

**SUBLEASE AGREEMENT FOR EXTENDED CHILD CARE SERVICES
AT PALO ALTO UNIFIED SCHOOL DISTRICT ELEMENTARY SCHOOL SITES
BETWEEN
CITY OF PALO ALTO
AND
KIDS CHOICE**

This Sublease agreement (herein "Sublease") is made and entered into on _____, by and between the City of Palo Alto, a California chartered municipal corporation (herein "City") and Kids Choice (herein "Sublessee"). City and Sublessee may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Sublease." The City Manager serves as Contract Administrator for this Sublease on behalf of the City Council.

RECITALS

- A. These recitals are a substantive portion of this Sublease.
- B. Effective July 1, 2023, City and the Palo Alto Unified School District ("District") entered into a Lease Agreement for Extended Day Care Spaces ("Master Lease"). The Master Lease provides in part, that the District furnish space at various elementary school sites to be used for the purpose of providing child care services. The space provided shall meet the State standards for licensing and have all the utility connections in place except telephone.
- C. Space has been provided by the District at various Palo Alto Elementary School Sites ("Sites"). City desires to Sublease the space to Sublessee for child care services.
- D. Sublessee desires to Sublease said space for the purpose of providing child care services.

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

SUBLEASE PROVISIONS

1. PREMISES.

City hereby subleases to Sublessee, certain real property located in the City of Palo Alto, County of Santa Clara, State of California, at the Sites more particularly described in Exhibit A attached hereto and incorporated herein by reference (herein the "Premises"). Unless specifically provided, Sublessee accepts the Premises "as-is" on the date of execution of this Sublease.

Sublessee acknowledges that the Premises meets the State requirements for State Licensing or as an Exempt Provider according to the general licensing requirements of Title 22 of the California Codes of Regulations as promulgated by the Department of Social Services. Sublessee shall notify City's Child Care Coordinator immediately if a site no longer qualifies for State Licensing as a child care facility.

2. **TERM.**

2.1 Original Term. The term of this Sublease shall commence on July 1, 2023 and end on June 30, 2024. Sublessee shall, at the expiration of the term of this sublease, or upon its earlier termination, surrender the Premises in as good condition as it is now at the date of this sublease. 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 Sublease upon sixty (60) days written notice.

2.3 Renewed Terms. This Sublease may be renewed for additional one (1) year terms ("Renewed Terms") upon the mutual written agreement of the Parties but in no event shall this Sublease's Term and Renewed Terms, together, exceed a total of five (5) years. If either party wishes to renew this Sublease, it shall notify the other party in writing at least ninety (90) days before the expiration of the Term."

3. **RENT.**

3.1 Base Rent. The rent to be paid by Sublessee shall be in the amount identified on Exhibit A, per site, per month without deduction or offset. Rent shall be payable on the first day of each and every month commencing on July 1, 2023, 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 Sublease, 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. Sublessee acknowledges late payment of rent will cause City to incur costs not contemplated by this Sublease, 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 Sublessee postmarked within ten (10) days after the date such rent is due, Sublessee 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 Sublessee. Acceptance of any late charge shall not constitute a waiver of Sublessee'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. Sublessee's obligation to pay rent shall commence upon the commencement of this Sublease. 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 Sublessee. Sublessee specifically agrees that acceptance of any late or incorrect rentals

submitted by Sublessee 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 Sublease. Acceptance of rent shall not constitute approval of any unauthorized sublease or use, nor constitute a waiver of any non-monetary breach. Payments shall be effective upon receipt. City may apply any payment received from Sublessee at any time against any obligation due and owing by Sublessee under this Sublease, regardless of any statement appearing on or referred to in any remittance from Sublessee 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. Sublessee'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. LIMITATION OF THE SUBLEASEHOLD.

Pursuant to the Master Lease, District leased to City the Sites in accordance with the terms of the Master Lease. Sublessee acknowledges that it has received a copy of the Master Lease. Capitalized terms used in this Sublease and not otherwise defined shall have the meaning given them in the Master Lease. This Sublease and the rights and privileges granted Sublessee in and to the Premises are subject to all covenants, conditions, restrictions, and physical or legal encumbrances, including but not limited to those listed out in Exhibit A. Nothing contained in this Sublease or in any document related hereto shall be construed to imply the conveyance to Sublessee of rights in the Premises which exceed those owned by City. Except as otherwise specifically provided herein, where this Sublease requires Sublessee to obtain City's consent or approval, Sublessee understands that City may be required to first obtain the consent or approval of District. If District should refuse such consent or approval, through no fault of City, City shall be released of any obligation to grant its consent or approval, whether or not such refusal, in Sublessee's opinion, is arbitrary or unreasonable. Sublessee acknowledges that City is not in a position nor obligated to render any of the services or to perform any of the obligations required of District under the Master Lease.

5. USE OF PREMISES.

5.1 Required and Permitted Uses. Throughout the term of this Sublease, Sublessee shall provide child care related uses, services and activities as set forth in Exhibit C which is attached and incorporated by reference. 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.

5.2. Use By City. Upon written approval by Sublessee, which approval shall not be unreasonably withheld, the City may use any of the Premises, at no cost, during the summer months that they are not used as set forth in Exhibit A.

5.3 Prohibited Uses. Sublessee shall not use Premises for any purpose not expressly permitted hereunder. Sublessee 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. Sublessee 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, Sublessee 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. Sublessee 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. Sublessee, 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 Sublessee.

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 Sublessee, and hereby disclaims any personal knowledge with respect thereto, it being expressly understood by the parties that Sublessee has personally inspected the Premises, knows its condition, finds it fit for Sublessee'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 Resublease 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. Sublessee 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 Sublessee, its agents, employees, contractors or invitees.

6.3 Termination of Sublease. City shall have the right to terminate the Sublease in City's sole and absolute discretion in the event that: (i) any anticipated use of the Premises by Sublessee 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) Sublessee 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 Sublessee's action or use of the Premises; or (iii) Sublessee 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 Reserved.

6.5 Hazardous Materials Indemnity. Sublessee 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 Sublease Term, in whole or in part, directly or indirectly, by the presence or discharge in, on, under, or about the Premises by Sublessee, Sublessee's

agents, employees, licensees, or invitees or at Sublessee's direction, of Hazardous Material, or by Sublessee'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 Sublessee or its employees, agents, customers, sub-sublessees, assignees, contractors, or subcontractors of Sublessee (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Sublessee. Sublessee'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 Sublease Term.

6.6 City's Right to Perform Tests. At any time prior to the expiration of the Sublease 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.

Sublessee acknowledges that City is not in a position nor obligated to render any of the services or to perform any of the obligations required of District under Section 5.1.6 of the Master Lease with respect to the furnishing of any services or utilities to the Premises. Sublessee shall pay the cost for utilities and provide and pay for any telephone equipment or services at the Premises. However, as separate meters are not provided for these services and it would be uneconomical to separately meter these services, Sublessee agrees to pay to City an estimate of Sublessee's consumption for these utilities. The monthly utility amount is set forth in Exhibit A hereto and shall be remitted by Sublessee to City at the same time as the Rent payments are due under Section 3.

If City is required to construct new or additional utility installations, including, without limitation, wiring, plumbing, conduits, and mains, resulting from Sublessee's special requirements, Sublessee shall on demand pay to City the total cost of such items or pay and contract for such installations directly.

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 Sublessee 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 Sublease, 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. Sublessee shall pay Sublessee'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 Sublessee receives a copy of the tax bill and notice of City's determination hereunder. Sublessee'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 Sublease term at the commencement or expiration of the Sublease.

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

8.4 Personal Property Taxes. Sublessee 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. Sublessee recognizes and understands in accepting this Sublease 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 Sublessee.

9. MAINTENANCE.

9.1 City and Sublessee Responsibilities. Sublessee acknowledges that City is not in a position nor obligated to perform any of the obligations required of District under Sections 5.3.2 of the Master Lease with respect to the maintenance, repair, or restoration of the Premises. Sublessee shall not be granted relief from rent or be given other consideration if and when District performs maintenance and repair obligations as required therein. Sublessee at Sublessee's expense, shall perform all remaining maintenance and repairs that are not the responsibility of District, including but not limited to: plumbing, painting, light bulb and ballast replacement, window glass replacement, floor treatment, drapery and carpet cleaning, door and window hardware replacement, space heater or any other Sublessee installed heating/air conditioning system, interior pest control and any special security devices. Sublessee shall provide janitorial service to the Premises and shall clean the windows inside and outside as

needed. Sublessee shall 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 Sublease. In addition, Sublessee shall maintain, at Sublessee'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 Sublease. Sublessee further agrees to provide approved containers for trash, garbage and recycling and to keep the Premises free and clear of rubbish, litter and recyclable materials. City shall have the right to enter upon and inspect the Premises at any time for cleanliness and safety. Notwithstanding the above provisions, Sublessee shall be responsible for damage or repair to the Premises or any of its support systems resulting from Sublessee's use of the Premises and not occasioned by normal wear and tear, including plumbing and glass breakage.

Sublessee shall designate in writing to City an on-site representative who shall be responsible for the day-to-day operation and level of maintenance, cleanliness and general order.

9.2 Waiver of Civil Code. Sublessee 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 Sublessee the right to make repairs at City's expense or to terminate this Sublease because of City's failure to keep Premises in good order, condition and repair. Sublessee further agrees that if and when any repairs, alterations, additions or betterments shall be made by Sublessee as required by this paragraph, Sublessee 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 Sublessee fails to make any repairs or perform any maintenance work for which Sublessee 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 Sublessee's expense; within ten (10) days of receipt of a bill, Sublessee 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 Sublessee to make repairs or perform maintenance as provided in this section.

9.3 Reserved.

10. CONSTRUCTION BY SUBLESSEE.

10.1 Construction Standards. All design and construction performed by or on behalf of Sublessee 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, Sublessee 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 Sublease.

10.2 Cost of Improvements. Sublessee shall pay all costs for construction done or caused to be done by Sublessee on the Premises as permitted or required by this Sublease. Sublessee shall keep the Premises free and clear of all claims and liens resulting from construction done by or for Sublessee. Promptly after completion of construction, Sublessee 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 Sublessee 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 sublease and upon City's election, shall remain upon the Premises upon termination of this Sublease. Title to all equipment, furniture, furnishings, and trade fixtures placed by Sublessee upon the Premises shall remain in Sublessee, and replacements, substitutions and modifications thereof may be made by Sublessee throughout the term of this Sublease. Sublessee may remove such fixtures and furnishings upon termination of this Sublease if Sublessee is not then in default under this Sublease, provided that Sublessee 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 Sublease.

10.4 Indemnity for Claims Arising Out of Construction. Sublessee shall defend and indemnify City against all claims, liabilities, and losses of any type arising out of work performed on the Premises by Sublessee, 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, Sublessee 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 Sublessee's full and faithful performance of all of the terms, covenants, and conditions of this Sublease:

- A. Completion Bond;
- B. Performance, labor and material bonds, supplied by Sublessee's contractor or contractors, provided the bonds are issued jointly to Sublessee 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 Sublessee of all of the terms, conditions, covenants, and agreements relating to the construction of improvements or alterations in accordance with this Sublease.

10.6 As Built Plans. Sublessee 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 SUBLESSEE

Sublessee shall not make any alterations or improvements to the Premises without obtaining the prior written consent of the City Manager. Sublessee 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, Sublessee 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, Sublessee 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 Sublessee'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 Sublessee, with respect to or in any way connected with this Sublease or in connection with Sublessee's performance of or failure to perform its obligations under this Sublease, including but not limited to Exhibit C. Sublessee 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 Sublease and shall survive the expiration of or early termination of the Sublease Term.

12.2 Waiver of Claims. Sublessee waives any claims against City for injury to Sublessee's business or any loss of income therefrom, for damage to Sublessee'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 Nonabatement. Except as provided herein, no destruction or

damage to the Premises by fire, windstorm or other casualty, whether insured or uninsured, shall entitle Sublessee to terminate this Sublease. City and Sublessee waive the provisions of any statutes which relate to termination of a sublease when subleased property is destroyed and agree that such event shall be governed by the terms of this Sublease.

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 Sublessee (financial inability excepted), shall excuse the performance by Sublessee for a period equal to the prevention, delay, or stoppage, except the obligations imposed with regard to rent to be paid by Sublessee pursuant to this Sublease. In the event any work performed by Sublessee or Sublessee's contractors results in a strike, lockout, and/or labor dispute, the strike, lockout, and/or labor dispute shall not excuse the performance by Sublessee of the provisions of this Sublease.

13.3 Restoration of Premises by Sublessee.

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, Sublessee 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 Sublease. If the laws existing at that time do not permit the restoration, either party can terminate this Sublease 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 Sublease by giving notice to Sublessee 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 Sublease, Sublessee, within thirty (30) days after receiving City's notice to terminate, can elect to pay to City, at the time Sublessee 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 Sublessee satisfactory evidence that all sums contributed by Sublessee as provided in this paragraph have been expended by City in paying the cost of restoration.

If City elects to terminate this Sublease, and Sublessee does not elect to contribute toward the cost of restoration as provided in this section, this Sublease 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, Sublessee 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 Sublease. If the laws existing at that time do not permit the restoration, either party can terminate this Sublease 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, Sublessee can elect to terminate this Sublease 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 Sublease, Sublessee, within thirty (30) days after receiving City's notice to terminate, can elect to pay to City at the time Sublessee 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 Sublessee satisfactory evidence that all sums contributed by Sublessee as provided in this paragraph have been expended by City in paying the cost of restoration.

If City elects to terminate this Sublease and Sublessee cannot or does not elect to contribute toward the cost of restoration as provided in this section, this Sublease 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 Sublessee, Sublessee's improvements, Sublessee's trade fixtures, and Sublessee's personal property, such excluded items being the sole responsibility of Sublessee to restore. City shall have no obligation to restore, replace or compensate Sublessee for any loss of Sublessee'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.

Sublessee 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 Assignment & Subletting Prohibited. The parties acknowledge that City has relied on the unique background, character and capabilities of Sublessee in entering into this Sublease or in establishing the rent payable under this Sublease. Consequently, Sublessee shall not, either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Sublease or any interest herein, or any right or privilege appurtenant hereto, or allow any other person (the employees, agents and invitees of Sublessee excepted) to occupy or use the Premises, or any portion thereof. Any purported assignment or subletting shall be void, and shall, at the option of the City, constitute a default under this Sublease.

15.2 Assignment Defined. For purposes of this section, each of the following shall also be deemed an assignment subject to the provisions hereof: (i) if Sublessee is a partnership or joint venture, a withdrawal, addition, or change (voluntary, involuntary, by operation of law, or otherwise) of any of the partners or venturers thereof; (ii) if Sublessee is a limited liability company, a withdrawal, addition, or change (voluntary, involuntary, by operation of law, or otherwise) of any of the members or managers thereof; (iii) if Sublessee is composed of more than one person, a purported assignment or transfer (voluntary or involuntary, by operation of law, or otherwise) from one thereof to the other or others thereof; (iv) if Sublessee is a corporation, a change in the ownership (voluntary or involuntary, by operation of law, or otherwise) of 25% or more of its capital stock or members (or, in the case of a nonprofit corporation without members, of 25% or more of its directors); or (v) a change in Sublessee's status as a non-profit, charitable organization.

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 Sublease, by Sublessee:

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

16.1.2 Failure by Sublessee to make any payment of rent or any other payment required to be made by Sublessee hereunder, as provided in this Sublease, where such failure shall continue for a period of ten (10) business days after written notice thereof from City to Sublessee. In the event City serves Sublessee 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 Sublessee to observe or perform any of the covenants, conditions or provisions of this Sublease in any material respect where such failure shall continue for a period of thirty (30) days after written notice thereof from City to Sublessee; provided, however, that if the nature of Sublessee's default is such that more than thirty (30) days are reasonably required for its cure,

then Sublessee shall not be deemed to be in default if Sublessee commenced such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion;

16.1.4 Making by Sublessee of any general arrangement or assignment for the benefit of creditors; Sublessee'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 Sublessee, 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 Sublessee's assets located at or on the Premises or of Sublessee's interest in this Sublease where possession is not restored to Sublessee within thirty (30) days; or the attachment, execution or other judicial seizure of all or substantially all of Sublessee's assets located at or on the Premises or of Sublessee's interest in this Sublease, where such seizure is not discharged within thirty (30) days.

16.2 Remedies. In the event of any material default or breach by Sublessee, 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 Sublessee's right to possession of the Premises by any lawful means, in which case this Sublease shall terminate and Sublessee shall immediately surrender possession of the Premises to City. In such event, City shall be entitled to recover from Sublessee all damages incurred by City by reason of Sublessee'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 Sublease 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 Sublessee proves could be reasonably avoided.

16.2.2 Maintain Sublessee's right to possession, in which case this Sublease shall continue in effect whether or not Sublessee shall have abandoned the Premises. In such event, City shall be entitled to enforce all of City's rights and remedies under this Sublease, 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. Sublessee 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 Sublessee is evicted or City otherwise lawfully takes possession of the Premises by reason of any default or breach of

this Sublease by Sublessee.

16.4 Disposition of Abandoned Personal Property. If the Sublessee fails to remove any personal property belonging to Sublessee from the Premises after forty-five (45) days of the expiration or termination of this Sublease, 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 Sublessee or to any person claiming under Sublessee, 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 Sublessee 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 Sublease applicable to Sublessee 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 Sublease shall give to Sublessee 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 Sublessee, for the purpose of inspecting same, showing same to prospective purchasers, lenders or sublessees, 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 Sublease" signs, all without rebate of rent or liability to Sublessee.

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 Sublessee to install such a security system, Sublessee agrees to bear the sole cost and expense of any security system, device, operation or plan and the installation and implementation thereof. Sublessee shall obtain City's prior approval before installing, implementing or changing any City approved security system, device, operation or plan.

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

locks that shall become the property of City.

20. INSURANCE.

Sublessee's responsibility for the Premises begins immediately upon delivery and Sublessee, 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 Sublease insurance coverage in amounts and in a form acceptable to City as set forth in Exhibit C attached hereto and incorporated herein by reference. Said policies shall be maintained with respect to Sublessee'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 C. Sublessee also agrees to secure renter's liability insurance.

Sublessee shall deposit with the City Manager, on or before the effective date of this Sublease, certificates of insurance necessary to satisfy City that the insurance provisions of this Sublease 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 Sublease. Should Sublessee 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 Sublessee 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 Sublease do not provide adequate protection for City and for members of the public using the Premises, the City Manager may require Sublessee 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 Sublessee in writing of changes in the insurance requirements. If Sublessee 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 Sublessee fails to maintain in effect any required insurance coverage, Sublessee shall be in default under this sublease without further notice to Sublessee. Such failure shall constitute a material breach and shall be grounds for immediate termination of this Sublease at the option of City.

The procuring of such required policy or policies of insurance shall not be construed to limit Sublessee's liability hereunder nor to fulfill the indemnification provision and requirements of this Sublease. Notwithstanding the policy or policies of insurance, Sublessee shall be obligated for the full and total amount of any damage, injury, or loss caused by or connected with this Sublease 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. Sublessee resubleases 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 Sublease 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 Sublease, Sublessee shall continue to be bound by the terms, covenants, and conditions of this Sublease. 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 Sublease, Sublessee may:

A. Terminate this Sublease and thereby be absolved of obligations under this Sublease 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 Sublease. If Sublessee 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. Sublessee shall provide City with written notice advising City of Sublessee'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 Sublessee shall be entitled to: (a) that portion of the compensation which represents the value for the remainder of the Sublease term of any Sublessee-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 Sublease term to the original Sublease term, using a straight line approach; and (b) any amount specifically designated as a moving allowance or as compensation for Sublessee's personal property. Sublessee shall have no claim against City for the value of any unexpired term of this Sublease.

23. POST-ACQUISITION TENANCY.

Sublessee hereby acknowledges that Sublessee was not an occupant of the Premises at the time the Premises were acquired by City. Sublessee further understands and agrees that as a post-acquisition Sublessee, Sublessee 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 Sublessee and City regarding the construction or application of this Sublease, and claims arising out of this Sublease 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 Sublease.

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 Sublease, 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 Sublease Activities. Sublessee agrees that in the performance of this Sublease and in connection with all of the activities Sublessee 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. Sublessee 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, Sublessee 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 Sublessee shall act and be an independent contractor and not an agent nor employee of City.

28. CONFLICT OF INTEREST.

Sublessee shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this agreement. Sublessee 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, Sublessee upon request of City shall immediately terminate such employment. Violation of this provision constitutes a serious breach of this Sublease and City may terminate this Sublease as a result of such violation.

29. MEMORANDUM OF SUBLEASE.

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

30. ESTOPPEL CERTIFICATE.

Sublessee 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 Sublease is unmodified and in full force and effect, or, if modified, stating the nature of the modification and certifying that the Sublease, 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 Sublessee'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.

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

33. ABANDONMENT.

Sublessee'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 Sublessee 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 Sublessee addressed as follows:

Kids Choice
132 Brenton Court
Mountain View, CA 94043
Attn: Lorene Scatena
Telephone: (650) 290-2040
Email: lscatena@kidschoiceafterschoolcare.org

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

35. TIME.

Time shall be of the essence in this Sublease.

36. AMENDMENTS.

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

37. SIGNING AUTHORITY.

If this Sublease is not signed by all Sublessees 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 Sublease are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

39. SURRENDER OF SUBLEASE NOT MERGER.

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

40. INTEGRATED DOCUMENT.

This Sublease, including any exhibits attached hereto, embodies the entire agreement between City and Sublessee. No other understanding, agreements, conversations or otherwise, with any officer, agent or employee of City prior to execution of this Sublease shall affect or modify any of the terms or obligations contained in any documents comprising this Sublease. 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.

41. WAIVER.

Waiver by City of one or more conditions of performance or any breach of a condition under this Sublease 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 Sublease. 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.

42. INTERPRETATIONS.

In construing or interpreting this Sublease, the word "or" shall not be construed as exclusive and the word "including" shall not be limiting. The Parties agree that this Sublease 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 Sublease 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 Sublease shall not be affected thereby.

44. GOVERNING LAW.

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

45. VENUE.

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

46. 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 Sublease.

47. BROKERS.

Each Party represents that it has not had dealings with any real estate broker, finder, or other person, with respect to this sublease 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.

48. ATTACHMENTS TO SUBLEASE.

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

“A” – Description of Premises and Rents

“B” – Standard Insurance Requirements

“C” – Scope of Required Childcare Services

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

CITY:

CITY OF PALO ALTO (LESSOR)

By: _____
City Manager or Designee

ATTEST:

City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney or Designee

RECOMMENDED FOR APPROVAL:

By: _____
Manager, Operating Department

TENANT:

KIDS CHOICE

By: _____

Its: _____

By: _____

Its: _____

EXHIBIT A

DESCRIPTION OF PREMISES AND RENTS

	PAUSD SITE	TRAILER # OR ID*	SQ. FT.	BASE	MONTHLY	TOTAL	TOTAL
				MONTHLY	UTILITIES (\$0.24 PER SQ. FT.)	MONTHLY RENT AND UTILITIES	ANNUALIZED RENT AND UTILITIES
1	NIXON	DAYCARE	1,440	\$ 615.01	\$ 345.60	\$ 960.61	\$ 11,527.37

* See attached maps for graphic description of Premises. Note that these site locations may change from time to time pursuant to Section 5 of the Lease Agreement between the City of Palo Alto and the Palo Alto Unified School District dated 7/1/2022.

EXHIBIT B

STANDARD INSURANCE REQUIREMENTS

Insurance Requirements for Sublessee:

Sublessee shall purchase and maintain the insurance policies set forth below on all of its operations under this Sublease at its sole cost and expense. Such policies shall be maintained for the full term of this Sublease and the related warranty period (if applicable). For purposes of the insurance policies required under this Sublease, 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) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
- 3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance (for sublessees with employees).
- 4) Property insurance against all risks of loss to any tenant improvements or betterments

The policy or policies of insurance maintained by Sublessee 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)Automobile Liability Including Owned, Hired and Non-Owned Automobiles	\$ 1,000,000 Combined Single Limit
(4) Workers' Compensation Employers Liability	Statutory \$1,000,000 per accident for bodily injury or disease

(5) Sublessee's Property Insurance

Sublessee shall procure and maintain property insurance coverage for:
all office furniture, trade fixture, office equipment, merchandise,
and all other items of Sublessee's property in, on, at, or about the
premises and the building, include property installed by, for,
or at the expense of Sublessee;

(b) all other improvements, betterments, alterations, and additions
to the premises.

Sublessee'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 Sublessee 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 Sublease.

Each insurance policy required by this Sublease 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 Sublessee; products and completed operations of the Sublessee; premises owned, occupied or used by the Sublessee; or automobiles owned, subleased, hired or borrowed by the Sublessee. 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 Sublease, the Sublessee'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 Sublessee'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 Sublessee'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. Sublessee 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 Sublessee's act(s) or Sublessee'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

SCOPE OF SERVICES FOR PROVIDERS OF EXTENDED CHILD CARE SERVICES AT PALO ALTO UNIFIED SCHOOL DISTRICT ELEMENTARY SCHOOL SITES

SERVICES: Under this Agreement, Kid's Choice shall provide extended child care services to the child(ren) of families enrolled at Nixon Elementary School located on the Palo Alto Unified School District (PAUSD) property lease by the city of Palo Alto.

Services shall be furnished as specified in this Exhibit C: Scope of Services for Providers of Extended Child Care Services at Palo Alto Unified School District Elementary School Sites.

The extended child care program shall be limited to children currently enrolled in Grades Kindergarten through Grade Five (5) in the Palo Alto Unified School District schools and children (age K-5th Grade) whose parent is on staff of either PAUSD or the child care provider.

PROGRAM GOALS:

- 1a. To offer affordable child care services to children of families enrolled in PAUSD Elementary schools; and
- 1b. Children (age K-5th grade) whose parent is on staff of either PAUSD or the child care provider.

Eligibility for Extended Child Care Services:

The extended child care program shall be limited to:

- a. Children currently enrolled in Grades Kindergarten through Grade Five (5) in the Palo Alto Unified School District (PAUSD) schools.
- b. Children (age K-5th grade) whose parent is on staff of either PAUSD or the child care provider.

Priority for the Extended Child Care Services:

Priority shall always be given to children currently enrolled in Grades Kindergarten through Grade Five (5) in the Palo Alto Unified School District (PAUSD) schools (see a. above). The number of children allowed in b. (above) shall not exceed 10% of the enrollment, unless first priority children (a. above) cannot fill available spaces. Priority children may not be wait-listed in favor of non-priority children enrolled beyond 10% capacity.

- 1. To provide working parents with access to licensed child care services year-round

including PAUSD school holidays, school vacations, and staff development days.

2. To provide a quality program, which seeks to maintain, standards set forth by the National Association for the Education of Young Children (NAEYC) and/or the Quality Matters, QRIS system of program quality assurance through WestEd.

PROGRAM SPECIFICATIONS:

1. Program Schedule

Services rendered shall include before-and after-school childcare for school age children in grades kindergarten through fifth grade. Before-school care shall be provided if such care is required by eight (8) or more children. The City will consider exceptions to the provision of before school care if PROVIDER can reasonably demonstrate the inability to find adequate staffing. Program schedule shall be operable daily throughout the year, including school holidays and vacation periods except for legal holidays, which are recognized by the City of Palo Alto as specified in Section 2.08.100 of the Palo Alto Municipal Code. Any exceptions to the provisions below must be approved by the City's Contract Manager.

a. Regular School Days

The designated hours of operation for extended child care services on regular school days shall commence not earlier than 6:30 a.m. but not later than 7:00 a.m. and shall operate until the scheduled start of school at the site. The provider shall reopen at the earliest scheduled end of the school day and shall remain open until at least 6:00 p.m. but not later than 6:30 p.m.

Regular school days are defined as Monday through Friday except legal holidays recognized by the City of Palo Alto, PAUSD school holidays, PAUSD school vacations, and PAUSD staff development days.

It is understood that the provider shall have exclusive use of the site. When the site is not in use by the provider, the City, PAUSD, its agent or assigns, may use the site for academic curriculum or other City purposes.

b. Legal Holidays

Services shall be offered as outlined in this Exhibit C with the only exception being legal holidays recognized by the City of Palo Alto, as defined and specified in Section 2.08.100 of the Palo Alto Municipal Code.

c. School Holidays

The designated hours of operation for extended child care services on school holidays that are not recognized by the City of Palo Alto as specified in Section 2.08.100 of the Palo Alto Municipal Code (including winter and spring breaks and summer vacation) shall be 7:30 a.m. to 6:00 p.m. The City will consider exceptions to the operational hours

if PROVIDER can reasonably demonstrate that the designated times are not needed by the participants in their programs.

d. Consolidation of Services

The provider may consolidate services with another licensed or legally exempt school age provider during school vacations and summer periods when enrollment is low. Programs may close for the purpose of offering staff development or in-service training. All such closings are subject to approval by the City's Project Manager which for purposes of this Agreement shall be the City Manager or designee.

e. Other Uses

The provider may use the contracted site(s) outside of the normal hours of operation for staff, parent, and/or student meetings.

2. Licensing and Exemptions

The provider shall operate a school age child care program that is licensed by the California Department of Social Services, Community Care Licensing Division, unless the provider qualifies for exemption from licensure as stated in the general licensing requirements of Title 22 of the California Code of Regulations as promulgated by the Department of Social Services/Community Care Licensing Division. All licensed programs shall maintain a current non-ambulatory license.

3. Licensing Reports

The provider shall forward to the City's Project Manager, within ten (10) days of all licensing visits, copies of all licensing reports issued by the California Department of Social Services, Community Care Licensing Division.

4. Staffing Ratios and Requirements

The provider shall meet or exceed the staffing ratios and requirements for school age children as specified in the licensing requirements of Title 22 of the California Code of Regulations: 1 teacher to 14 children

1 teacher and 1 aide to 28 children

For any group over 28 and up to 42, 2 teachers plus 1 aide are required to be present and within eye contact of enrollees.

For any group over 42, 2 teachers and 2 aides are mandated.

Job descriptions shall be developed and maintained for all positions including staff employed on a substitute or temporary basis.

5. Health and Safety Standards

The provider shall enforce health and safety standards that are consistent with state regulations, State and County health orders, and PAUSD policies and regulations in such areas as administration of medications, emergency information forms, and exclusion of sick children. The providers shall ensure that staff members receive ongoing training in

the areas of basic first aid and cardiopulmonary resuscitation (CPR).

6. Emergency Preparedness

The provider shall implement and follow emergency procedures and drills that are consistent with state laws and PAUSD elementary school site policies and regulations, and the Emergency Preparedness Plan for School Age Child Care Centers located at PAUSD Elementary School Sites. Compliance and implementation will be the responsibility of the provider and will be documented in the Emergency Preparedness Plan Notebook. The provider shall ensure that staff members receive on going emergency preparedness training. The provider shall also, on an annual basis, inform the parents of enrolled children about the program's policies and procedures regarding the Emergency Preparedness Plan.

7. Sign In/Sign Out Procedures

The provider shall offer appropriate sign-in and sign-out procedures in accordance with state licensing requirements.

8. Staff Development

The provider shall offer appropriate staff development activities on an ongoing basis, including staff training, in order to fully meet the child development needs of children enrolled in the program.

9. Written Schedules

The provider shall at all times maintain a written schedule setting forth the operating hours and operating procedures for each required and optional use provided on or from the elementary school site. A fee schedule for prices charged for all services related to the required and optional uses set forth in this Contract shall be maintained.

10. Children with Special Needs

The provider shall identify children with special needs at the time of enrollment to ensure adequate staffing levels. Children with special needs who require assistance during an emergency evacuation shall be accommodated.

11. Equipment and Supplies

The provider shall assume responsibility for program implementation, and shall provide furniture, equipment, and supplies except as otherwise agreed upon with the City and PAUSD.

12. Collaboration with Local Agencies and Programs

The provider shall coordinate with local agencies and programs to enable children to participate in extra-curricular activities including sports, scouts, recreational activities, and community service projects. The Provider shall seek to ensure collaboration with other agencies and programs in order to maximize access to existing services and to

avoid duplication.

13. Waiting Lists

The provider shall maintain a current waiting list when program is at licensed capacity and shall grant priority enrollment status to working parents and to non-ambulatory children when a non-ambulatory space becomes available.

14. Provider Parent Feedback mechanism

The provider shall establish a regular mechanism to solicit and receive parent feedback related to program operations and quality at each PAUSD elementary site. The feedback mechanism shall be shared with the City's Project Manager by September 30th of each year.

15. City Annual Parent Survey

The providers shall distribute an annual parent survey provided by City.

16. Materials to be Kept on File

The following materials will be submitted to the City's Office of Human Services for each contract period and resubmitted within the same period in the event of any changes. The Annual Financial Statement is due upon its completion. The remaining materials are due by September 30.

- Annual Financial Statement

- Calendar of days open and closed

- Operating Procedures and Policies (Parent Handbook)

- Licensing reports issued by the California Department of Social Services (within 10 days of visit)

- Summary sheet of annual parent evaluations
- Tuition schedule

In addition to the above, the following materials shall be available at each Center for examination by the City's Office of Human Services.

- Current operating license

- Completed and up to date copy of the Emergency Preparedness Plan for School Age Child Care Centers located at PAUSD Elementary School Sites.

17. Annual Site Evaluation

The provider shall participate in an annual site evaluation conducted by the City's Project Manager to determine that the program continues to satisfactorily meet the City's requirements as stated in this Exhibit C- Scope of Services for Providers of Extended Child Care Services at Palo Alto Unified School District Elementary School Sites.

18. Reports to the City

All correspondence relating to this Exhibit C: Scope of Services for Providers of Extended Child Care Services at Palo Alto Unified School District Elementary School Sites shall be

sent to the following address:

City of Palo Alto
Office of Human Services
4000 Middlefield Road #T2
Palo Alto, CA 94301

PROVIDER QUALIFICATIONS, STATUS, AND DUTIES

1.1 PROVIDER represents and warrants that it has the expertise and professional qualifications to furnish or cause to be furnished the Services. PROVIDER further represents and warrants that the project director and every individual charged with the performance of the Services under this Contract are duly licensed or certified by the State of California, to the extent such licensing or certification is required by law to perform the Services.

1.2 In reliance on the representation and warranty set forth in Section 1.1, CITY hires PROVIDER to perform, and PROVIDER covenants and agrees that it will furnish or cause to be furnished, the Services.

1.3 PROVIDER will assign a project director to have supervisory responsibility for the performance, progress, and execution of the Services. If circumstances or conditions subsequent to the execution of this Contract cause the substitution of the project director for any reason, the appointment of a substitute project director will be subject to the prior written approval of the project manager.

1.4 PROVIDER represents and warrants that it will:

1.4.1 Procure all permits and licenses, pay all charges and fees, and give all notices which may be necessary and incident to the due and lawful prosecution of the Services;

1.4.2 Keep itself fully informed of all existing and future Federal, State of California, and local laws, ordinances, regulations, orders, and decrees which may affect those engaged or employed under this Contract, any materials used in PROVIDER's performance under this Contract, or the performance of the Services;

1.4.3 At all times observe and comply with, and cause its employees and providers (and consultants), if any, who are assigned to the performance of this Contract to observe and comply with, the laws, ordinances, regulations, orders and decrees mentioned above; and

1.4.4 Report immediately to the project manager, in writing, any discrepancy or inconsistency it discovers in the laws, ordinances, regulations, orders, and decrees mentioned above in relation to any plans, drawings, specifications or provisions of this Contract.

1.5 PROVIDER will be responsible for employing or engaging all persons necessary to perform the Services. All contractors of PROVIDER will be deemed to be directly controlled and supervised by PROVIDER, which will be responsible for their performance.

1.6 PROVIDER shall ensure that all services offered under this CONTRACT shall be secular in nature. PROVIDER shall further ensure that it shall refrain from offering

religious instruction, worship, or other religious activities while providing child care services, in accordance with the provision of the California and United States Constitution.

FINANCIAL CONTROL RESPONSIBILITIES OF PROVIDER

1.1 PROVIDER shall establish and maintain a system of accounts that shall conform with generally accepted principles of accounting. Such system of accounts shall be subject to the review of the Deputy City Manager, Administrative Services and the City Auditor.

1.2 In support of its system of accounts, PROVIDER shall maintain complete and accurate records of all financial transactions, including contracts, invoices, time cards, cash receipts, cancelled checks, and bank statements. Such records shall be preserved and made available upon request until the expiration of three (3) years following the termination of this CONTRACT.

1.3 Financial expense and revenue summary sheets for all of PROVIDER's operations under this Contract shall be submitted by PROVIDER on an annual basis to CITY.

1.4 PROVIDER shall provide for an independent audit of its fiscal transactions, records and financial reports relating to its obligations under this Contract. The audit shall be completed every two years and shall be conducted by a certified public accountant according to generally accepted audit procedures.

1.5 Income to the program in the form of fees, direct contributions, fundraising, and any other form of monetary program support must be shown in the records of the fiscal PROVIDER in a manner acceptable to the Project manager and PROVIDER.

1.6 On reasonable notice, PROVIDER shall grant the project manager access to all records, data, statements, and reports, but excluding any confidential records of personnel and client reports which tend to identify specific individuals, for purposes of financial or

operational audit or review of PROVIDER by CITY. PROVIDER shall permit CITY to audit, at any reasonable time during the term of this CONTRACT and for three (3) years thereafter, PROVIDER's records pertaining to matters covered by this CONTRACT. PROVIDER further agrees to maintain and retain such records for at least three (3) years after the expiration or earlier termination of this CONTRACT.

COST OF SERVICES OFFERED BY PROVIDER

1.1 The PROVIDER shall at all times maintain a written schedule setting forth operating hours and operating procedures for each required and optional use provided on or from the PREMISES. A schedule of prices charged for all services related to the required and optional use of this CONTRACT shall be maintained.

Upon written request, PROVIDER shall furnish the project manager a copy of the schedules and procedures. Should the project manager decide that any part of these schedules or procedures is not justified with regard to fairly satisfying the needs of the public, upon written notice from the project manager, the PROVIDER shall meet and confer to attempt to address the issue. This meeting may focus on the following data:

- (1) The degree of public service involved in the sale of services;
- (2) The market prices charged by other competing and/or comparable businesses; and
- (3) The degree to which salaries and benefits are at a commensurate level that ensures a quality program which minimizes staff turnover.