to City endorsed as payment in full will be deemed to be a partial payment only. City may accept and deposit said check without prejudice to its right to recover the balance. Any endorsements or statements on the check or any letter accompanying the check shall not be deemed an accord and/or satisfaction. Lessee's obligation (without prior notice or demands) to pay rent and all other amounts due hereunder shall be absolute and unconditional, and not subject to any abatement, set off, defense, recoupment or reduction.

4. WAIVER OF RENT.

City shall waive the Base Rent as long as Lessee faithfully meets all conditions and provides all activities, public services and benefits as required by Exhibit "C", Guidelines for Site Usage, attached hereto and incorporated herein by reference, and the Annual Work Plan as set forth in Exhibit D below. In the event that Lessee fails to adhere to the Guidelines as set forth in Exhibit C, or to meet all provisions of the Annual Work Plan, the rent waiver shall cease, and Lessee shall begin monthly rent payments in accordance with Sections 3.1, 3.2, 3.3, and 3.4 above. Monthly rental payments shall begin within 30 days of Lessee's receipt of City's written notification that Lessee is in violation of Guidelines for Site Usage or the provisions of the Annual Work Plan.

5. USE OF PREMISES.

5.1 Required Uses. Throughout the term of this Lease, Lessee shall provide the following uses, services and activities ("Required Uses"):

5.1.1. The maintenance and operation of administrative offices, a community center and full-service child care centers and other programs from the Premises as set forth in Section 1 of Exhibit "C" (Guidelines for Site Usage) attached to and made a part hereof; and in accordance with the Annual Work Plan (Exhibit "E") described in Section 5.1.2 below.

5.1.2. Within (sixty) 60 days after the date of execution of this Lease, and thereafter on or before July 1 of each year during the term of this Lease, Lessee shall submit to the City Manager, or designee, a proposed written Annual Work Plan for operation of the uses and services described in Section 5.1.1, including a description of Lessee's proposed activities on the Property. Lessee and the City Manager or designee, shall jointly review the work plan and jointly develop performance objectives and standards for Lessee's activities, including, but not limited to the child care, site usage and property management activities to be accomplished during the year. Commencing on January, 2023 and on or before July of each subsequent year of this Lease, Lessee and the City Manager, or designee, shall conduct a performance review addressing the activities that have been carried out on the Property during the past year, and conformance to the agreed upon performance objectives and standards. The performance review shall serve as a basis for consideration of the continued Waiver of Rent in accordance with Section 4 above. Lessee's failure to substantially conform to the agreed upon performance objectives and standards shall be grounds for the City to discontinue the Waiver of Rent as set forth in Section 4 above.

5.2 Permitted Uses. In addition to the Required Uses, Lessee may also use the Premises for the following uses: Additional services and uses which are ancillary to and compatible with the required services and uses set forth above and not in conflict with the uses surrounding the Premises. Premises may not be used for any other purposes without City's prior written consent; which consent may be withheld in the sole and absolute discretion of the City.

5.3 Prohibited Uses. Lessee shall not use Premises for any purpose not expressly permitted hereunder. Lessee shall not create, cause, maintain or permit any nuisance or waste in, on, or about the Premises, or permit or allow the Premises to be used for any unlawful or immoral purpose. Lessee shall not do or permit to be done anything in any manner which unreasonably disturbs the users of the Sites. Specifically, and without limiting the above, Lessee agrees not to cause any unreasonable odor, noise, vibration, power emission, or other item to emanate from the Premises. No materials or articles of any nature shall be permanently stored outside upon any portion of the Premises, unless approved in writing by the City. Lessee will not use Sites in a manner that increases the risk of fire or cost of fire insurance. No unauthorized sign or placard shall be painted, inscribed or placed in or on said Sites; and no tree or shrub thereon shall be destroyed or removed or other waste committed of said Sites. No motorcycles, automobiles or other mechanical means of transportation shall be placed or stored anywhere on the Sites except for the parking lot. No repair, overhaul or modification of any motor vehicle shall take place on the Sites or the street in front of said Sites. Lessee, at his/her expense, shall keep the Premises in as good condition as it was at the beginning of the terms hereof, except damage occasioned by ordinary wear and tear, and except damage to the roof, sidewalks and underground plumbing, which is not the fault of Lessee.

5.4 Condition, Use of Premises. City makes no warranty or representation of any kind concerning the condition of the Premises, or the fitness of the Premises for the use intended by

Lessee, and hereby disclaims any personal knowledge with respect thereto, it being expressly understood by the parties that Lessee has personally inspected the Premises, knows its condition, finds it fit for Lessee's intended use, accepts it as is, and has ascertained that it can be used exclusively for the limited purposes specified in Section 5.1.

6. HAZARDOUS MATERIALS.

6.1 Hazardous Materials Defined. The term "Hazardous Material(s)" shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant, or infectious or radioactive material, including but not limited to, those substances, materials, or wastes regulated now or in the future under any of the following statutes or regulations and any and all of those substances included within the definitions of "hazardous substances," "hazardous waste," "hazardous chemical substance or mixture," "imminently hazardous chemical substance or mixture," "toxic substances," "hazardous air pollutant," "toxic pollutant" or "solid waste" in the (a) CERCLA or Superfund as amended by SARA, 42 U.S.C. Sec. 9601 et seq., (b) RCRA, 42 U.S.C. Sec. 6901 et seq., (c) CWA., 33 U.S.C. Sec. 1251 et seq., (d) CAA, 42 U.S.C. 78401 et seq., (e) TSCA, 15 U.S.C. Sec. 2601 et seq., (f) The Refuse Act of 1899, 33 U.S.C. Sec. 407, (g) OSHA, 29 U.S.C. 651 et seq. (h) Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801 et seq., (i) USDOT Table (40 CFR Part 302 and amendments) or the EPA Table (40 CFR Part 302 and amendments), (j) California Superfund, Cal. Health & Safety Code Sec. 25300 et seq., (k) Cal. Hazardous Waste Control Act, Cal. Health & Safety Code Section 25100 et seq., (l) Porter-Cologne Act, Cal. Water Code Sec. 13000 et seq., (m) Hazardous Waste Disposal Land Use Law, Cal. Health & Safety Code Sec. 25220 et seq., (n) Proposition 65, Cal. Health and Safety Code Sec. 25249.5 et seq., (o) Hazardous Substances Underground Storage Tank Law, Cal. Health & Safety Code Sec. 25280 et seq., (p) California Hazardous Substance Act, Cal. Health & Safety Code Sec. 28740 et seq., (q) Air Resources Law, Cal. Health & Safety Code Sec. 39000 et seq., (r) Hazardous Materials Release Response Plans and Inventory, Cal. Health & Safety Code Secs. 25500-25541, (s) TCPA, Cal. Health and Safety Code Secs. 25208 et seq., and (t) regulations promulgated pursuant to said laws or any replacement thereof, or as similar terms are defined in the federal, state and local laws, statutes, regulations, orders or rules. Hazardous Materials shall also mean any and all other substances, materials, and wastes which are, or in the future become, regulated under applicable local, state or federal law for the protection of health or the environment, or which are classified as hazardous or toxic substances, materials or wastes, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including without limitation: (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents; (ii) any petroleum products or fractions thereof; (iii) asbestos, (iv) polychlorinated biphenyls; (v) flammable explosives; (vi) urea formaldehyde; and, (vii) radioactive materials and waste.

6.2. Compliance with Laws. Lessee shall not cause or permit any Hazardous Material (as defined above) to be brought upon, kept or used in or about the Premises or Sites by Lessee, its agents, employees, contractors or invitees.

6.3 Termination of Lease. City shall have the right to terminate the Lease in City's sole and absolute discretion in the event that: (i) any anticipated use of the Premises by Lessee involves

the generation or storage, use, treatment, disposal, or release of Hazardous Material in a manner or for a purpose prohibited or regulated by any governmental agency, authority, or Hazardous Materials Laws; (ii) Lessee has been required by any lender or governmental authority to take remedial action in connection with Hazardous Material contaminating the Premises, if the contamination resulted from Lessee's action or use of the Premises; or (iii) Lessee is subject to an enforcement order issued by any governmental authority in connection with the release, use, disposal, or storage of a Hazardous Material on the Premises.

6.4 Hazardous Materials Indemnity. Lessee shall indemnify, defend (by counsel reasonably acceptable to City), protect, and hold City harmless from and against any and all claims, liabilities, penalties, forfeitures, losses, and/or expenses, including without limitation, diminution in value of the Premises, damages for the loss or restriction on use of the rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact or marketing of the Premises and sums paid in settlement of claims, response costs, cleanup costs, site assessment costs, attorneys' fees, consultant and expert fees, judgments, administrative rulings or orders, fines, costs of death of or injury to any person, or damage to any property whatsoever (including, without limitation, groundwater, sewer systems, and atmosphere), arising from, caused, or resulting, either prior to or during the Lease Term, in whole or in part, directly or indirectly, by the presence or discharge in, on, under, or about the Premises by Lessee, Lessee's agents, employees, licensees, or invitees or at Lessee's direction, of Hazardous Material, or by Lessee's failure to comply with any Hazardous Materials Law, whether knowingly or by strict liability. For purposes of the indemnity provided herein, any acts or omissions of Lessee or its employees, agents, customers, sub-Lessees, assignees, contractors, or subcontractors of Lessee (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Lessee. Lessee's indemnification obligations shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary Hazardous Materials management plan, investigation, repairs, cleanup or detoxification or decontamination of the Premises, and the presence and implementation of any closure, remedial action or other required plans, and shall survive the expiration of or early termination of the Lease Term.

6.5 City's Right to Perform Tests. At any time prior to the expiration of the Lease Term, City shall have the right to enter upon the Premises in order to conduct tests of water and soil.

7. UTILITIES AND OPERATING EXPENSES.

Lessee shall fully and promptly pay for all expenses associated with the operation of the Property (excluding water supplied to the open field areas), including but not limited to the furnishing of gas, water, sewer, electricity, telephone service, garbage pickup and disposal, landscaping installation and maintenance inside the fenced play areas, and other public utilities.

8. TAXES.

8.1 Real Property Taxes Defined. The term "real property taxes" as used herein shall mean all taxes (including possessory interest taxes), assessments, levies and other charges, general and special, foreseen and unforeseen, now or hereafter imposed by any governmental or quasi-governmental authority or special district having the direct or indirect power to tax or levy

assessments, which are levied or assessed against or with respect to: (i) value, occupancy, use or possession of the Premises and/or the improvements; (ii) any improvements, fixtures, equipment and other real or personal property of Lessee that are an integral part of the Premises; or, (iii) use of the Premises, improvements public utilities or energy within the Premises. The term “real property taxes” shall also mean all charges, levies or fees imposed by reason of environmental regulation or other governmental control of the premises and/or the improvements, new or altered excise, transaction, sales, privilege, assessment, or other taxes or charges now or hereafter imposed upon City as a result of this Lease, and all costs and fees (including attorneys’ fees) incurred by City in contesting any real property taxes and in negotiating with public authorities as to any real property taxes affecting the Premises. If any real property taxes are based upon property or rents unrelated to the Premises and/or the improvements, then only that part of such tax that is fairly allocable to the Premises and/or the improvements, as determined by City, on the basis of the assessor’s worksheets or other available information, shall be included within the meaning of the term “real property taxes.”

8.2 Payment of Real Property Taxes. Lessee shall pay Lessee’s share of all real property taxes (as defined in Section 8.1 above) which become due and payable to City on or before the later of ten (10) days prior to the delinquency thereof or three (3) days after the date on which Lessee receives a copy of the tax bill and notice of City’s determination hereunder. Lessee’s liability to pay real property taxes shall be prorated on the basis of a three hundred sixty-five (365) day year to account for any fraction or portion of a tax year included in the Lease term at the commencement or expiration of the Lease.

8.3 Revenue and Taxation Code. Lessee specifically acknowledges it is familiar with section 107.6 of the California Revenue and Taxation Code. Lessee realizes that a possessory interest subject to property taxes may be created, agrees to pay any such tax, and hereby waives any rights Lessee may have under said California Revenue and Taxation Code section 107.6.

8.4 Personal Property Taxes. Lessee shall pay before delinquent, or if requested by City, reimburse City for, any and all taxes, fees, and assessments associated with the Premises, the personal property contained in the premises and other taxes, fees, and assessments regarding any activities which take place at the Sites. Lessee recognizes and understands in accepting this Lease that its interest therein may be subject to a possible possessory interest tax that City or County may impose on such interest and that such tax payment shall not reduce any rent due City hereunder and any such tax shall be the liability of and be paid by Lessee.

9. MAINTENANCE.

9.1 City and Lessee Responsibilities. Lessee at Lessee's expense, shall perform all maintenance and repairs, including but not limited to exterior and interior painting; flooring, plumbing and electrical fixtures, light switches, light fixtures, bulb and ballast replacement; broken and vandalized or damaged window replacement; re-keying and key copies (making sure to provide copies of all keys to City); interior and exterior pest control; and service and maintenance of landscaping within the fenced play yard areas, including asphalt blacktop areas (except for the parking lot), necessary to keep the Premises and all improvements thereto in first-class order, repair, and condition, and shall keep the Premises in a safe, clean,

wholesome, and sanitary condition to the complete satisfaction of City, and in compliance with all applicable laws, throughout the term of this Lease. In addition, Lessee shall maintain, at Lessee's expense, all equipment, furnishings and trade fixtures upon the Premises required for the maintenance and operation of a first-class business of the type to be conducted pursuant to this Lease.

City shall be responsible for the maintenance and repair of the building electrical and plumbing system fixtures/switches, heating, ventilation, main boilers, zone circulation pumps, roof repair and replacement, exterior structural repairs, landscaping maintenance of the large public turf area at the rear of the property, and asphalt maintenance of the parking lot.

9.2 Waiver of Civil Code. Lessee expressly waives the benefit of any statute now or hereinafter in effect, including the provisions of Sections 1941 and 1942 of the Civil Code of California, which would otherwise afford Lessee the right to make repairs at City's expense or to terminate this Lease because of City's failure to keep Premises in good order, condition and repair. Lessee further agrees that if and when any repairs, alterations, additions or betterments shall be made by Lessee as required by this paragraph, Lessee shall promptly pay for all labor done or materials furnished and shall keep the Premises free and clear of any lien or encumbrance of any kind whatsoever. If Lessee fails to make any repairs or perform any maintenance work for which Lessee is responsible within a reasonable time (as determined by the City Manager in the City Manager's sole discretion) after demand by the City, City shall have the right, but not the obligation, to make the repairs at Lessee's expense; within ten (10) days of receipt of a bill, Lessee shall reimburse City for the cost of such repairs, including a fifteen percent (15%) administrative overhead fee. The making of such repairs or performance of maintenance by City shall in no event be construed as a waiver of the duty of Lessee to make repairs or perform maintenance as provided in this section.

10. CONSTRUCTION BY LESSEE

10.1 Construction Standards. All design and construction performed by or on behalf of Lessee shall conform to the approved plans, specifications, construction and architectural standards approved by the City Council if required by Palo Alto ordinances or procedures or otherwise by the City Manager. Once the work is begun, Lessee shall with reasonable diligence prosecute all construction to completion. All work shall be performed in a good and workmanlike manner, shall substantially comply with any plans and specifications approved by City and shall comply with all applicable governmental permits, laws, ordinances and regulations, and shall meet all other requirements contained in this Lease.

10.2 Cost of Improvements. Lessee shall pay all costs for construction done or caused to be done by Lessee on the Premises as permitted or required by this Lease. Lessee shall keep the Premises free and clear of all claims and liens resulting from construction done by or for Lessee. Promptly after completion of construction, Lessee shall provide to the City Manager a statement of the reasonable and actual costs of construction for the initial improvements, which statement shall be certified as to accuracy and signed by Lessee under penalty of perjury.

10.3 Ownership of Improvements. All improvements constructed, erected, or installed upon the Premises must be free and clear of all liens, claims, or liability for labor or material and shall become the property of City, at its election, upon expiration or earlier termination of this Lease and upon City's election, shall remain upon the Premises upon termination of this Lease. Title to all equipment, furniture, furnishings, and trade fixtures placed by Lessee upon the Premises shall remain in Lessee, and replacements, substitutions and modifications thereof may be made by Lessee throughout the term of this Lease. Lessee may remove such fixtures and furnishings upon termination of this Lease if Lessee is not then in default under this Lease, provided that Lessee shall repair to the satisfaction of City any damage to the Premises and improvements caused by such removal and provided that usual and customary lighting, plumbing and heating fixtures shall remain upon the Premises upon termination of this Lease.

10.4 Indemnity for Claims Arising Out of Construction. Lessee shall defend and indemnify City against all claims, liabilities, and losses of any type arising out of work performed on the Premises by Lessee, together with reasonable attorneys' fees and all costs and expenses reasonably incurred by City in negotiating, settling, defending or otherwise protecting against such claims.

10.5 Assurance of Completion. Prior to commencement of any construction or alteration expected to cost more than \$5,000.00, Lessee shall furnish the City Manager evidence that assures City that sufficient monies will be available to complete the proposed work. The amount of such assurance shall be at least the total estimated construction cost. Evidence of such assurance shall take one of the forms set out below and shall guarantee Lessee's full and faithful performance of all of the terms, covenants, and conditions of this Lease:

- A. Completion Bond;
- B. Performance, labor and material bonds, supplied by Lessee's contractor or contractors, provided the bonds are issued jointly to Lessee and City;
- C. Irrevocable letter of credit from a financial institution; or
- D. Any combination of the above.

All bonds and letters of credit must be issued by a company qualified to do business in the State of California and be acceptable to the City Manager. All bonds and letters of credit shall be in a form acceptable to the City Manager, and shall insure faithful and full observance and performance by Lessee of all of the terms, conditions, covenants, and agreements relating to the construction of improvements or alterations in accordance with this Lease.

10.6 As Built Plans. Lessee shall provide the City Manager with a complete set of reproducible "as built plans" reflecting actual construction within or upon the Premises upon completion of any: (i) new construction; (ii) structural alterations; or, (iii) non-structural alterations costing more than \$25,000.

11. ALTERATIONS BY LESSEE.

Lessee shall not make any alterations or improvements to the Premises without obtaining the prior written consent of the City Manager. Lessee may, at any time and at its sole expense, install and place business fixtures and equipment within the Premises, provided such fixtures and installation have been reviewed and approved by the City Manager. Prior to commencement of any work, Lessee shall pay the amount of any increase in premiums on insurance policies provided for herein because of endorsements to be made covering the risk during the course of the work and shall pay for any and all permits which may be required.

12. HOLD HARMLESS/INDEMNIFICATION.

12.1 Indemnification. To the extent permitted by law, Lessee agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, agents, volunteers, and employees from and against any claim, injury, liability, loss, cost, and/or expense or damage, however same may be caused, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom for which City shall become legally liable arising from Lessee's, its officers' agents' subcontractors' or employees' negligent, reckless, willful, or wrongful acts, errors, or omissions, or conduct for which applicable law may impose strict liability on Lessee, with respect to or in any way connected with this Lease or in connection with Lessee's performance of or failure to perform its obligations under this Lease, including but not limited to Exhibit C. Lessee shall give City immediate notice of any claim or liability hereby indemnified against. This indemnity shall be in addition to the Hazardous Materials indemnity contained in this Lease and shall survive the expiration of or early termination of the Lease Term.

12.2 Waiver of Claims. Lessee waives any claims against City for injury to Lessee's business or any loss of income therefrom, for damage to Lessee's property, or for injury or death of any person in or about the Premises or Sites, from any cause whatsoever, except to the extent caused by City's active negligence or willful misconduct.

13. DAMAGE, DESTRUCTION AND TERMINATION.

13.1 Nontermination and Non-abatement. Except as provided herein, no destruction or damage to the Premises by fire, windstorm or other casualty, whether insured or uninsured, shall entitle Lessee to terminate this Lease. City and Lessee waive the provisions of any statutes which relate to termination of a Lease when Leased property is destroyed and agree that such event shall be governed by the terms of this Lease.

13.2 Force Majeure. Prevention, delay or stoppage due to strikes, lockouts, labor disputes, Acts of God, inability to obtain labor, inability to obtain materials or reasonable substitutes, governmental restrictions, governmental regulation, governmental controls, judicial orders, enemy or hostile governmental actions, civil commotion, fire or other casualty, and other causes beyond the reasonable control of Lessee (financial inability excepted), shall excuse the performance by Lessee for a period equal to the prevention, delay, or stoppage, except the obligations imposed with regard to rent to be paid by Lessee pursuant to this Lease. In the event any work performed by Lessee or Lessee's contractors results in a strike, lockout, and/or labor

dispute, the strike, lockout, and/or labor dispute shall not excuse the performance by Lessee of the provisions of this Lease.

13.3 Restoration of Premises by Lessee.

13.3.1 Destruction Due to Risk Covered by Insurance. If, during the term, the Premises are totally or partially destroyed from a risk covered by the insurance described in Section 20 (Insurance), rendering the Premises totally or partially inaccessible or unusable, Lessee shall restore the Premises to substantially the same condition as it was in immediately before destruction, whether or not the insurance proceeds are sufficient to cover the actual cost of restoration. Such destruction shall not terminate this Lease. If the laws existing at that time do not permit the restoration, either party can terminate this Lease immediately by giving notice to the other party.

If the cost of the restoration exceeds the amount of proceeds received from the insurance required under Section 20 (Insurance), City can elect to terminate this Lease by giving notice to Lessee within thirty (30) days after determining that the restoration cost will exceed the insurance proceeds. In the case of destruction to the Premises only, if City elects to terminate this Lease, Lessee, within thirty (30) days after receiving City's notice to terminate, can elect to pay to City, at the time Lessee notifies City of its election, the difference between the amount of insurance proceeds and the cost of restoration, in which case City shall restore the Premises. City shall give Lessee satisfactory evidence that all sums contributed by Lessee as provided in this paragraph have been expended by City in paying the cost of restoration.

If City elects to terminate this Lease, and Lessee does not elect to contribute toward the cost of restoration as provided in this section, this Lease shall terminate.

13.3.2 Destruction Due to Risk Not Covered by Insurance. If, during the term, the Premises are totally or partially destroyed from a risk not covered by the insurance described in Section 20 (Insurance), rendering the Premises totally or partially inaccessible or unusable, Lessee shall restore the Premises to substantially the same condition as it was in immediately before destruction, whether or not the insurance proceeds are sufficient to cover the actual cost of restoration. Such destruction shall not terminate this Lease. If the laws existing at that time do not permit the restoration, either party can terminate this Lease immediately by giving notice to the other party.

If the cost of restoration exceeds ten percent (10%) of the then replacement value of the Premises totally or partially destroyed, Lessee can elect to terminate this Lease by giving notice to City within sixty (60) days after determining the restoration cost and replacement value.

In the case of destruction to the Premises only, if City elects to terminate this Lease, Lessee, within thirty (30) days after receiving City's notice to terminate, can elect to pay to City at the time Lessee notifies City of its election, the difference between ten percent (10%) of the then replacement value of the Premises and the actual cost of restoration, in which case City shall restore the Premises. City shall give Lessee satisfactory evidence that all sums contributed by Lessee as provided in this paragraph have been expended by City in paying the cost of restoration.

If City elects to terminate this Lease and Lessee cannot or does not elect to contribute toward the cost of restoration as provided in this section, this Lease shall terminate.

13.3.3 Extent of City's Obligation to Restore. If City is required or elects to restore the Premises as provided in this section, City shall not be required to restore alterations made by Lessee, Lessee's improvements, Lessee's trade fixtures, and Lessee's personal property, such excluded items being the sole responsibility of Lessee to restore. City shall have no obligation to restore, replace or compensate Lessee for any loss of Lessee's improvements, trade fixtures or personal property in the event of partial damage to Premises due to floor or ceiling water leaks, electrical damage, fire damage or smoke damage.

14. SIGNS.

Lessee shall not place, construct, maintain, or allow any signs upon the Premises without prior written consent of City, which consent shall not be unreasonably withheld. All signs must comply with the City's Sign Ordinance unless exempt therefrom.

15. ASSIGNMENT AND SUBLETTING.

15.1 City's Consent Required. Lessee shall not assign this lease, nor any interest therein, and shall not sublet or encumber the Property or any part thereof, nor any right or privilege appurtenant thereto, nor allow or permit any other person(s) to occupy or use the Property, or any portion thereof, without the prior written consent of City. A list of current subtenants approved by the City is attached as Exhibit D (List of Approved Subtenants). This Lease shall be binding upon any permitted assignee or successor of Lessee. Consent by City to one assignment, subletting, occupation or use by another person shall not be deemed to be consent to any subsequent assignment, subletting, occupation or use by another person. No assignment, subletting, or encumbrance by Lessee shall release it from or in any way alter any of Lessee's obligations under this Lease. Lessee may have the Property delivered to a subsidiary company of Lessee, but such arrangement shall in no way alter Lessee's responsibilities hereunder with respect to the Property. Any assignment, subletting, encumbrances, occupation, or use contrary to the provisions of this Lease shall be void and shall constitute breach of this Lease. City may assign any of its rights hereunder without notice to Lessee.

15.2 No Release of Lessee. No subletting or assignment as approved by City shall release

Lessee of Lessee's obligation or alter the primary liability of Lessee to pay the rent and to perform all other obligations by Lessee hereunder. The acceptance of rent by City from any other person shall not be deemed to be a waiver by City of any provision hereof. In the event of default by any assignee of Lessee or any successor of Lessee in the performance of any of the terms hereof, City may proceed directly against Lessee without the necessity of exhausting remedies against said assignee.

16. DEFAULTS; REMEDIES.

16.1 Defaults. The occurrence of any one or more of the following events shall constitute a material default, or breach of this Lease, by Lessee:

16.1.1 Abandonment of the Premises by Lessee as defined by California Civil Code section 1951.3;

16.1.2 Failure by Lessee to make any payment of rent or any other payment required to be made by Lessee hereunder, as provided in this Lease, where such failure shall continue for a period of ten (10) business days after written notice thereof from City to Lessee. In the event City serves Lessee with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes, such Notice to Pay Rent or Quit shall also constitute the notice required by this subparagraph;

16.1.3 Failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease in any material respect where such failure shall continue for a period of thirty (30) days after written notice thereof from City to Lessee; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commenced such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion;

16.1.4 Making by Lessee of any general arrangement or assignment for the benefit of creditors; Lessee's becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days); the appointment of a bankruptcy trustee or receiver to take possession of all or substantially all of Lessee's assets located at or on the Premises or of Lessee's interest in this Lease where possession is not restored to Lessee within thirty (30) days; or the attachment, execution or other judicial seizure of all or substantially all of Lessee's assets located at or on the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days.

16.2 Remedies. In the event of any material default or breach by Lessee, City may at any time thereafter, following any notice required by statute, and without limiting City in the exercise of any right or remedy which City may have by reason of such default or breach:

16.2.1 Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Premises to City. In such event, City shall be entitled to recover from Lessee all

damages incurred by City by reason of Lessee's default including but not limited to: the cost of recovering possession of the Premises and Improvements; expenses of reletting, including necessary renovation and alteration of the Premises and Improvements; reasonable attorneys' fees; the worth at the time of the award of the unpaid rent that had been earned at the time of termination of this Lease and the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of such award exceeds the amount of such rental loss for the same period that Lessee proves could be reasonably avoided.

16.2.2 Maintain Lessee's right to possession, in which case this Lease shall continue in effect whether or not Lessee shall have abandoned the Premises. In such event, City shall be entitled to enforce all of City's rights and remedies under this Lease, including the right to recover rent and other payments as they become due hereunder.

16.2.3 Pursue any other remedy now or hereafter available to City under the laws or judicial decisions of the State of California. City shall have all remedies provided by law and equity.

16.3 No Relief from Forfeiture After Default. Lessee waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure sections 1174 and 1179, and any other present or future law, in the event Lessee is evicted or City otherwise lawfully takes possession of the Premises by reason of any default or breach of this Lease by Lessee.

16.4 Disposition of Abandoned Personal Property. If the Lessee fails to remove any personal property belonging to Lessee from the Premises after forty-five (45) days of the expiration or termination of this Lease, such property shall at the option of City be deemed to have been transferred to City. City shall have the right to remove and to dispose of such property without liability to Lessee or to any person claiming under Lessee, and the City shall have no need to account for such property.

17. INTEREST ON PAST-DUE OBLIGATIONS.

Except as expressly provided herein, any amount due City when not paid when due shall bear interest at the lesser of ten percent (10%) per year or the maximum rate then allowable by law from the date due.

18. HOLDING OVER.

If Lessee remains in possession of the Premises or any part thereof after the expiration of the term or option term hereof, such occupancy shall be a tenancy from month to month with all the obligations of this Lease applicable to Lessee and at City's prevailing monthly rate of rent for the Premises at the time of expiration. The rent under a month-to-month tenancy is subject to increase on thirty (30) days prior written notice from City. Nothing contained in this Lease shall give to Lessee the right to occupy the Premises after the expiration of the term, or upon an earlier termination for breach.

19. CITY'S ACCESS.

19.1 Access for Inspection. City and City's agents shall have the right to enter the Premises at reasonable times, upon not less than twenty-four (24) hours prior notice to Lessee, for the purpose of inspecting same, showing same to prospective purchasers, lenders or Lessees, and making such alterations, repairs, improvements, or additions to the Premises as City may deem necessary. City may at any time place on or about the Premises any ordinary "For Sale" signs and City may at any time during the last one hundred twenty (120) days of the term hereof place on or about the Premises any ordinary "For Lease" signs, all without rebate of rent or liability to Lessee.

19.2 Security Measures. City shall have the right to require a reasonable security system, device, operation, or plan be installed and implemented to protect the Premises or the Improvements. Should City, in its sole discretion, require Lessee to install such a security system, Lessee agrees to bear the sole cost and expense of any security system, device, operation or plan and the installation and implementation thereof. Lessee shall obtain City's prior approval before installing, implementing or changing any City approved security system, device, operation or plan.

19.3 New Locks. Lessee may install new locks on all exterior doors. Lessee shall advise City of such action and shall provide City with keys to said locks. Lessee shall also deliver to City the old locks with keys. Upon termination, Lessee shall leave new locks that shall become the property of City.

20. INSURANCE.

Lessee's responsibility for the Premises begins immediately upon delivery and Lessee, at its sole cost and expense, and at no cost to City, shall purchase and maintain in full force and effect during the entire term of this Lease insurance coverage in amounts and in a form acceptable to City as set forth in Exhibit "B" Insurance Requirements, attached hereto and incorporated herein by reference. Said policies shall be maintained with respect to Lessee's employees, if any, and all vehicles operated on the Premises. The policies shall include the required endorsements, certificates of insurance and coverage verifications as described in Exhibit B. Lessee also agrees to secure renter's liability insurance.

Lessee shall deposit with the City Manager, on or before the effective date of this Lease, certificates of insurance necessary to satisfy City that the insurance provisions of this Lease have been complied with, and to keep such insurance in effect and the certificates therefore on deposit with City during the entire term of this Lease. Should Lessee not provide evidence of such required coverage at least three (3) days prior to the expiration of any existing insurance coverage, City may purchase such insurance, on behalf of and at the expense of Lessee to provide six months of coverage.

City shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of the City's Risk Manager (or comparable official), the insurance provisions in this Lease do not provide adequate protection for City and for members of the public using the Premises, the City Manager may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection as determined by the

Risk Manager. City's requirements shall be reasonable and shall be designed to assure protection from and against the kind and extent of risk that exists at the time a change in insurance is required.

The City Manager shall notify Lessee in writing of changes in the insurance requirements. If Lessee does not deposit copies of acceptable insurance policies with City incorporating such changes within sixty (60) days of receipt of such notice, or in the event Lessee fails to maintain in effect any required insurance coverage, Lessee shall be in default under this Lease without further notice to Lessee. Such failure shall constitute a material breach and shall be grounds for immediate termination of this Lease at the option of City.

The procuring of such required policy or policies of insurance shall not be construed to limit Lessee's liability hereunder nor to fulfill the indemnification provision and requirements of this Lease. Notwithstanding the policy or policies of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by or connected with this Lease or with use or occupancy of the Premises.

21. RESERVATION OF AVIGATIONAL EASEMENT.

City hereby reserves for the use and benefits of the public, a right of avigation over the Premises for the passage of aircraft landing at, taking off, or operating from the adjacent airport operated by the County of Santa Clara. Lessee releases the City from all liability for noise, vibration, and any other related nuisance.

22. EMINENT DOMAIN.

22.1 If all or any part of the Premises (or the building in which the Premises are located) is condemned by a public entity in the lawful exercise of its power of eminent domain, this Lease shall cease as to the part condemned. The date of such termination shall be the effective date of possession of the whole or part of the Premises by the condemning public entity.

22.2 If only a part is condemned and the condemnation of that part does not substantially impair the capacity of the remainder to be used for the purposes required by this Lease, Lessee shall continue to be bound by the terms, covenants, and conditions of this Lease. However, the then monthly rent shall be reduced in proportion to the diminution in value of the Premises. If the condemnation of a part of the Premises substantially impairs the capacity of the remainder to be used for the purposes required by this Lease, Lessee may:

- A. Terminate this Lease and thereby be absolved of obligations under this Lease which have not accrued as of the date of possession by the condemning public entity; or
- B. Continue to occupy the remaining Premises and thereby continue to be bound by the terms, covenants and conditions of this Lease. If Lessee elects to continue in possession of the remainder of the Premises, the monthly rent shall be reduced in proportion to the diminution in value of the Premises.

- C. Lessee shall provide City with written notice advising City of Lessee's choice within thirty (30) days of possession of the part condemned by the condemning public entity.

22.3 City shall be entitled to and shall receive all compensation related to the condemnation, except that Lessee shall be entitled to: (a) that portion of the compensation which represents the value for the remainder of the Lease term of any Lessee-constructed improvements taken by the condemning public entity, which amount shall not exceed the actual cost of such improvements reduced in proportion to the relationship of the remaining Lease term to the original Lease term, using a straight line approach; and (b) any amount specifically designated as a moving allowance or as compensation for Lessee's personal property. Lessee shall have no claim against City for the value of any unexpired term of this Lease.

23. POST-ACQUISITION TENANCY.

Lessee hereby acknowledges that Lessee was not an occupant of the Premises at the time the Premises were acquired by City. Lessee further understands and agrees that as a post-acquisition Lessee, Lessee is not eligible and furthermore waives all claims for relocation assistance and benefits under federal, state or local law.

24. DISPUTE RESOLUTION.

24.1 Unless otherwise mutually agreed to, any controversies between Lessee and City regarding the construction or application of this Lease, and claims arising out of this Lease or its breach shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.

24.2 The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Lease.

24.3 The costs of mediation shall be borne by the Parties equally.

24.4 Mediation under this section is a condition precedent to filing an action in any court. In the event of litigation arising out of any dispute related to this Lease, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit, regardless of the outcome of the litigation.

25. NON-LIABILITY OF OFFICIALS AND EMPLOYEES OF THE CITY.

No official or employee of City shall be personally liable for any default or liability under this agreement.

26. NON-DISCRIMINATION.

26.1 Non-discrimination in Lease Activities. Lessee agrees that in the performance of this Lease and in connection with all of the activities Lessee conducts on the Premises, it shall not

discriminate against any employee or person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. Lessee acknowledges that is familiar with the provisions set forth in Section 2.30.510 of the Palo Alto Municipal Code relating to nondiscrimination in employment and Section 9.73 of the Palo Alto Municipal Code relating to City policy against arbitrary discrimination.

26.2 Human Rights Policy. In connection with all activities that are conducted upon the Premises, Lessee agrees to accept and enforce the statements of policy set forth in Section 9.73.010 which provides: "It is the policy of the City of Palo Alto to affirm, support and protect the human rights of every person within its jurisdiction. These rights include, but are not limited to, equal economic, political, and educational opportunity; equal accommodations in all business establishments in the city; and equal service and protection by all public agencies of the city."

27. INDEPENDENT CONTRACTOR.

It is agreed that Lessee shall act and be an independent contractor and not an agent nor employee of City.

28. CONFLICT OF INTEREST.

Lessee shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this agreement. Lessee warrants and covenants that no official or employee of City nor any business entity in which any official or employee of City is interested: (1) has been employed or retained to solicit or aid in the procuring of this agreement; or (2) will be employed in the performance of this agreement without the divulgence of such fact to City. In the event that City determines that the employment of any such official, employee or business entity is not compatible with such official's or employee's duties as an official or employee of City, Lessee upon request of City shall immediately terminate such employment. Violation of this provision constitutes a serious breach of this Lease and City may terminate this Lease as a result of such violation.

29. MEMORANDUM OF LEASE.

Neither this Lease, nor any memorandum, affidavit, or other writing with respect thereto, shall be recorded by Lessee or by anyone acting through, under, or on behalf of Lessee. City shall have the right to record a memorandum of this Lease, and Lessee shall execute, acknowledge, and deliver to City for recording any memorandum prepared by City.

30. ESTOPPEL CERTIFICATE.

Lessee shall, from time to time, upon at least thirty (30) days prior written notice from City, execute, acknowledge and deliver to City a statement in writing: (i) certifying this Lease is unmodified and in full force and effect, or, if modified, stating the nature of the modification and certifying that the Lease, as modified, is in full force and effect, and the date to which the rental and other charges, if any, have been paid; and, (ii) acknowledging that there are not to Lessee's

knowledge, any defaults, or stating if any defaults are claimed, any statement may be relied upon by any prospective purchaser or encumbrancer of the Premises.

31. LIENS.

Lessee agrees at its sole cost and expense to keep the Sites free and clear of any and all claims, levies, liens, encumbrances or attachments.

32. VACATING.

Upon termination of the tenancy, Lessee shall completely vacate the Sites, including the removal of any and all of its property. Before departure, Lessee shall return keys and personal property listed on the inventory to City in good, clean and sanitary condition, reasonable wear and tear excepted. Lessee shall allow City to inspect the Premises to verify the condition of the Premises and its contents.

33. ABANDONMENT.

Lessee's absence from the Premises for three (3) consecutive days, without prior notice, during which time rent or other charges are delinquent, shall be deemed abandonment of the Premises. Such abandonment will be deemed cause for immediate termination without notice. City shall thereupon be authorized to enter and take possession and to remove and dispose of the property of Lessee or its guests without any liability whatsoever to City.

34. NOTICES.

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Palo Alto
Real Estate Manager
250 Hamilton Avenue
Palo Alto, CA 94301

And

Office of Human Services
Cubberley Community Center
4000 Middlefield Road #T2
Palo Alto, CA 94303

And to Lessee addressed as follows:

Palo Alto Community Child Care
3990 Ventura Court
Palo Alto, CA 94306
Attn: Lee Pfab
Telephone: (650) 493-2361
Email: lpfab@paccc.org

Notices may be served upon Lessee in person, by first class mail, or by certified mail whether or not said mailing is accepted by Lessee.

35. TIME.

Time shall be of the essence in this Lease.

36. AMENDMENTS.

It is mutually agreed that no oral Leases have been entered into and that no alteration or variation of the terms of this Lease shall be valid unless made in writing and signed by the Parties to this Lease.

37. SIGNING AUTHORITY.

If this Lease is not signed by all Lessees named herein, the person actually signing warrants that he/she has the authority to sign for the others.

38. CAPTIONS.

The captions of the various sections, paragraphs and subparagraphs of this Lease are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

39. SURRENDER OF LEASE NOT MERGER.

The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of City, terminate all or any existing subleases or subtenancies, or may, at the option of City, operate as an assignment of any and all such subleases or subtenancies.

40. LIMITATION OF THE LEASEHOLD.

This Lease and the rights and privileges granted Lessee in and to the Premises are subject to all covenants, conditions, restrictions, and physical or legal encumbrances, including those which are set out in the December 3, 1980 Purchase Agreement (Purchase Agreement) between City and the Palo Alto Unified School District (PAUSD). Purchase Agreement conditions include the provision that PAUSD may reacquire the Premises upon one year written notice. Nothing contained in this Lease or in any document related hereto shall be construed to imply the conveyance to Lessee of rights in the Premises which exceed those owned.

41. INTEGRATED DOCUMENT.

This Lease, including any exhibits attached hereto, embodies the entire agreement between City and Lessee. No other understanding, agreements, conversations or otherwise, with any officer, agent or employee of City prior to execution of this Lease shall affect or modify any of the terms or obligations contained in any documents comprising this Lease. Any such verbal agreement shall be considered as unofficial information and in no way binding upon City. All agreements with City are subject to approval of the City Council before City shall be bound thereby.

42. WAIVER.

Waiver by City of one or more conditions of performance or any breach of a condition under this Lease shall not be construed as a waiver of any other condition of performance or subsequent breaches. The subsequent acceptance by a Party of the performance of any obligation or duty by another Party shall not be deemed to be a waiver of any term or condition of this Lease. The exercise of any remedy, right, option or privilege hereunder by City shall not preclude City from exercising the same or any and all other remedies, rights, options and privileges hereunder and City's failure to exercise any remedy, right, option or privilege at law or equity, or otherwise which City may have, shall not be construed as a waiver.

43. INTERPRETATIONS.

In construing or interpreting this Lease, the word "or" shall not be construed as exclusive and the word "including" shall not be limiting. The Parties agree that this Lease shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against any other Party.

43. SEVERABILITY CLAUSE.

If any provision of this Lease is held to be illegal, invalid or unenforceable in full or in part, for any reason, then such provision shall be modified to the minimum extent necessary to make the provision legal, valid and enforceable, and the other provisions of this Lease shall not be affected thereby.

45. GOVERNING LAW.

This Lease shall be governed and construed in accordance with the statutes and laws of the State of California.

46. VENUE.

In the event that suit shall be brought by any Party to this Lease, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara.

47. COMPLIANCE WITH LAWS.

The Parties hereto shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments in the performance of their rights, duties and obligations under this Lease.

48. BROKERS.

Each Party represents that is has not had dealings with any real estate broker, finder, or other person, with respect to this Lease in any manner. Each Party shall hold harmless the other Party from all damages resulting from any claims that may be asserted against the other Party by any broker, finder, or other person with whom the indemnifying Party has or purportedly has dealt.

49. PREVAILING WAGE.

As required by law, all contractors and subcontractors performing work on the Premises are required to pay general prevailing wages as defined in Subchapter 3, Title 8 of the California Code of Regulations and section 160000 et seq. and Labor Code Section 1773.1. Before entering into a construction contract to perform work on the Premises and at all times while performing work on the Premises, all contractors and subcontractors must be registered with the California Department of Industrial Relations to perform public work under Labor Code Section 1725.5. Pursuant to Labor Code Section 1773, the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of worker needed to perform the work for this Premises may be obtained at the Purchasing Office of the City of Palo Alto. All contractors and subcontractors for the Project must comply with the provisions of Labor Code Sections 1775, 1776, 1777.5, 1810, and 1813.

50. ATTACHMENTS TO LEASE.

The following exhibits are attached to and made a part of this Agreement:

- “A” – Description of Premises and Rents
- “B” – Standard Insurance Requirements
- “C” – Guidelines for Site Usage
- “D” – Current City Approved Subtenants
- “E” – Annual Work Plan FY2022

IN WITNESS WHEREOF, the parties have executed this Lease the day and year first above written.

CITY:

TENANT:

CITY OF PALO ALTO (LESSOR)

PALO ALTO COMMUNITY CHILD
CARE, a California non-profit corporation

By: _____

City Manager or Designee

By: _____

Its: _____

APPROVED AS TO FORM:

By: _____

City Attorney or Designee

RECOMMENDED FOR APPROVAL:

By: _____

Manager, Operating Department

EXHIBIT A

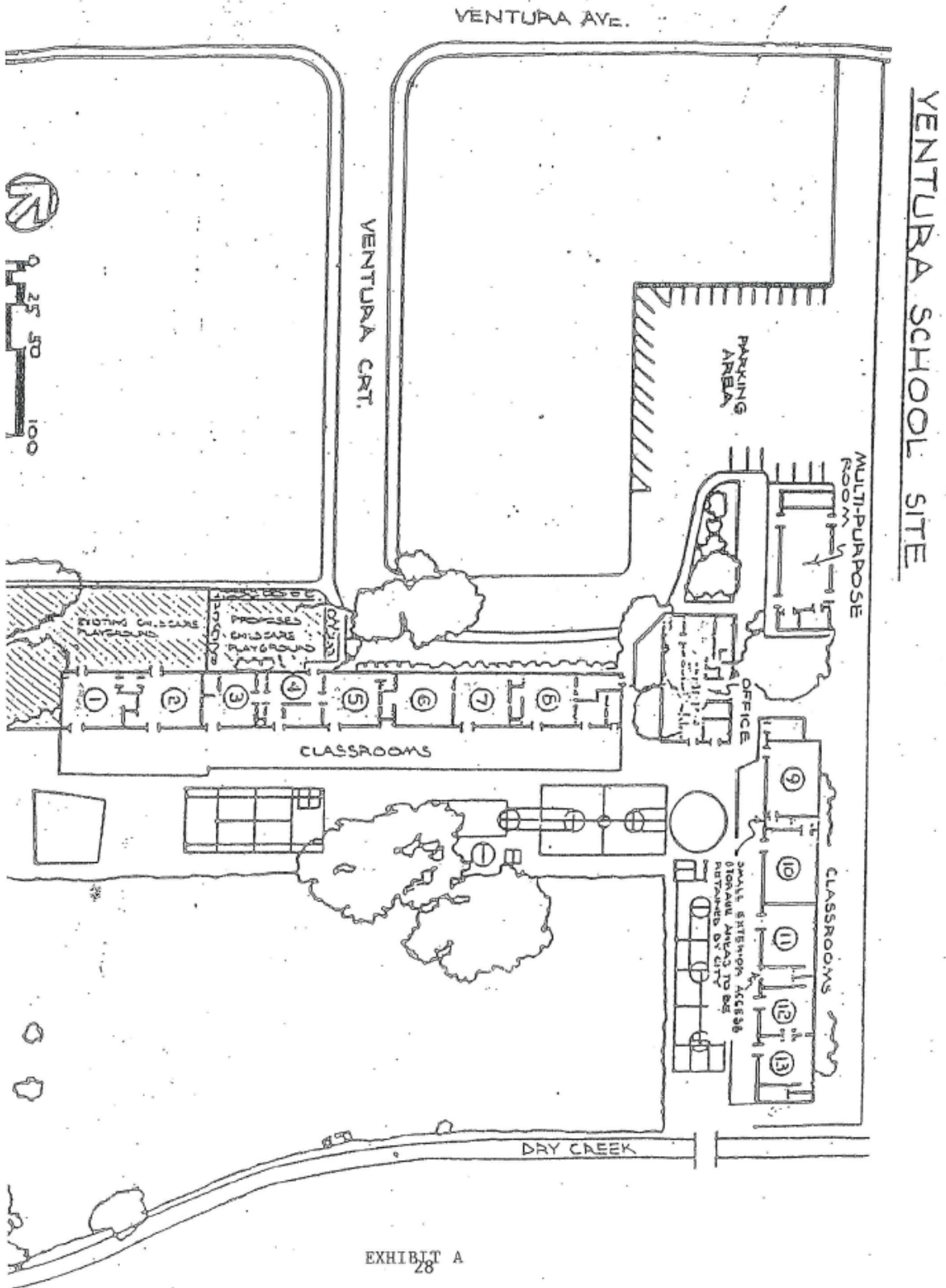


EXHIBIT B

STANDARD INSURANCE REQUIREMENTS

Insurance Requirements for Lessee:

Lessee shall purchase and maintain the insurance policies set forth below on all of its operations under this Lease at its sole cost and expense. Such policies shall be maintained for the full term of this Lease and the related warranty period (if applicable). For purposes of the insurance policies required under this Lease, the term "City" shall include the duly elected or appointed council members, commissioners, officers, agents, employees and volunteers of the City of Palo Alto, California, individually or collectively.

Coverages (RL 28.1A) S

Minimum Scope of Insurance

Coverage shall be at least as broad as:

- 1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- 2) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance (for Lessees with employees).
- 3) Property insurance against all risks of loss to any tenant improvements or betterments

The policy or policies of insurance maintained by Lessee shall provide the following limits and coverages:

<u>POLICY</u>	<u>MINIMUM LIMITS OF LIABILITY</u>
(1) Commercial General Liability	\$2,000,000 per each occurrence for bodily injury, personal injury and property damage
(2) Abuse and Molestation Liability	\$1,000,000 per person, per occurrence
(3) Workers' Compensation/ Employers Liability	Statutory \$1,000,000 per accident for bodily injury or disease
(4) Lessee's Property Insurance	

Lessee shall procure and maintain property insurance coverage for:

- a) all office furniture, trade fixture, office equipment, merchandise, and all other items of Lessee's property in, on, at, or about the premises and the building, include property installed by, for, or at the expense of Lessee;
- b) all other improvements, betterments, alterations, and additions to the premises.

Lessee's property insurance must fulfill the following requirements:

- a) it must be written on the broadest available "all risk" policy form or an equivalent form acceptable City of Palo Alto, including earthquake sprinkler leakage.

- b) for no less than ninety percent (90%) of the full replacement cost (new without deduction for depreciation) of the covered items and property; and
- c) the amounts of coverage must meet any coinsurance requirements of the policy or policies.

(RL 28.2)

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Lessee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Insurance shall be in full force and effect commencing on the first day of the term of this Lease.

Each insurance policy required by this Lease shall:

1. Be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
2. Include a waiver of all rights of subrogation against the City and the members of the City Council and elective or appointive officers or employees, and each party shall indemnify the other against any loss or expense including reasonable attorney fees, resulting from the failure to obtain such waiver.
3. Name the City of Palo Alto as a loss payee on the property policy.
4. Provide that the City, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Lessee; products and completed operations of the Lessee; premises owned, occupied or used by the Lessee; or automobiles owned, Leased, hired or borrowed by the Lessee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents or volunteers.
5. Provide that for any claims related to this Lease, the Lessee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.
6. Provide that any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees, agents or volunteers.

7. Provide that Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
8. Lessee agrees to promptly pay to City as Additional Rent, upon demand, the amount of any increase in the rate of insurance on the Premises or on any other part of Building that results by reason of Lessee's act(s) or Lessee's permitting certain activities to take place.

Acceptability of Insurers

All insurance policies shall be issued by California-admitted carriers having current A.M. Best's ratings of no lower than A-VII.

EXHIBIT C

GUIDELINES FOR SITE USAGE

1. General Use

A. TENANT shall provide the following uses and services from and on the Ventura site:

1. TENANT shall provide a variety of child care services including but not limited to basic child care and a community resource room used jointly by TENANT, and the Community.
2. TENANT shall provide programs necessary for basic child care services.
3. A Cubicle in classroom 12 shall be used by the City's Police Department for use as a police substation at no cost to CITY. TENANT will not be liable for personal injuries occurring in connection with CITY's Police Department use except in the case of injuries resulting from TENANT'S negligence.
4. TENANT shall occupy the school administration building and will use the space for the administration of PACCC center's city-wide and site management activities.
5. The multipurpose room and a conference room located in the office building shall be available for short term rental use by community groups for special meetings as available. TENANT may charge and collect rent and/or user fees for this use. Such use shall be subject to rates and rules set forth below under section 4 Rates and Rental Conditions.
6. TENANT shall coordinate the use and/or sublease of classrooms by other "non-profit" agencies and child care centers. Sublease shall be in conformance with section 15 (Assignment and Subletting). Short term rental or use shall be subject to the rental rates and rules set forth below under section 4 Rates and Rental Conditions.
7. Open space is divided into two types. Fenced off space attached to child care classes shall be used for the TENANT'S programs. Said space is shown cross-hatched and labeled on Exhibit A. All other open space is subject to the same use conditions that govern the use of City parks in this class or specified Park Use Regulation of the Municipal Code.

2. Additional Site Management – Ventura School Site

TENANT shall be responsible for general management of the Ventura School Site, including the following:

1. TENANT shall ensure that affiliate organizations occupy space in compliance with prescribed child care programming.
2. TENANT shall maintain in a master events calendar and a use calendar of available building space for public use.

3. TENANT shall ensure that use of the multipurpose room and other available classroom space will comply with City Facility Use conditions (see Section 4 of the Exhibit).
4. TENANT shall open locked rooms when scheduled for non-City sponsored activities and secure same seven days per week.
5. TENANT shall ensure that all subtenants maintain current certificates of insurance, in accordance with section 20 (insurance) and that all hourly users comply with insurance requirements in accordance with Exhibit B.
6. TENANT will manage the Community Garden at the Ventura site and act as garden liaison for this community garden location (see 6.1 Community Garden Volunteer Liaison role). As garden liaison, TENANT may obtain a plot and have all fee(s) waived per the current municipal fee schedule. All fee(s) will be collected for the garden plots by the City of Palo Alto, Open Space, Parks and Golf Division.

6.1 Community Garden Volunteer Liaison Role

1. Work with the Community Garden Coordinator to keep the garden plot list current and notify the Community Garden Coordinator of any changes within the garden.
2. Assign plots from the current waiting list. This includes showing the available plots and signing the gardener up with the appropriate forms supplied by the Community Garden Coordinator. The new gardener will forward all payments to the City of Palo Alto, Open Space and Golf Division c/o Community Garden Coordinator.
3. As soon as the Community Garden Coordinator is notified of vacant plots she will notify the volunteer garden liaison to show the plot(s) to the waiting list candidates.
4. Be the source of contact between the gardeners and the Community Garden Coordinator.
5. Assist in resolving disputes between gardeners. Disputes that are not resolved in this manner may be referred to the Community Garden Coordinator for resolution.
6. Encourage gardeners to follow City rules regarding water use.
7. Maintain the above ground water system. Requests for parts will be submitted to the Community Garden Coordinator.
8. Make routine patrols of the Community Gardens to monitor gardeners' activities, watch for improper water use, and for security purposes.
9. Provide access to gardens on a reasonable basis and following City policy, for vehicles to be brought in (if applicable).
10. Coordinate workdays as part of the gardeners agreement and Rules and Regulations.
11. Consult with the Garden Coordinator for any projects that will take place at the garden site.

3. Security and Safety

1. TENANT shall maintain general security of the Premises.
2. Any violation of law shall be reported by TENANT as soon as possible to the proper authorities.
3. TENANT shall ensure all locks and safety systems are operating properly and shall provide City a master key to all doors on the premises.
4. TENANT shall secure the Premises on a daily basis including those special events and activities not sponsored by the City during weekday evenings and on weekends.

4. Rates and Rental Conditions – Ventura School Site

1. Rental Fee Schedule – Per Hour

Multi-purpose Room	\$ TBD
Classrooms	\$ TBD
Damage and Cleaning Deposit	\$ TBD

2. Rental Conditions

RENTAL CONDITIONS

Reservations: Reservation Applications are accepted up to a year in advance on a first come, first served basis, with preference given to on-going, City and City-sponsored programs.

Applications for the Cubberley Community Center are accepted beginning in May of each year for the booking period of September of the current year through August of the following year.

Applications submitted less than thirty (30) days prior to an event date are subject to the approval of the Facility Manager, availability of space, availability of staff, current insurance, payment of total fees, and special conditions for facilities such as gymnasiums.

Application Submission: Before a reservation request can be accepted the rental application must be filled out and signed by an authorized person 21 years of age or older. Name must be consistent on all required documents. Residency verification will be required to qualify for any applicable Palo Alto resident discounts. No reservation is confirmed until the application has been approved and the reservation payment is paid in full. Approval is dependent upon intended use, availability, applicant's agreement to abide by the terms and conditions listed herein and any other conditions deemed necessary by the Facility Manager (as attached to the approved contract).

Insurance: Your rental may require a certificate of general liability insurance that names the City of Palo Alto as an additional insured in the minimum amount of one million dollars due thirty (30) days before your event. Insurance must be provided by a carrier rated A-VII or higher by Best's Insurance Rating Service. Failure to provide or purchase insurance will result in the cancellation of the booking. Staff will let you know if insurance is required upon application approval.

Fees & Charges: See fee schedule for rental rates. A down payment (50% of all incurred charges) is due upon application approval. This is refundable, with written permit holder request, within 10 calendar days from application approval. Refunding the down payment will cancel your permit. After the 10 days has passed, the amount is no longer refundable. The remaining balance is due thirty (30) days before the event, this is also non-refundable. Failure to pay rental charges when they are due may result in cancellation of your reservation and/or charges to the credit card on file. Picnic areas, field house, camp sites, Interpretive Center meeting rooms, and Banners all require full payment upon application approval.

A) Non-profit Discount: Non-profits providing a majority (51% or more) of their service to Palo Alto residents are eligible to receive a non-profit discount. Palo Alto-serving organizations must submit an IRS letter of nonprofit 501(c) (3) status with their application. No discount will be given if fees are charged by the renting organization or donations requested for the event.

B) Facility Staff: Facility staff is required if the activity is held outside the posted hours of the facility or if the nature of the event makes their presence necessary. The facility staff is on duty to assist the client and for facility safety. The Facility Manager will determine the

number of staff required. In some cases, and at the permit holder's expense, the services of a professional security firm may be required based on the type of event and the number of participants. Permit holder is responsible for set-up, clean up, and take down of rooms. City facility staff will be on the premises at all times during rental period. *Staff will not be on site for rentals at the Alma Room or Peers Park Field House.*

C) Cleaning and Damage Deposits/Overtime: A refundable cleaning/damage deposit of up to \$2,000 may be assessed. Cleaning and/or damage expenses, extra staff time, and/or extra room rental time may be deducted from the cleaning/damage deposit and/or charged to the credit card on file. Permit holder will be signed out of the facility by the facility staff on duty, when applicable. Any charges incurred to return the venue to its original condition, reasonable wear and tear excepted, will be deducted from the cleaning/damage deposit and/or charged to the credit card on file. This deposit may be forfeited for violations of ANY rental conditions named herein.

If cleaning/damage deposit was charged, permit holder will be charged for any damages in excess of the deposit. If no deposit was required, permit holder will be charged for any damages, cleaning expenses, and overtime.

D) Rental Time: Must include time for set up, decoration, take down and facility clean up. Rental times differ among facilities so please check when events must conclude. Any requests to modify dates, times, rooms, equipment, etc., to an existing contract must be made in writing fourteen (14) days prior to the event. Any fees incurred due to the amendment will be payable immediately. Deliveries and pickups cannot be outside the rental period, unless prior arrangements are made with the Facility Manager.

In respect for our neighbors, for events that have live or recorded music, the music must conclude by 11:00 p.m. on Fridays and Saturdays and by 9:00 p.m. Sunday through Thursday. Any exceptions require prior arrangements and approval of the Facility Manager.

E) Cancellations: Must be made in writing and received thirty (30) days before the event. One half of rental fees and charges is non-refundable unless the City cancels the permit, wherein a full refund will be made. No refund is given if cancellation is made less than thirty (30) days before the event. The City reserves the right to cancel an applicant's permit, if the City deems the facility not usable or unsafe due to natural causes, repair, renovation, or is deemed an unsuitable facility for the event by the City. Changes to previously approved permits may result in cancellation of the permit.

SPECIAL CONDITIONS

A) Liquor Conditions: Sale or dispensing of distilled spirits at any rented City facility is strictly prohibited. The sale of beer and wine requires the Facility Manager's prior approval, liquor liability insurance, and a state license, which is the responsibility of the permit holder to obtain. No alcohol may be brought into the facility except that which is served by the

permit holder. Based on the type of the event, the number of participants, the presence of minors at the event, and other criteria, the Facility Manager may require additional security deposits, the use of City-approved security officers, and other safeguards at events that sell or dispense alcoholic beverages (beer, wine and champagne). No alcohol is permitted at Rinconada Pool.

If food/refreshments are to be sold, a health permit is required and is the responsibility of the permit holder to obtain. Proof of the licenses must be on file with the appropriate Facility Manager fourteen (14) days before the event.

B) Sound Restrictions: Sound, as heard from outside the rented facility, cannot be greater than 15 dB above the local ambient noise level at a distance of 25 feet or more from the facility (PAMC 9.10.050). Sounds from an event must not interfere with any other scheduled events. Amplified sound is not permitted in the Art Center Sculpture Garden or Courtyard at any time. In order to protect the habitat of nesting swallows, amplified music is not permitted at the Baylands Interpretive Center mid-March through mid-September.

C) Equipment: Check with facility staff for availability and fees.

Permit Holder's Responsibilities: Returning the facility to its clean and tidy condition existing at the beginning of the rental is the renter's responsibility. Unless otherwise specified City staff will not provide janitorial service for the event. Spilled food or beverages must be cleaned up immediately. All equipment, decorations, food, beverages and trash must be removed and properly disposed of. The City is not responsible for any materials or equipment left by the renter after the event. No rice, confetti, birdseed, or other substances may be thrown in or around the facility. Decorations must be flame retardant and fastened in an approved manner. Lighted candles, incense and open flames may be permitted under special conditions. Check with the facility staff for particular facility rules. All City facilities prohibit smoking inside or outside (within 20 feet of a public entrance). Posted parking rules must be observed and authorized parking stalls used.

The Alma Community Room: Only incidental snack foods, i.e. cookies, soft drinks, coffee, can be consumed in the room and food preparation is prohibited onsite. No alcoholic beverages, smoking, amplified music or sound is allowed. Parking at Alma Plaza is limited to (1) hour parking and is strictly enforced.

The Community Room is available for use weekdays from 8:00 a.m. to 1:00 p.m. and after 6:30 p.m. The room is also available weekdays from 1:00 p.m. to 4:00 p.m. for groups not more than 20 people. For weekend use, the Community Room is available from 8:00 a.m. to 11:00 a.m. and after 6:00 p.m.

All capacity limits must be adhered to and are set by the Fire Marshal.

REVISED 06-03-2021

EXHIBIT D

Current City Approved Subtenants

Heffalump Coop Preschool

Country Day School

EXHIBIT E

WORKPLAN DOCUMENT FY2024

BACKGROUND

In 1971 a Child Care Task Force, appointed by the Palo Alto City Council, recommended that the City take an active and supportive role in the provision of childcare and related services, and that a non-profit corporation be established to implement and coordinate the Task Force's recommendations.

Palo Alto Community Child Care (PACCC) was created and incorporated as a 501(c)(3) organization in March 1974 to carry out the various components of the Task Force Plan.

Since PACCC's inception, the City of Palo Alto has supported the operations of PACCC. In the early years this was through general support of its administration and currently through the support of subsidies for low-income families and program administration and childcare facility rent subsidies.

PACCC is one of four ongoing agency members (serving without term limits) of the Palo Alto Advisory Committee on Early Care & Education (PAACECE), the City's Childcare Advisory Board, which serves to advocate for high quality, accessible early childhood educational environments on behalf of families and children in Palo Alto and works to create and implement an annual workplan. *(Supports Program C1.15.2 Utilize the Early Care and Education Committee to develop and update the Child Care Master Plan, and to connect providers and professionals working with families with young children, explore challenges and opportunities to programs and services for young children, and support early education programs in the community in their efforts to enhance quality.)*

The depth of services provided by PACCC to the City and the community is listed below. See "workplan" below for specific service details, goals and measurable outcomes for these service areas.

Child Care Services

PACCC provides childcare for families living and working in Palo Alto in 18 centers. Ages served are infants, toddlers and preschoolers as well as after-school, kindergarten through 5th grade. PACCC serves nearly 850 children each year. *(Supports Policy C-1.15 Continue strong support for and coordinate delivery of childcare services, addressing the needs of infants, toddlers and pre-kindergarten, as well as school-aged children. Program C1.15.1 Support and promote the provision of comprehensive childcare services in Palo Alto by public and private providers, including employers)*

Currently, PACCC's infant-toddler care is provided at 3 sites within the City traditionally serving approximately 65 children. Very few private programs are able to financially offer infant

care as the cost of doing so is prohibitive. With high staffing costs, rent and utility costs, coupled with required ratios of staff to children, infant care fees do not cover costs of operating a quality program. PACCC is able to provide these services due in large part to the support of all age group fees and the consolidation of administrative services for so many programs.

PACCC offers preschool programs at four of our centers and traditionally serves over 100 families. These centers have waitlists, as preschools generally do not provide enough fees to cover staffing ratios required. *(Supports Program C1.12.1 In cooperation with public and private businesses, nonprofit organizations and PAUSD, develop a service program that will coordinate the efforts of agencies providing services to families and youth in Palo Alto.)*

PACCC is the largest provider of after-school programming in the City. Operating at 11 of the 12 elementary school sites, PACCC offers flexible schedules to families. In addition, PACCC cares for these children on weekdays when school is not in session, providing fun activities and exciting field trips. The City leases classroom space for PACCC and provides administrative oversight for the school age childcare programs located at each of PAUSD's elementary schools.

Each summer PACCC operates full-time camp-style programs for school-age children at 4 or more sites traditionally serving up to 160 children per week. In addition, PACCC cares for children on-site after PAUSD summer school programs. PACCC families benefit from having this on-site care throughout the summer so parents can continue to work while their children are out of school. Additionally, the families have a seamless transition from school year care to summer care with the continuity of the provider.

Contracts between the City and PACCC

PACCC manages the City of Palo Alto's childcare subsidies through a contract to support low-income families with necessary childcare services.

PACCC is under contract with the City to provide quality after-school childcare services at 11 of the 12 elementary school sites traditionally serving approximately 600 children.

COMMUNITY BENEFITS

Quality Assessment

All PACCC Programs will utilize a rigorous process of quality assessment and improvement planning that combines the use of Desired Results, Environmental Rating Scale (ERS) observations and parent surveys. PACCC infant, toddler and preschool programs will implement the Quality Rating and Improvement System (QRIS) in collaboration with FIRST 5 Santa Clara County. *Supports Program C1.15.3 Collaborate with Palo Alto Community Child Care (PACCC) to identify, develop and promote high quality early learning environments to serve all families in our community).*

Funding for low-income families

PACCC leverages City of Palo Alto contract funds with other funding sources, such as the State of California and its own fundraising, to offer subsidized childcare to the community's low-income families.

Provider Connection: Professional Development Opportunities for Early Childhood Education and Care Providers and Educators

As part of our mission and values, we support the professional growth of providers and educators in our local community. PACCC has launched an online Provider Connection platform for Early Childhood Education and Care Providers and Educators in all areas of quality programming through leadership management, Quality Matters, developmental assets, PAUSD Promise, P-3 Alignment, Desired Results (DRDP), Environmental Rating Scales (ERS), educational policies, and taking initiative to go beyond licensing standards.

PACCC offers scheduled workshops, professional development resources, local partner resources and reflective discussion groups throughout the year. All resources incorporate researched-based education and systematic tools for program curriculum, events and activities intended to advance and maximize enriching experiences for children and families. We also offer wellness resources to encourage self-care and well-being for professionals who care for children.

https://paccc.org/teacher_resources
https://paccc.org/teacher_resources/workshops

Provider Connection also provides providers meeting room space at the Ventura Community Center.

Volunteer Opportunities

PACCC offers community members many opportunities to volunteer in the childcare centers and the administrative offices. Volunteers range from local high school students, college students, disabled persons and seniors living in the community. Youth are able to meet their community service graduation requirement through their volunteer hours at PACCC programs.

WORK PLAN GOALS

Quality Assessment

All PACCC Programs will share all Quality Rating and Improvement System (QRIS) results with the City annually.

The Provider Connection

PACCC will is to re-open Provider Connect as online platform:

- Create an educator online community space for supporting educators, maintaining required trainings and career advancement education each quarter.

- Continuing to offer a minimum of six CPR classes to local providers. Health and Safety training is offered at least once.
- Provide communication to providers about upcoming resources and support services (ongoing)

Volunteer Opportunities

PACCC will report the number of volunteer hours in PACCC programs annually to the City. With restrictions it is difficult to determine the number of volunteer hours. PACCC is working with PAUSD Early Education Teachers to develop a student volunteer plan to give high school students the opportunity to put classroom education into practice.

Ventura Community Garden

PACCC will host two garden work days and update the waitlist monthly.