

DUPLICATE

**CITY OF SAN DIEGO
LEASE**

THIS CITY OF SAN DIEGO LEASE ("Lease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and San Diego Police Officers Association, a California corporation, ("LESSEE"), to be effective September 30 1, 2022 ("Effective Date").

RECITALS

- A. The CITY owns certain real property (commonly known as Police Plaza) located at 4020 Murphy Canyon Road, San Diego, CA 92123, consisting of multiple buildings and outdoor areas ("Property").
- B. The Property is currently being used as a facility for the San Diego Police Department (SDPD) for office, repair, storage, and training purposes. All portions of the Property, other than the Premises as defined in Section 1.1, are part of a secured facility, and LESSEE acknowledges that it shall be LESSEE's responsibility to ensure that all of LESSEE's offices, employees, agents, contractors, subcontractors, invitees, and guests are aware of the secured nature of the facility.
- C. The CITY and LESSEE have identified that recruiting and retaining SDPD officers has been difficult, and that at times, SDPD officers have been unable to work their scheduled shift, or unable to respond to a request extend their shift due to childcare being unavailable on short notice, or not available at the time of the shift.
- D. LESSEE desires to lease a portion of the Property to provide childcare facilities with extended normal operating hours, and emergency after-hour operating hours that can be used by sworn SDPD officers. CITY understands that if space is available after sworn SDPD officers have the opportunity to use the childcare facilities, LESSEE may also make the childcare services available, under certain circumstances, to non-sworn SDPD employees and employees of the licensed childcare provider.
- E. LESSEE has entered into a Master Services Agreement with a state recognized licensed childcare center management company (Service Provider) for the day-to-day operations of the childcare facility.

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. PREMISES; USES

- 1.1 CITY leases to LESSEE and LESSEE leases from CITY approximately 3,000 square feet located in the southwest corner of the main building and approximately half of the outside athletic area adjacent to the main building ("Premises") located on the Property as more particularly depicted in Exhibit A "Aerial Site Plan," Exhibit B "Interior Floor Plan," and Exhibit C "Playground" attached hereto. The

Premises excludes all other portions of the buildings, improvements, and land that are part of the Property (Excluded Portion). LESSEE shall have no right to enter upon, use, or occupy any Excluded Portion of the Property without the express consent of the CITY.

- (a) Security of Facility. LESSEE shall ensure that none of LESSEE's officers, employees, contractors, subcontractors, agents, invitees or guests ("LESSEE Party or Parties") who are not otherwise authorized to gain entrance to the secured portion of the Property do not do so. Upon receiving written consent from the City, and at LESSEE's sole costs and expense, LESSEE shall make any improvements necessary to ensure that no LESSEE Parties gain access to or enter upon the secured portion of the Property as more specifically set forth in Section 3.3.
- 1.2 Allowed Uses. LESSEE may use the Premises solely and exclusively to operate, lease, and maintain the Premises to provide childcare services for sworn SDPD officer, and if space allows non-sworn SDPD employees, and employees of the SERVICE PROVIDER ("Allowed Use") during the normal operating hours (as defined in Section 1.3) and on an emergency as-needed basis. LESSEE shall establish criteria for determining if non-sworn SDPD employees and employees of the SERVICE PROVIDER may use the childcare services, which if met by SERVICE PROVIDER shall be an Allowed Use. Any use other than the Allowed Use requires the prior written approval of CITY in its sole discretion in each instance.
- 1.3 Hours of Operation. The normal hours of operation will be 5:00 a.m. to 10:00 p.m. Monday through Sunday, including all holidays. LESSEE, may upon request of service provider, agree to adjust the normal hours of operation if it determines that the usage of the facility requires an adjustment. If LESSEE chooses to adjust the normal hours of operation, LESSEE shall notify CITY in writing thirty (30) days prior to change in the normal hours of operation becoming effective.
- 1.4 Superior Interests. This Lease is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, permits and licenses, easements, and rights-of-way pertaining to the Premises recorded before the Effective Date. LESSEE shall obtain all consents and approvals from third parties with respect to such superior interests as are required to allow LESSEE's development and use of the Premises in accordance with this Lease.
- 1.5 Governmental Approvals. By entering into this Lease, neither CITY nor CITY's City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to LESSEE's occupancy, use, development, maintenance, or restoration of the Premises. Discretionary action includes without limitation re-zonings, variances, environmental clearances, and all other required governmental approvals. CITY makes no representation or warranty regarding review or approval of LESSEE's development or redevelopment plans for the Premises, and failure of the CITY or

City Council to approve any plans or grant any required permits for development or redevelopment shall not give rise to any claim, liability, obligation, or cause of action related to this Lease. LESSEE shall obtain and maintain throughout the term of this Lease all legally required permits and licenses for the construction of improvements and the operation of its business on the Premises including, but not limited to, building permits.

- 1.6 CITY's Consent, Approval. CITY's consent or approval under this Lease shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise expressly provided. CITY's discretionary acts under this Lease shall be made in the Mayor's discretion, unless otherwise expressly provided.
- 1.7 Quiet Possession. LESSEE, so long as it is not in default beyond any applicable notice and cure periods under this Lease, shall at all times during the Term of this Lease peaceably and quietly have, hold, and enjoy the Premises. If LESSEE is temporarily dispossessed through action or claim of a title superior to CITY's, this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or resulting damages, including any consequential damages. There shall be determined and stated in writing by CITY, a proportionate reduction of the rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the Premises, and such reduction in rent shall be LESSEE's sole remedy for any temporary dispossession.
- 1.8 Reservation of Rights.
 - (a) Mineral Rights. CITY reserves all rights, title, and interest in and to any and all subsurface natural gas, oil, minerals, and water on or within the Premises.
 - (b) Easements. CITY reserves the right to grant, establish, and use easements and rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or access as it deems advisable for the public good at no cost or liability to CITY; provided that CITY shall provide written notice to LESSEE of each such grant, establishment, and use that CITY enters into on or after the Effective Date.
 - (c) Repairs. CITY may at all reasonable times, upon reasonable advance notice to LESSEE (other than in the event of an emergency, in which case CITY shall notify LESSEE within two (2) working days following such emergency arising), enter the Premises for the purpose of making repairs to or developing municipal water, electrical, sewer, or other utility facilities on or about the Premises.
 - (d) Noninterference. CITY shall not unreasonably interfere with LESSEE's use of the Premises for the Allowed Use in exercising its reserved rights under

this section 1.8. CITY shall pay all costs in connection with the exercise of these reserved rights.

2. TERM

- 2.1 Initial Term. The Effective date of this Lease shall be the date of full execution. The term of this Lease shall commence on the date the childcare facility opens and expire sixty (60) months later ("Term").
- 2.2 Holdover. Any holding over by LESSEE after the expiration or earlier termination of this Lease shall not be considered a renewal or extension of this Lease. The occupancy of the Premises after the expiration or earlier termination of this Lease shall constitute a month-to-month tenancy at will, and all other terms and conditions of this Lease shall continue in full force and effect.
- 2.3 Surrender of Premises. Upon the expiration or earlier termination of this Lease, LESSEE shall vacate the Premises and surrender the Premises to CITY free and clear of all liens and encumbrances caused by or at the direction of LESSEE, and in a decent, safe, and sanitary condition with reasonable wear and tear.

3. OPERATIONS ON THE PREMISES

- 3.1 Operation of Facilities. LESSEE shall conduct the Allowed Uses and operate the Premises continuously and without interruption during normal hours of operation subject to force majeure events and reasonable closure for repair or restoration. LESSEE shall notify CITY 30 days in advance of any closures anticipated to continue for more than one week (other than in the event of an emergency, in which case LESSEE shall notify CITY within two (2) working days following such emergency arising). LESSEE shall conduct its business and operate the Premises in conformity with all applicable laws, rules, and regulations.
- 3.2 Equipment. LESSEE shall furnish all equipment necessary for the operation of the Premises in conformity with this Lease at its sole cost and expense.
- 3.3 Security and Safety of Premises. As between CITY and LESSEE, LESSEE shall bear sole responsibility for the security and safety of the Premises affected by or relating to the Allowed Use during the Term, including for the maintenance, cleanup, and securing of the Premises daily, as appropriate to ensure security and safety. LESSEE shall comply with all applicable laws, rules, regulations, and directives of competent governmental authorities with respect to the security and safety of the Premises, at LESSEE's sole cost and expense. CITY has no obligation to provide oversight of the Allowed Use or staffing or resources for the Allowed Use at the Premises during the Term.

4. RENT

Annual Rent. LESSEE shall pay to CITY rent in the amount of Four Thousand Eighty-Two Dollars and Fifty Cents (\$4,082.50) per year, paid annually in advance.

LESSEE shall pay the rent for the first year of the Term within thirty (30) days of the Effective Date, and thereafter on or before each anniversary of the Effective Date. The rent shall be reviewed annually and will be increased as provided below. Under no circumstances, will the annual rent review require a reduction in the annual rent. If the annual rent review, applying the formula below, would result in a lower amount of annual rent due, the annual rent will not be adjusted and LESSEE will pay the same annual rent as LESSEE paid for the prior Lease Year.

a. **CPI Adjustments.** On each anniversary of the Effective Date, the rent shall be adjusted to reflect any increase in the Consumer Price Index for "All Urban Consumers" for Los Angeles/Riverside/Orange County, California (the "CPI") based on the average of the three then-most recently published monthly indices just prior to each adjustment. If the CPI is no longer published, the index for adjustment shall be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the CPI.

- i. If a rent adjustment is calculated using an index from a different base year than 1982-84, which equaled a base figure of 100 for the CPI, the base figure used shall first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.
- ii. If the Department of Labor indices are no longer published, CITY may use another index deemed by CITY to be reasonably comparable to the CPI, which shall then be the "CPI" under this Lease.
- iii. In no event shall any adjusted rent be less than the rent in existence immediately prior to the adjustment date. CITY's failure to deliver timely notice of any rent adjustment shall not constitute a waiver by CITY of its rights hereunder.

b. **CPI Adjustment Computation.** The rent for each adjustment period shall be calculated as follows:

- i. The "adjustment multiplier" shall be calculated by dividing the "current index" by the "base index" as defined below.
- ii. The "base index" denominator for the calculation is 178.5. This is a fixed number representing the three (3) month average of the CPI indices for the months of July, August and September 2001.
- iii. The "current index" numerator for the calculation is a variable number that shall be the three (3) month average of the CPI indices for the months of July, August and September of the calendar year preceding the adjustment date.
- iv. The "base figure" for purposes of calculating the annual adjustment shall be a fixed amount of two thousand five hundred dollars (\$2,500).

Example Calculation

Current Index (Third Quarter 2017)	256.884
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Base Index (Third Quarter 2001)	178.5=
Adjustment Multiplier	1.439

The base figure is then multiplied by the adjustment multiplier to determine the new rent. Using the forgoing example, the adjusted rent is calculated as follows:

\$2,500.00	(Base Figure)
X 1.439	(Adjustment Multiplier)
\$3,597.50	(Adjusted Rent)

$$(\text{CURRENT INDEX} \div \text{BASE INDEX}) \times \text{BASE FIGURE} = \text{NEW RENT AMOUNT}$$

Time and Place of Payment. All Rent payments shall be made payable to the City Treasurer and mailed to:

The Office of the City Treasurer
City of San Diego
P.O. Box 129030
San Diego, California 92112-9030

or hand-delivered to:

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

CITY may change the place of payment at any time upon thirty (30) days' prior written notice to LESSEE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt.

- 4.1 Delinquent Payments. If LESSEE fails to make any payment under this Lease when due and such failure continues for five working days after CITY provides written notice to LESSEE of such failure, LESSEE shall pay to CITY, in addition to the unpaid amount, five percent (5%) of the unpaid amount, which shall be additional Rent. If any amount of such payment remains unpaid after fifteen (15) days past due, LESSEE shall pay to CITY an additional five percent (5%) of the unpaid amount [being a total of ten percent (10%)], which shall be additional Rent. Notwithstanding the foregoing, in no event shall the charge for late payment of Rent be less than Twenty-Five Dollars (\$25). After thirty (30) days past due, unpaid amounts due CITY under this Lease may be referred to the CITY's City Treasurer for collection and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. LESSEE shall pay to CITY any collection-referral fee and all other fees and charges plus interest as may then be charged by the CITY's City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of LESSEE's breach or default with respect to the late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity. As required by law, LESSEE is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due after the expiration of all notice and cure periods.

5. ENCUMBRANCES; ASSIGNMENT & SUBLETTING

- 5.1 Leasehold Encumbrances. LESSEE shall not encumber the Lease, its interest in the Lease, or any improvements on the Premises by deed of trust, mortgage, chattel mortgage, or other security instrument without the City's prior written consent.
- 5.2 Assignment and Subletting. LESSEE shall not assign this Lease or any interest in this Lease, and shall not sublet, license or allow any other person, organization, corporation, agency or entity of any type to use or occupy the Premises or any part of the Premises without CITY's prior written consent, which consent shall not be unreasonably withheld, delayed, or conditioned. Any such consent shall not be deemed consent to any subsequent assignment or subletting. Neither this Lease nor any interest in it shall be assignable, as to LESSEE's interest, by operation of law, without CITY's written consent. "Assignment" for the purposes of this section shall include without limitation the transfer of any interest in this Lease and a change in "Control" of LESSEE. "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ability to exercise voting power, by contract or otherwise.
- (a) City's Consent to Service Provider. CITY acknowledges that LESSEE is not a licensed childcare provider, and that LESSEE has entered into a Master Services Agreement (MSA) with Service Provider to provide the Allowed Uses as required by this Lease. City consents to LESSEE's allowing Service Provider's use and occupancy of the Premises to provide

the Allowed Uses pursuant to the MSA subject to the following terms and conditions:

- i. The MSA shall not release LESSEE from any liability, whether past, present, or future, under this Lease as to the Premises, the Property, or any portion of thereof;
- ii. The MSA and Service Providers use and occupancy of the Premises as set forth in the MSA shall be subject and subordinate to this Lease;
- iii. The MSA shall not authorize any additional uses of the Premises, not authorized in this Lease;
- iv. The MSA shall not alter the primary liability of LESSEE to pay the rent and perform all of LESSEE'S obligations under this Lease;
- v. This consent shall not be construed as a waiver of CITY'S right to consent to any proposed sublease or agreement after the date hereof by LESSEE under this Lease, or as a consent to any portion of the Premises in being used or occupied by any other party;
- vi. The MSA shall not grant any rights to the Service Provider greater than those rights granted to LESSEE under this Lease;
- vii. The MSA shall not require CITY to recognize Service Provider in the event of a default in the Lease by LESSEE;
- viii. The MSA shall not enlarge or in any manner increase CITY'S obligations or duties under this Lease;
- ix. The MSA shall not create obligations or costs to CITY with regard to the MSA or Service Provider's use and occupancy of the Premises;
- x. The MSA shall not modify, waive, amend, or otherwise affect any provision of this Lease;
- xi. This consent shall not be deemed to be any type of obligation by CITY to LESSEE, Service Provider or to any governmental agent, board, commission, or agency with regard to any other action relating to Service Provider's occupancy, use, or maintenance of any portion of the Premises or improvements thereon;
- xii. Prior to LESSEE allowing Service Provider's use or occupancy of the Premises, LESSEE shall cause to be filed with the CITY, a copy of the certificates of insurance demonstrating that the Service Provider is in compliance with all of the insurance requirements in

Section 7, which certificates shall name LESSEE and the "City of San Diego, its elected officials, officers, representatives, agents, and employees", as additional insureds for the entire term of the MSA. CITY reserves the right to request, and LESSEE shall provide upon request, a copy of the policy of insurance if so requested; and

- xii. Service Provider shall agree in writing, regardless of any term in the MSA to the contrary, to be bound by and subject to the applicable terms of this Lease affecting and relating to Service Providers use and occupancy of the Premises, including without limitation the use restrictions, the acceptance of the Premises and all insurance and indemnification requirements of this Lease.

5.3 Consent Conditions. CITY may require, as a condition to consenting to any sublease, that the sublease be subject and subordinate to each and every provision of this Lease. Approval of any assignment shall be conditioned upon the assignee agreeing in writing that it will assume the applicable rights and obligations of LESSEE under this Lease.

5.4 Charter Section 225. Pursuant to San Diego City Charter section 225, LESSEE and each of its assignees shall disclose to CITY the names and identities of all natural persons who own more than 10% of LESSEE or such assignee, as applicable.

6. DEFAULT AND REMEDIES

6.1 Default. LESSEE shall be in default of this Lease if any of the following occurs:

- (a) LESSEE fails to make any payment required under this Lease when due and such failure continues for ten (10) business days after receipt of written notice from CITY of such failure;
- (b) LESSEE breaches any of its obligations under this Lease, other than those requiring payment to CITY, and fails to cure the breach within thirty (30) days following written notice thereof from CITY, or if not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion;
- (c) LESSEE voluntarily files, or involuntarily has filed against it and does not cause such involuntary petition to be dismissed within ninety (90) days after such involuntary petition is filed, any petition under any bankruptcy or insolvency act or law;
- (d) LESSEE is adjudicated a bankrupt; or
- (e) LESSEE makes a general assignment for the benefit of creditors.

6.2 Remedies. Upon LESSEE'S default under this Lease, CITY may pursue any one or more of the remedies listed in this section in addition to any other remedies now or later available to CITY, in law or equity. Such remedies shall be cumulative and not exclusive.

- (a) For Monetary Default. Upon LESSEE'S default for nonpayment under Section 6.1(a) of this Lease, CITY may, in its sole discretion, either give LESSEE, or any person claiming rights through LESSEE, a written Ten (10) Day Notice to Pay or Quit, or CITY may terminate this Lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the Premises or to possession of the Premises, and CITY may enter and take possession of the Premises and may recover the amount set forth below.
- (b) For Non-Monetary Default. Upon LESSEE'S default based upon Sections 6.1(b) through 6.1(e) of this Lease, CITY may, in its sole discretion, terminate this Lease, and all rights of LESSEE and of all persons claiming rights through LESSEE to the Premises or possession of the Premises, and CITY may enter and take possession of the Premises and may recover from LESSEE the amount set forth below. If any default described in Sections 6.1(b) through 6.1(e) of this Lease is not curable within thirty (30) calendar days after notice to LESSEE, CITY will not terminate this Lease pursuant to the default, if LESSEE immediately commences to cure the default and diligently pursues the cure to completion.
- (c) CITY'S Recovery Upon Termination. Upon termination of the Lease due to LESSEE'S default, CITY may recover the sum of:
 - i. The worth at the time of award of any unpaid rent that had been due at the time of termination; plus
 - ii. The worth at the time of award of the amount by which (a) the unpaid rent that would have been earned after termination until the time of award minus (b) the amount of the rent lost, if any, that LESSEE affirmatively proved could have been reasonably avoided; plus
 - iii. The worth at the time of award of the amount by which (a) the unpaid rent for the balance of the Term after the time of the award minus (b) the amount of rent lost, if any, as LESSEE affirmatively proves could be reasonably avoided; plus
 - iv. Any other amount necessary to compensate CITY for the detriment proximately caused by LESSEE'S failure to perform LESSEE'S obligations or that, in the ordinary course of things, would be likely to result; plus

- v. All other amounts in addition to or in lieu of those previously stated as may be permitted by California law.

As used in Sections 6.2(c)(i) and (ii), the "worth at time of award" shall be computed by allowing interest at the rate of ten percent (10%) per annum. As used in Section 6.2(c)(iii), the "worth at the time of award" shall be computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "rent" shall include base rent and any and all other amounts that LESSEE is required to pay to CITY under this Lease.

The calculation of any sum under this section shall be based on a 30-day month and a 360-day year.

6.3 Default if Leasehold is Encumbered. If there is a CITY-approved encumbrance on LESSEE's leasehold interest, CITY shall give the mortgagee or beneficiary written notice of LESSEE's default under this Lease contemporaneously with written notice of LESSEE's default under this Lease being provided to LESSEE, and the same mortgagee or beneficiary shall have thirty (30) days from the notice to cure the default, or, if the default is not curable within thirty (30) days, to commence to cure the default and diligently pursue the cure to completion. CITY may extend the cure period if the mortgagee or beneficiary uses reasonable diligence to pursue a cure. If the mortgagee or beneficiary chooses to cure the default through litigation or foreclosure, then CITY may exercise any of the following options following the expiration of all applicable notice and cure periods:

- (a) CITY may correct the default and charge the costs to the account of LESSEE, which charge shall be due and payable on the date that the Rent is next due after CITY's notice of such costs to LESSEE, and mortgagee or beneficiary;
- (b) CITY may correct the default and pay the costs from the proceeds of any insurance fund held by CITY, CITY and LESSEE, or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or to pay the costs of correction performed by or at the direction of CITY; and
- (c) CITY may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE shall assume and pay any and all penalties or premiums required by the beneficiaries, trustees or mortgagees as a condition of early payoff of the related obligations by CITY. CITY may, as an alternative, substitute the terminated LESSEE with a new lessee reasonably satisfactory to the mortgagee or beneficiary. LESSEE shall pay to CITY all reasonable costs incurred by CITY in re-leasing to a new lessee.

- (d) If the default is non-curable by LESSEE, then any lender holding a beneficial interest in the Premises, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this Lease. If the mortgagee or beneficiary gives notice in writing of its election to substitute itself within the thirty (30) day period after receiving CITY's written notice of a default, and the default, if curable, is cured by the mortgagee or beneficiary, then this Lease will not terminate pursuant to the default. In that event, CITY consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Lease with all the rights, privileges, and obligations of LESSEE, subject to the curing of the default, if possible, by mortgagee or beneficiary. In that event, LESSEE shall assign to mortgagee or beneficiary all of its interest in and to the leasehold estate under this Lease.

6.4 Abandonment by LESSEE. If LESSEE abandons the Premises this Lease shall continue in effect as long as CITY does not terminate this Lease, and CITY may enforce all of its rights and remedies under this Lease, including without limitation the right to recover Rent as it becomes due, plus damages recoverable at law.

6.5 Waiver. Any waiver by CITY of a breach or default by LESSEE shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by CITY. CITY's delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Lease. The enforcement of a particular right or remedy for a breach or default shall not waive any other right or remedy for the same breach or default, or for any other or later breach or default. CITY's acceptance of any Rent shall not be a waiver of any default preceding such payment. LESSEE acknowledges that the Premises are a part of publicly-owned property held in trust for the benefit of the citizens of the City of San Diego, and that any failure by CITY to discover a breach or default, or to take prompt action to require the cure of any breach or default, shall not result in an equitable estoppel, but CITY shall, at all times, have the legal right to require the cure of any breach or default. CITY's acceptance of a partial payment of Rent shall not constitute a waiver of the balance of the Rent payment due.

7. EMINENT DOMAIN

7.1 Eminent Domain. If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) shall be as follows:

- (a) Full Taking. If the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

- (b) Partial Taking - Remainder Unusable. If a partial taking of the Premises occurs, and in the reasonable opinion of CITY, the remaining part of the Premises is unsuitable for the Allowed Use, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- (c) Partial Taking - Remainder Usable. If a partial taking of the Premises occurs, and in the reasonable opinion of CITY, the remaining part of the Premises are suitable for the Allowed Use, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The Rent shall be equitably reduced to reflect the portion of the Premises taken, only to the extent that LESSEE's operations are reduced or impaired.
- (d) Award. All monies awarded in any taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee or both. LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE's then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- (e) Transfer. CITY has the right to transfer CITY's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by LESSEE on the Premises in accordance with this Lease.
- (f) No Inverse Condemnation. The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

8. INDEMNITY; HOLD HARMLESS; INSURANCE

- 8.1 LESSEE Indemnification & Hold Harmless. LESSEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with LESSEE's acts or omissions in the performance of its obligations under this Lease or out of the presence of asbestos in the Premises, and all expenses of investigating and defending against same, including without limitation, reasonable attorney fees and costs; provided, however, that LESSEE's duty to indemnify and hold CITY and its elected officials, officers, employees, representatives, and agents harmless shall not include any liability to the extent arising from the negligence or intentional misconduct of CITY or its elected officials, officers, employees, representatives,

and agents. CITY may, at its election, participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all costs related thereto, including without limitation reasonable attorney fees and costs.

8.2 Insurance. LESSEE shall not begin any work under this Lease until it obtained, and provided to the CITY, insurance certificates reflecting evidence of all insurance required in Section 8.3; and (b) obtained CITY approval of each insurance company or companies in accordance with Section 8.5. LESSEE's liabilities, including but not limited to LESSEE's indemnity obligations, under this Lease, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Lease, and LESSEE's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Lease may be treated as a material breach of contract by the CITY. LESSEE shall not modify any policy or endorsement thereto which increases the CITY's exposure to loss for the duration of this Lease.

8.3 Types of Insurance. At all times during the Term of this Lease, LESSEE shall maintain insurance coverage as follows:

- (a) Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 04 13 or an equivalent form providing coverage at least as broad which shall cover liability, arising from any and all personal injury or property damage in the amount of Five Million Dollars (\$5,000,000) per occurrence and subject to an annual aggregate of Fifteen Million Dollars (\$15,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy. The required limits may be satisfied through a combination of CGL and umbrella excess liability policies.
- (b) Commercial Automobile Liability. For all of LESSEE's automobiles including owned, hired, and non-owned automobiles, LESSEE shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of One Million Dollars (\$1,000,000) per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).
- (c) Causes of Loss - Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of LESSEE's insurable property related to the Allowed Use of the Premises under this Lease or the Premises in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver a certificate of such insurance to CITY's Department of Real Estate and Airport Management,

- (d) Workers' Compensation. To the extent required by applicable state or federal law, LESSEE shall keep in full force and effect a Workers' Compensation policy. That policy shall provide a minimum of One Million Dollars (\$1,000,000) of employers' liability coverage, and LESSEE shall provide an endorsement that the insurer waives the right of subrogation against CITY and its respective elected officials, officers, employees, agents, and representatives.
 - (e) Cyber Liability Insurance. LESSEE shall provide, at its sole cost and expense, evidence of Cyber Liability insurance with limits of not less than \$1,000,000 for each occurrence and an annual aggregate of \$2,000,000 covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. Such coverage is required only if any products and/or services related to information technology (including hardware and/or software) are provided to LESSEE and for claims involving any professional services for which LESSEE's contractor is engaged with LESSEE for such length of time as necessary to cover any and all claims.
 - (f) Crime Insurance. LESSEE shall keep in full force and effect a crime insurance policy which shall include employee dishonesty/fidelity coverage for a minimum of twenty-five thousand dollars (\$25,000.00) per employee or one hundred thousand dollars (\$100,000.00) blanket limit. This coverage shall protect against loss by the theft or mysterious disappearance of property by any of LESSEE's employees or third parties while the Premises are in the care, custody, or control of LESSEE resulting directly or indirectly from the performance or execution of the Lease, and a contract or subcontract thereunder.
- 8.4 Deductibles. All deductibles on any policy shall be the responsibility of the LESSEE and shall be disclosed to the CITY at the time the evidence of insurance is provided.
- 8.5 Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Lease shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California. CITY will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.
- 8.6 Accident Reports. LESSEE shall report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Allowed Uses within a reasonable time following such accident. Such report shall contain,

to the extent available to LESSEE, the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, photographs or video, if any, and other pertinent information.

- 8.7 Additional Insurance. LESSEE may obtain additional insurance not required by this Lease.
- 8.8 Excess Insurance. All policies providing excess coverage to CITY shall follow the form of the primary policy or policies including but not limited to all endorsements.
- 8.9 Required Endorsements. The following endorsements to the policies of insurance are required to be provided to CITY before any work is initiated under this Lease.

Commercial General Liability Insurance Endorsements:

- (i) ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an additional insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives with respect to liability arising out of (a) ongoing operations performed by LESSEE or on LESSEE's behalf, (b) LESSEE's products, (c) LESSEE's work, including but not limited to LESSEE's completed operations performed by LESSEE or on LESSEE's behalf, or (d) premises owned, leased, controlled, or used by LESSEE.
- (ii) PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents, and representatives as respects operations of LESSEE. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents, and representatives shall be in excess of LESSEE's insurance and shall not contribute to it.
- (iii) SEVERABILITY OF INTEREST. The policy or policies must be endorsed to 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 and shall provide cross-liability coverage.

Automobile Liability Insurance Endorsements:

- (iv) ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an additional insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives with respect to liability arising out of automobile owned, leased, hired, or borrowed by or on behalf of LESSEE.

(v) SEVERABILITY OF INTEREST. The policy or policies must be endorsed to 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 and shall provide cross-liability coverage.

Worker's Compensation Insurance Endorsements:

(vi) WAIVER OF SUBROGATION. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against CITY and its respective elected officials, officers, employees, agents, and representatives for losses paid under the terms of this policy or these policies which arise from work performed by LESSEE for CITY.

9. IMPROVEMENTS; ALTERATIONS; REPAIRS; MAINTENANCE

9.1 Waste; Casualty. LESSEE shall not commit and shall use commercially reasonable efforts to not allow any third party, including Service Provider, to commit, any voluntary physical waste or any public or private nuisance on the Premises. If the Premises are damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE shall, to the extent LESSEE receives insurance proceeds that may be applied to restore or rebuild the Premises in a sufficient amount to restore or rebuild the Premises, and so long as such restoration or rebuilding can feasibly be completed before the expiration of the Lease, either, at CITY's option: (a) restore the Premises to substantially the same as its prior condition within a reasonable time and to CITY's reasonable satisfaction; or (b) clear and remove from the Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage. LESSEE agrees that, to the extent LESSEE has an obligation to restore or rebuild under this Section 9.1, preliminary steps toward performing such restoration or rebuilding of the Premises shall be commenced by LESSEE within thirty (30) days of written notice from CITY of its election under this Section 9.1, and the required restoration or rebuilding shall be completed within a reasonable time thereafter. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the Premises within two (2) days of such fire or damage.

9.2 Acceptance of Premises. CITY has not made and makes no representation or warranty as to the condition or suitability of the Premises for LESSEE's intended use, and assumes no obligation to alter or improve the Premises other than any express obligation to alter or improve the Premises as set forth in this Lease. LESSEE has relied solely on its own independent investigations of the condition and suitability of the Premises and is satisfied with the condition thereof. LESSEE further acknowledges that the Premises are in the condition called for by this Lease and that LESSEE shall not hold CITY responsible for any defects, whether apparent or latent, in the Premises as of the Effective Date, including the presence of any Hazardous Substances as defined in this Lease. LESSEE acknowledges and agrees

that unless set forth in this Lease, CITY has no obligation to improve, modify, repair, replace, alter or otherwise develop the Premises at any time either prior to, on, or after the Effective Date.

- 9.3 Asbestos Disclosure. Portions of the structural components of the Premises may contain asbestos. LESSEE acknowledges receipt of notice from CITY of the presence of such asbestos in accordance with California Health and Safety Code Section 25915. LESSEE shall disclose to all appropriate parties the existence of asbestos on the Premises, as required by California Health and Safety Code Section 25915.
- 9.4 Asbestos. If LESSEE makes improvements, alterations, or repairs to the Premises, LESSEE shall be responsible for any asbestos removal, management, or containment that is required by applicable law in connection with such improvement, alteration, or repair, and shall pay all costs associated therewith. Asbestos removal, management, or containment shall be conducted in accordance with all applicable laws. CITY may, at its discretion, station supervisory personnel at the work site to ensure that LESSEE's obligations under this section are fulfilled.
- 9.5 Entry and Inspection. Upon three (3) business days prior notice to the LESSEE (except in the event of an emergency in which case no prior notice shall be required), CITY, as the lessor under this Lease with no effect on its governmental rights and powers, reserves and shall always have the right, but not the obligation, to enter and inspect the Premises and the operations conducted on the Premises, provided that such entry and inspection shall not unreasonably interfere with LESSEE's use of the Premises.
- (a) Notwithstanding any provision of this Lease allowing LESSEE an opportunity to correct a breach, if the Premises are not in a decent, safe, and sanitary condition, CITY shall have the right, but not the obligation, after thirty (30) days prior written notice to LESSEE, to have any maintenance work done that is deemed by CITY in its reasonable discretion to be necessary, and all at LESSEE's sole cost and expense, to keep the Premises in a decent, safe, and sanitary condition. LESSEE shall promptly pay CITY for all costs incurred for such work following receipt of an invoice therefor (together with reasonable backup documentation).
- 9.6 Maintenance. LESSEE shall, at LESSEE's sole cost and expense, and to CITY's satisfaction, maintain the Premises in good order and repair, and in a safe, healthy and sanitary condition at all times during the Term. Maintenance shall include janitorial and routine maintenance and repair services at the Premises, including but not limited to, pest control, basic maintenance of landscaping, HVAC maintenance and repairs for any HVAC installed by LESSEE, and general repairs, such as basic interior plumbing and electrical issues (e.g., clogged toilets and sinks, inoperable light fixtures, or similar issues), doors/hardware/electronic hardware, windows, interior walls, fixtures including lighting fixtures, entry gates/fencing, furniture, playground equipment, and IT equipment installed by LESSEE or

Service Provider, including security equipment. CITY shall at no time during the Term of the Lease be required to make any improvements or repairs to the Premises, except as set forth in this Lease. LESSEE shall comply with all applicable laws, rules, regulations and directives of competent governmental authorities, at LESSEE's sole cost and expense, with respect to maintaining the Premises in a safe and secure manner during the Term and in the condition required to operate a childcare facility. LESSEE will, without limitation, perform all maintenance and repair to all components of the Premises in accordance with this Lease. CITY shall keep in good order, condition and repair the exterior roof and existing building systems. LESSEE shall be responsible for the cost to repair or replace damage as a result of LESSEE's gross negligence or willful misconduct. If the Premises are not in a clean, decent, safe, healthy and sanitary condition, in City's reasonable determination, CITY will have the right but not the obligation, after thirty (30) days prior written notice to LESSEE, to have any maintenance work done that is reasonably deemed by CITY in its sole discretion to be necessary, at LESSEE's sole cost and expense. LESSEE will promptly pay CITY for all costs incurred for such work after receipt of an invoice therefor. CITY may require LESSEE to file with CITY a faithful performance bond to ensure the prompt correction of any condition which is not clean, decent, safe, healthy and sanitary. The bond will be in an amount reasonably determined by CITY to be adequate to correct the unsatisfactory condition. LICENSEE will pay the cost of the bond.

9.7 RESERVED

- 9.8 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered, by LESSEE without CITY's prior written approval. LESSEE shall not make any structural or architectural design alterations to approved improvements, structures, or installations on the Premises without CITY's prior written approval, including applicable building permits, which should not be unreasonably withheld, delayed, or conditioned. This provision shall not relieve LESSEE of any maintenance obligation under this Lease. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations to the Premises other than any expense in connection with any express obligation to alter or improve the Premises set forth in this Lease.

- 9.9 Required Improvements. LESSEE shall make certain improvements and alterations to the Premises as more fully set forth in Exhibit E_: Description of Site Improvements and Alterations ("Required Improvements"). The Required Improvements shall be in substantial conformance to the plans approved by the CITY as Lessor, and all permits and approvals by the applicable governmental authorities, including the CITY'S Development Services Department. This Lease does not constitute or guarantee the approval, or bind the CITY, the City Council or any City Department to approving any applications or permits for the Required Improvements.

- (a) Permits and Approvals. Prior to commencing any work on the Required Improvements LESSEE shall secure all required permits and approvals from the applicable governmental authorities.

- 9.10 Construction Bond. Prior to LESSEE commencing any work or construction on the Premises, including the Required Improvements, LESSEE shall deposit with CITY, prior to commencement of the construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY that the uncompleted construction shall be removed, and the Premises restored to a condition satisfactory to CITY. The bond or cash shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY.

Prior to the commencement of any work on the Premises, LESSEE shall deliver to City a payment bond (materials and labor bond) in an amount not less than one hundred percent (100%) of the total amount payable under the contract(s) for construction on the Premises to satisfy claims of material suppliers and of mechanics and laborers employed on the contract(s) for construction on the Premises. The bond shall be provided in compliance with California Civil Code sections 9550-9566. The bond shall be executed by an admitted surety, consistent with California Code of Civil Procedure section 995.670, that is authorized by the State of California Department of Insurance to transact surety insurance in the State. Lessee shall maintain the bond in full force and effect until all improvements for the construction on the Premises are accepted by City and until all claims for materials and labor are paid, and must otherwise comply with the Government Code. Should the bond become insufficient, Lessee shall renew, or cause the renewal of, the bond within ten (10) calendar days after receiving notice from City.

- 9.11 Liens. LESSEE shall protect, defend, indemnify, and hold CITY harmless from and against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Premises by or at the direction of LESSEE and the costs of defending against such claims, including without limitation reasonable attorneys' fees. If LESSEE causes improvements, alterations, or repairs to be made to the Premises, and a lien or notice of lien is filed against the Premises, LESSEE shall notify CITY of the lien within five (5) days after LESSEE first becomes aware of the existence of the lien, and within thirty (30) days after the filing either: (a) take all actions necessary to record a valid release of the lien; or (b) file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.
- 9.12 Prevailing Wages. Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair, and maintenance work performed under this Lease is subject to State prevailing wage laws. For any construction project performed by or at the direction of LESSEE under this Lease cumulatively

exceeding \$25,000 and for alteration, demolition, repair, and maintenance work performed by or at the direction of LESSEE under this Lease cumulatively exceeding \$15,000, LESSEE, its contractors and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements set forth in Exhibit D.

- 9.13 Signs. LESSEE shall not erect or display any permanent banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices, or advertising without CITY's prior written consent; provided that signs on the interior of the Premises that are not visible from the exterior of the Premises shall not require CITY's consent.. If any such unauthorized item is found on the Premises, LESSEE shall remove the item at its expense within five (5) working days after receipt of written notice from CITY, or CITY may thereafter remove the item at LESSEE's cost.

9.14 Ownership of Improvements and Personal Property.

- (a) Improvements. During the Term of the Lease, LESSEE shall own all improvements, fixtures, structures, installations, and additions constructed or installed on the Premises by LESSEE. Upon expiration or termination of this Lease, all such improvements, fixtures, structures, installations, and additions shall be deemed a part of the Premises and owned by CITY. Notwithstanding the foregoing, CITY may, upon notice to LESSEE at the time CITY's consent to such improvement, fixture, structure, installation, or addition was requested, elect to have part or all of such improvement, fixture, structure, installation or addition removed by LESSEE at the end of the Term. In that case, LESSEE shall, at LESSEE's sole cost and expense, remove those items designated for removal in CITY's notice, but in no event later than sixty (60) days after the expiration or earlier termination of this Lease. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage (ordinary wear and tear excepted) resulting from the removal of such items. If LESSEE fails to remove the items as required herein, CITY may, at its option, remove them at LESSEE's sole cost and expense.
- (b) Personal Property. LESSEE shall remove LESSEE-owned machines, appliances, equipment, trade fixtures, and other items of personal property upon the expiration of the Term, or as soon as practicable after termination, but in no event later than thirty (30) days after the expiration or earlier termination of this Lease. Any such items which LESSEE fails to so remove shall be deemed abandoned and become CITY's property free of all claims and liens of LESSEE, or CITY may, at its option, remove such items at LESSEE's sole cost and expense. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage (ordinary wear and tear excepted) resulting from the removal of its personal property from the Premises.

- (c) Late Removal. Notwithstanding any provision of this Lease to the contrary, LESSEE shall pay rent to CITY for any period of time after the expiration or termination of this Lease needed to remove improvements required to be removed by LESSEE under Section 9.15(a). Such rent shall be calculated on a per diem basis using the then-current fair market rental rate as determined by qualified CITY staff, in its sole but reasonable discretion.
 - (d) CITY's Right to Acquire Personal Property. If LESSEE wants to dispose of any of its personal property used in its operations on the Premises upon expiration of this Lease, LESSEE shall notify CITY at least one hundred twenty (120) days before the expiration of this Lease of its desire to dispose of such personal property and the then-unamortized value of such personal property (it being understood that the current value of such personal property is being amortized on a straight-line basis over five years commencing on the Effective Date). CITY shall have the right, exercisable within thirty (30) days after receipt of notice from LESSEE, to notify LESSEE in writing of its intent to acquire some or all of such personal property (if such personal property is less than all of such personal property, specifically identify such personal property) for the applicable then-unamortized value and, upon the expiration of this Lease, CITY shall purchase all such personal property for such value pursuant to a customary bill of sale. If CITY purchases any such personal property in accordance with this Section 9.15(c), LESSEE may leave all such personal property in place on the Premises upon the expiration of this Lease. If CITY does not exercise its right in accordance with this Section 9.15(c), LESSEE will remove all of such personal property from the Premises on or before the expiration or earlier termination of the Lease.
- 9.15 Permits and Approvals. Prior to commencing any construction or improvements on the Premises, LESSEE shall (1) submit development plans and all documents required by the applicable CITY departments (e.g., Development Services Department); and (2) secure all required permits and approvals from competent governmental authorities for all planned construction and improvements, including final review pursuant to CEQA.
- 9.16 Contractor Requirements. All construction work performed by or at the direction of LESSEE shall be performed only by competent and qualified contractors duly licensed under the laws of the State of California pursuant to written contracts with such contractors. LESSEE further warrants and represents that it will require any contractor or subcontractor to maintain their license in an active status and in good standing for the term of any contract related to work subject to this Lease. CITY shall have the right to demand production of and to inspect the contractor's or subcontractor's license, and LESSEE agrees to produce said documentation within two (2) working days of such a request. LESSEE shall notify CITY within two (2) working days after it becomes aware that a contractor or subcontractor is unlicensed, or that said license has been suspended or revoked, and LESSEE further represents and warrants that it will not allow said contractor or subcontractor to enter

onto the Premises or perform work subject to the Lease until LESSEE has demonstrated to CITY's satisfaction that the license is active and in good standing.

10. GENERAL PROVISIONS

- 10.1 Notices. Any notice required or permitted to be given under this Lease shall be in writing and may be served personally, by nationally recognized overnight courier, or by United States mail, postage prepaid, addressed as follows:

If to LESSEE:

THE SAN DIEGO POLICE OFFICERS ASSOCIATION
Attention: Jared Wilson
8388 Vickers Street
San Diego, California 92111
(858) 573-1199

If to CITY:

THE CITY OF SAN DIEGO
Attention: Director, Department of Real Estate and Airport Management
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101
(619) 236-6020

- 10.2 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, restoration, and operation of the Premises comply with all applicable laws, rules, regulations, and requirements of competent legal authority at LESSEE's sole cost and expense. LESSEE shall promptly deliver to CITY copies of all documentary evidence of such compliance received by or otherwise reasonably available to LESSEE) following CITY's written request. In addition, LESSEE shall comply with any and all notices issued by CITY under the authority of any law, statute, ordinance, or regulation. CITY shall comply with all applicable laws, rules, regulations, and requirements of competent legal authority at CITY's sole cost and expense in connection with exercising its rights and performing its obligations under this Lease.
- 10.3 California Public Records Act. LESSEE acknowledges that CITY is a government entity subject to the California Public Records Act (CPRA). CITY, in its sole discretion will determine if records related to this Lease, including records submitted by or obtained from LESSEE, are responsive to a CPRA request, and if they are responsive, CITY in its sole discretion shall determine if such records are exempt from disclosure. CITY shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by LESSEE as a result of CITY's disclosure of LESSEE information required pursuant to the CPRA.
- (a) CITY shall have no obligation or duty to notify LESSEE prior to disclosing any records pursuant to a CPRA request. However, without waiving the

CITY'S right in its sole discretion to determine if records are disclosable, LESSEE may request that the City withhold certain records by notifying CITY, at the time LESSEE discloses information or provides records to CITY that it objects to the disclosure of such information to a third party, marking every page of such records "CONFIDENTIAL" at the time of delivery to CITY, and providing specific and detailed legal grounds, including any applicable case law, upon which CITY may rely for withholding any information requested pursuant to the CPRA. If CITY withholds disclosure of information in reliance on such legal analysis provided by LESSEE, LESSEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless for and from legal actions or challenges seeking to obtain the information from CITY and all costs incurred by CITY associated therewith, and shall defend, at LESSEE's sole expense, any action brought against CITY resulting from CITY's nondisclosure of the information. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification at its own cost and expense. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all costs related thereto, including without limitation reasonable attorney fees and costs.

- (b) LESSEE's Waiver. LESSEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS THAT LESSEE INCURS AS A RESULT OF CITY'S DISCLOSURE OF LESSEE INFORMATION REQUIRED PURSUANT TO THE CPRA.

The obligations under this Section 10.3 shall survive the expiration or earlier termination of this Lease.

- 10.4 Equal Opportunity. LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations. LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, gender identity, gender expression, sexual orientation, disability, medical condition, or place of birth. Upon CITY's request, LESSEE shall submit a current Workforce Report and, if required, an Equal Opportunity Plan which set forth the actions LESSEE will take to achieve the CITY's goals for the employment of African Americans, Native Americans, Asians, Latinos, women, and people with disabilities. LESSEE shall cause the foregoing provisions to be inserted in all subleases and all contracts for any work covered by this Lease so that such provisions will be binding upon each sublessee and contractor. LESSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these

requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.

- 10.5 Equal Benefits. LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, which require lessees of CITY-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. LESSEE shall certify that it will maintain such equal benefits throughout the Term. LESSEE's failure to maintain equal benefits shall be a default of this Lease.
- 10.6 Disabled Access Compliance. LESSEE shall, as applicable to the Premises and LESSEE's possession, use, and occupancy thereof, comply with the California Government Code Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); California Building Code (CBC) Title 24; and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. When a conflict exists between any federal or state accessibility requirements, LESSEE will follow the most restrictive accessibility requirement (i.e., that which provides the most access). LESSEE's compliance shall include but not necessarily be limited to the following:
- (a) LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
 - (b) No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.
 - (c) LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the Premises.
 - (d) Where required by law, any improvements, fixtures, structures, or installations on the Premises shall comply with municipal, state, and federal accessibility requirements by bringing up to code and making accessible any areas of the Premises which deny access to disabled persons. All improvements and alterations shall be at the sole cost of LESSEE.
 - (e) LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessees shall be individually responsible for their own ADA employment programs.
 - (f) LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this Lease.

- 10.7 Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that the Premises have not been inspected by a Certified Access Specialist (CASP). Further pursuant to California Civil Code section 1938(e), CITY is required to state:

“A Certified Access Specialist (CASP) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.”

- 10.8 Drug-free Workplace. LESSEE shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

- (a) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the Premises and specifying the actions that will be taken against employees for violations of the prohibition.
- (b) Establish a drug-free awareness program to inform employees about all of the following:
 - (i) The dangers of drug abuse in the workplace;
 - (ii) LESSEE's policy of maintaining a drug-free workplace;
 - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees for drug abuse violations.
- (c) LESSEE shall include in each of its subleases and contracts related to this Lease language obligating each sublessee and contractor to comply with the provisions of this section to maintain a drug-free workplace. LESSEE, and each of its sublessees and contractors, shall be individually responsible for their own drug-free workplace program.

- 10.9 CITY Employee Participation Policy. CITY may terminate this Lease if LESSEE knowingly employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee,

participate in negotiations with or otherwise have an influence on the selection of LESSEE for this Lease, and LESSEE does not terminate such individual promptly following written notice from CITY. It is not the intent of this policy that these provisions apply to members of the City Council.

- 10.10 Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Lease and to the extent legally possible, LESSEE shall use commercially reasonable efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. LESSEE shall use commercially reasonable efforts to hire qualified local residents and firms whenever practicable.
- 10.11 Water Quality Assurances. CITY and LESSEE are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the Premises in a manner which aids in the protection of the City of San Diego's precious water resources. It is LESSEE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code Sections 43.0301 to 43.0312). Therefore, LESSEE shall implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code Section 43.0307(a).
- 10.12 Nondiscrimination. This Lease is made and accepted upon and subject to the covenant and condition, which shall run with the land, that LESSEE or any person claiming under or through LESSEE shall not establish or cause any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, gender expression, gender identity, disability, sexual orientation, marital status, national origin, ancestry, familial status, or source of income in the possession, use, and occupancy of the Premises or in the selection, location, number, use, or occupancy of tenants, subtenants, or vendees in the Premises.
- 10.13 Cumulative Remedies. CITY's and LESSEE's rights and remedies under this Lease are cumulative and shall not limit or otherwise waive or deny any of CITY's or LESSEE's rights or remedies at law or in equity.
- 10.14 Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive such expiration or termination.
- 10.15 No Affiliation. Nothing contained in this Lease shall be deemed or construed to create a partnership, joint venture, fiduciary, or other affiliation between CITY and LESSEE or between CITY or LESSEE and any third party, or cause CITY or LESSEE to be responsible in any way for the debts or obligations of the other or any third party.

- 10.16 Entire Agreement. This Lease constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties, and agreements between them pertaining to LESSEE's occupancy and use. Any modification, alteration, or amendment of this Lease shall be in writing and signed by all the parties hereto. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself. Each of the parties in the Lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Lease. The failure or refusal of any party to read the Lease or other documents, inspect the Premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions.
- 10.17 Partial Invalidity. If any term, covenant, condition, or provision of this Lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
- 10.18 Hazardous Substances. LESSEE shall not allow the illegal installation, storage, utilization, generation, sale, or release of hazardous or otherwise regulated substances in, on, under, or from the Premises. LESSEE and LESSEE's agents and contractors shall not install, store, utilize, generate, or sell any hazardous substance on the Premises in violation of applicable law. LESSEE shall obtain and maintain all required licenses and permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a hazardous substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment, or device which holds or incorporates a hazardous substance or hazardous waste.
- (a) Release. A release shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances.
 - (b) Hazardous Substances. Hazardous substances shall mean any hazardous liquid, solid, or gaseous material or waste substances listed by the Environmental Protection Agency or the State of California as a hazardous substance, and any type of petroleum-related substances and their chemical constituents.
 - (c) Remediation. If LESSEE's occupancy, use, development, maintenance, or restoration of the Premises results in a release of a Hazardous Substance in violation of applicable law, LESSEE shall pay all costs of remediation and removal as required under, and in accordance with, all applicable laws, rules, and regulations of governmental authorities.

- (d) Removal. If LESSEE or LESSEE's contractor or agent has received approval and permits to store, utilize, generate, or install, or otherwise bring Hazardous Substances onto the Premises, LESSEE shall remove or cause to be removed all Hazardous Substances from the Premises immediately upon or prior to the expiration or earlier termination of this Lease. CITY reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the Hazardous Substances from the Premises. LESSEE shall be responsible for any and all costs incurred by CITY to remove or cause the removal of such Hazardous Substances from the Premises.
- (e) Indemnity. LESSEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims (other than direct claims between CITY and LESSEE) related to environmental liabilities resulting from LESSEE's occupancy, use, redevelopment, maintenance, or restoration of the Premises and all costs and expenses in connection therewith, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties, or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LESSEE's officers, employees, invitees, guests, agents, or contractors, or the public; and (vii) all costs of any health assessments or health effect studies; but excluding any and all claims, costs and expenses arising from the City's negligence or willful misconduct.
- (f) Notice of Release. If LESSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from, or beneath the Premises in violation of applicable law, LESSEE shall within three (3) working days notify CITY and any appropriate regulatory or reporting agency per California Administrative Code Title 19 and any other applicable laws or regulations. LESSEE shall deliver a written report thereof to CITY within three (3) working days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LESSEE shall use commercially reasonable efforts to alleviate the danger. LESSEE shall within three (3) working days notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises.
- (g) Environmental Assessment. Upon reasonable cause to believe that LESSEE's occupancy, use, redevelopment, maintenance, or restoration of the Premises ("LESSEE's Operations") resulted in any Hazardous Substance being released on, from or beneath the Premises in violation of applicable law, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional

environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at LESSEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by LESSEE's Operations on, in, from or under the Premises, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by laws, rules and regulations of competent governmental authorities or require future restricted re-use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws, rules and regulations, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with the laws, rules and regulations of competent governmental authority is achieved, and LESSEE shall pay all costs and expenses therefor.

- 10.19 Unavoidable Delay. If the performance of an act required by this Lease is directly prevented or delayed by a cause beyond the reasonable control of the party required to perform the act (*Force Majeure* Event), that party shall be excused from performing the act for a period equal to the period of the prevention or delay. A *Force Majeure* Event includes strikes or other labor difficulties, unavailability or scarcity of materials or labor, war, riot, civil insurrection, accidents, and material adverse weather conditions and acts of God. This provision shall not apply to or excuse the obligation to pay Rent. The party claiming a delay shall notify the other party in writing within ten (10) days after the beginning of any claimed delay.
- 10.20 Authority to Contract. Each party represents and warrants that the individual executing this Lease on its behalf is authorized to do so in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such party's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Lease is binding upon such party in accordance with its terms..
- 10.21 Controlling Law/Venue. This Lease and all Lease documents shall be deemed to be made under, and shall be construed in accordance with and governed by, the laws of the State of California without regard to the conflicts or choice of law provisions thereof. The venue for any suit or proceeding concerning this Lease, including the interpretation or application of any of its terms or any related disputes, shall be in the County of San Diego, State of California.
- 10.22 Equal Pay Ordinance. Unless an exception applies, LESSEE shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801

through 22.4809. By signing this Lease, LESSEE certifies that it will comply with the requirements of the Equal Pay Ordinance throughout the Term.

- (a) LESSEE and Sublessee Requirement. The Equal Pay Ordinance applies to any sublessee of the Premises to the same extent as it would apply to LESSEE. LESSEE shall require sublessees to certify compliance with the Equal Pay Ordinance in their subleases.
- (b) Notice Requirement. LESSEE must post a notice at the Premises informing its employees of their rights under the Equal Pay Ordinance.

- 10.23 Single Use Plastic Reduction Ordinance. Unless an exception applies, LESSEE will comply with the Single Use Plastic Reduction Ordinance codified in San Diego Municipal Code sections 66.0901 through 66.0907, as may be amended. By signing this Lease, LESSEE certifies that it will comply with the requirements of the Single Use Plastic Reduction Ordinance throughout the Term unless an exception applies.
- 10.24 Time of the Essence. Time is of the essence of each term, covenant, and condition of this Lease.
- 10.26 Successors. Each term, covenant, and condition of this Lease shall inure to the benefit of and bind the successors and assigns of the respective parties.
- 10.27 Noise Disturbances. LESSEE shall not use the Premises in any manner that violates CITY's Noise Abatement and Control Ordinance (Chapter 5, Article 9.5 of the San Diego Municipal Code, as amended from time to time).
- 10.28 LESSEE's Risk. LESSEE shall bear all risks and liability arising out of LESSEE's use or occupancy of the Premises.

IN WITNESS WHEREOF, this Lease is executed to be effective as of the Effective Date.

Date: 8/10/22

SAN DIEGO POLICE OFFICERS ASSOCIATION,
a California corporation

By: [Signature]

Name: JARED WILSON

Title: SPDA PRESIDENT

THE CITY OF SAN DIEGO, a California municipal
corporation

Date: 8-10-22

By: [Signature]

Penny Maus, Director
Department of Real Estate and Airport Management

Approved as to form this 30th day of September, 2022:

MARA W. ELLIOTT, CITY ATTORNEY

By: [Signature]
Julie Inman, Deputy City Attorney

Exhibit A: Aerial Site Plan

Exhibit B: Interior Floor Plan

Exhibit C: Playground

Exhibit D: Prevailing Wage Requirements

Exhibit E: Required Improvements

R-314252

Exhibit A



Exhibit B

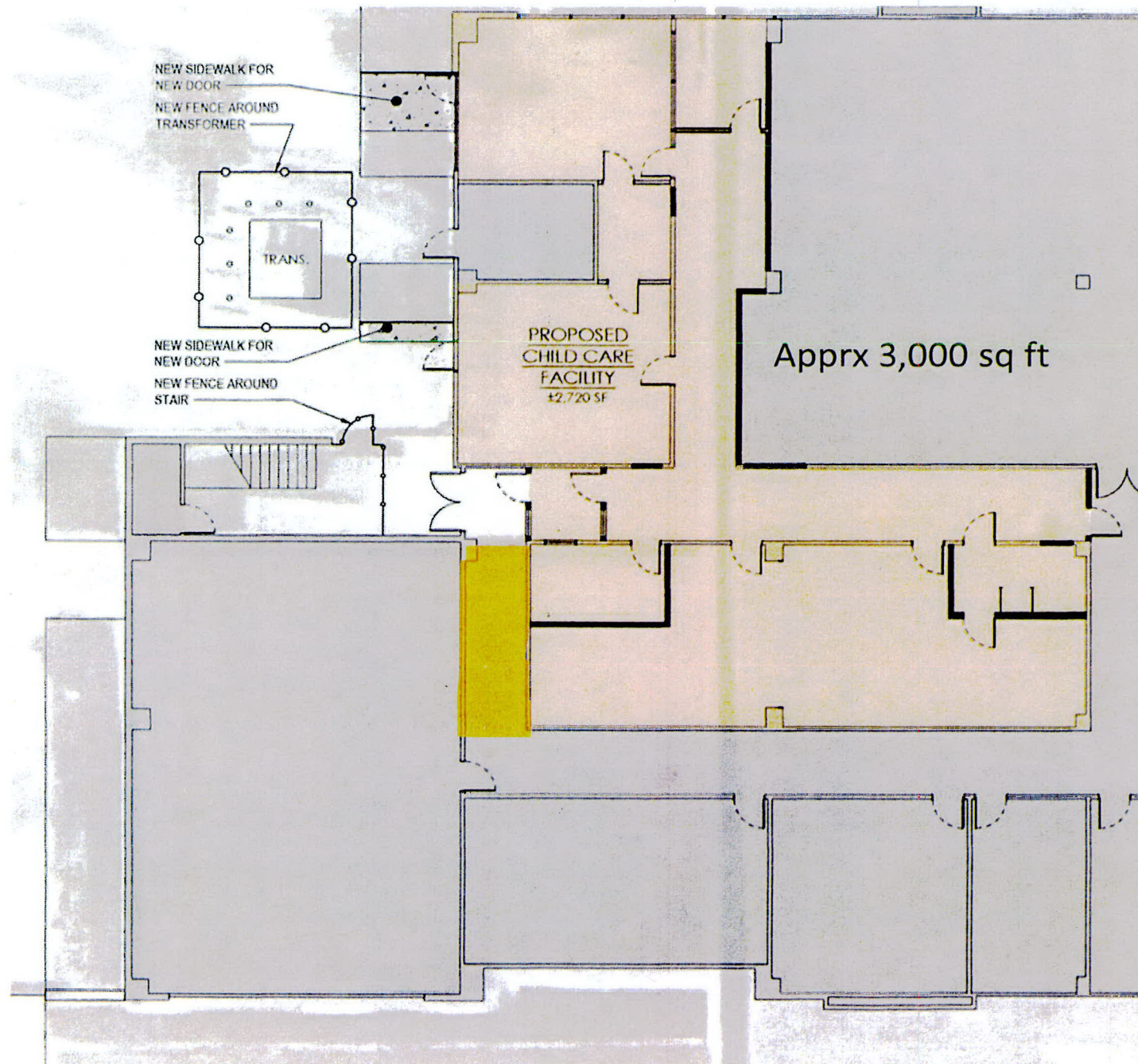


Exhibit C

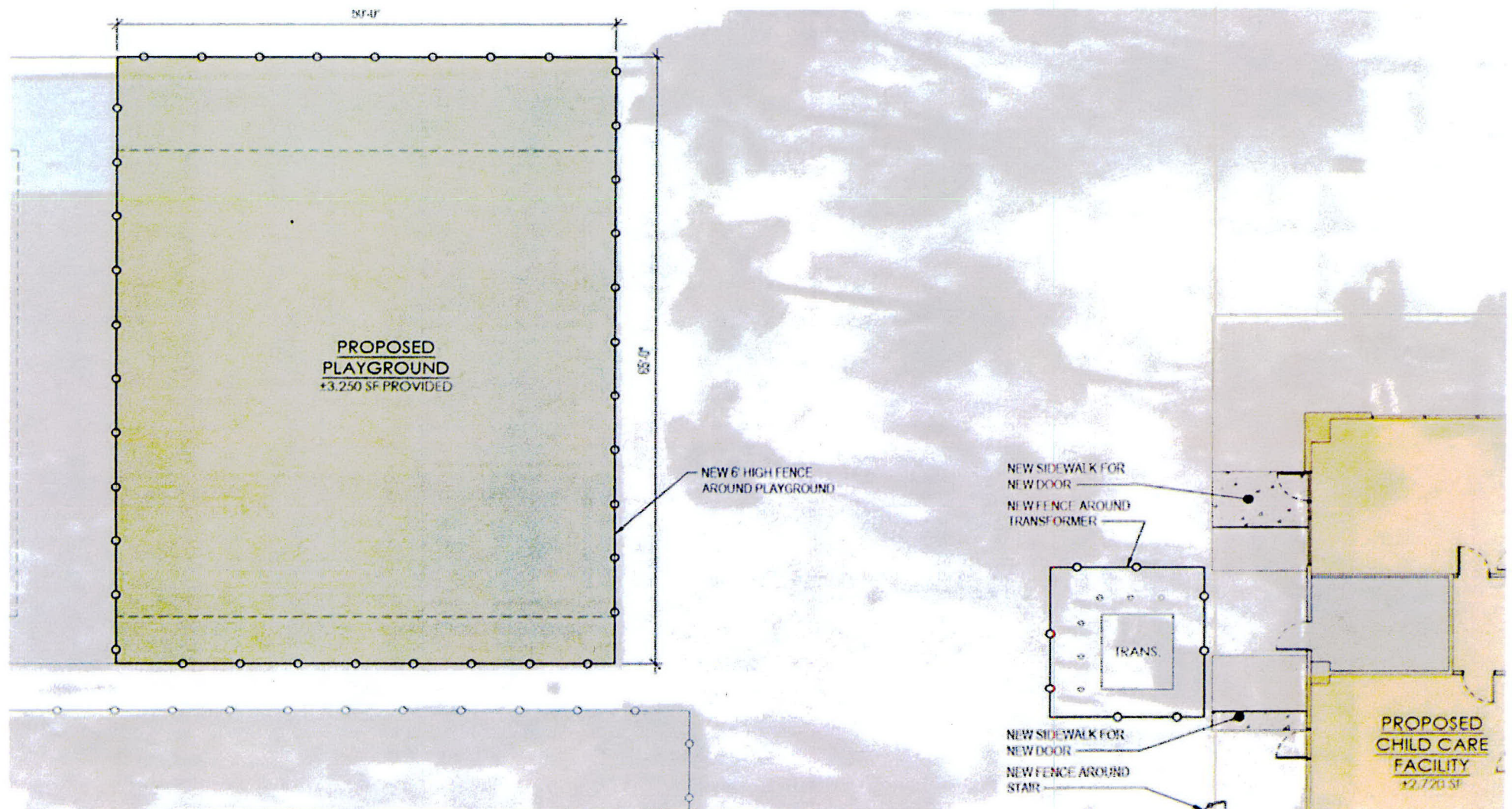


EXHIBIT D

PREVAILING WAGE REQUIREMENTS

By signing this Lease, LESSEE certifies that he or she is aware of the wage provisions described herein and shall comply with such provisions before commencing any work.

Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Lease is subject to State prevailing wage laws. For construction work performed under this Lease cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Lease cumulatively exceeding \$15,000, LESSEE, its contractors and subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.

1. Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, LESSEE, its contractors and subcontractors shall ensure that all workers who perform work under this Lease are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

1.1. Copies of such prevailing rate of per diem wages are on file at the City of San Diego's Equal Opportunity Contracting Department and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. LESSEE, its contractors and subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

1.2. The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Lease. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Lease in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Lease, each successive predetermined wage rate shall apply to this Lease on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Lease, such wage rate shall apply to the balance of the Lease.

2. Penalties for Violations. LESSEE, its contractors and subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 – 1861.

3. Payroll Records. LESSEE, its contractors and subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying

and certifying payroll records, and making them available for inspection. LESSEE shall require its contractors and subcontractors to also comply with section 1776. LESSEE, its contractors and subcontractors shall submit weekly certified payroll records online via the CITY's web-based Labor Compliance Program. LESSEE is responsible for ensuring its contractors and subcontractors submit certified payroll records to the CITY. LESSEE, its contractors and subcontractors shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.

4. Apprentices. LESSEE, its contractors and subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. LESSEE shall be held responsible for their compliance as well as the compliance of their contractors and subcontractors with sections 1777.5, 1777.6 and 1777.7.

5. Working Hours. LESSEE, its contractors and subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

6. Required Provisions for Contracts and Subcontracts. LESSEE shall include at a minimum a copy of the following provisions in any contract they enter into with a contractor or subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861. LESSEE shall ensure its contractors shall include at a minimum a copy of the following provisions in any contract they enter into with a contractor or subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

7. Labor Code Section 1861 Certification. LESSEE in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Lease, LESSEE certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Lease."

8. Labor Compliance Program. The City has its own Labor Compliance Program authorized in August 2011 by the DIR. LESSEE shall withhold contract payments pursuant to the contract between LESSEE and LESSEE's contractors or subcontractors when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.

9. Contractor and Subcontractor Registration Requirements. This project is subject to compliance monitoring and enforcement by the DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or enter into any contract for public work, as defined in this chapter of the Labor Code unless currently registered and qualified to perform the work pursuant to Section 1725.5. In accordance with Labor Code section 1771.1(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by

Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

9.1. A contractor's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.

9.2. A contract entered into with any contractor or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of section 1725.5 of this section.

9.3. By signing this Lease, LESSEE certifies that he or she has verified that all contractors and subcontractors used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and LESSEE shall provide proof of registration for themselves and all listed contractors and subcontractors to the City at the time of execution of this Lease or upon request.

10. Stop Order. For LESSEE or its contractor(s) or subcontractor(s) engaging in the performance of any public work contract without having been registered in violation of Labor Code sections 1725.5 or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor(s) or unregistered subcontractor(s) on ALL public works until the unregistered contractor(s) or unregistered subcontractor(s) is registered. Failure to observe a stop order is a misdemeanor.

11. List of all Subcontractors. The City may ask LESSEE for the most current list of contractors or subcontractors (regardless of tier), along with their DIR registration numbers, utilized on this Lease at any time during performance of this Lease, and LESSEE shall provide the list within ten (10) working days of the City's request. LESSEE shall notify City of any contractors or subcontractors, including their DIR registration numbers, which have not previously performed work on this Lease prior to said contractors or subcontractors performing work on this Lease. Additionally, LESSEE shall provide the City with a complete list of all contractors or subcontractors utilized on this Lease (regardless of tier), within ten (10) working days of the completion of the work authorized by this Lease, along with their DIR registration numbers. LESSEE shall withhold final payment to contractor(s) until at least 30 days after this information is provided to the City.

12. Exemptions for Small Projects. There are limited exemptions for installation, alteration, demolition, or repair work done on projects of \$25,000 or less. LESSEE shall still comply with Labor Code sections 1720 et. seq. The only recognized exemptions are listed below:

12.1. Registration. LESSEE and its contractors will not be required to register with the DIR for small projects. (Labor Code section 1771.1).

12.2. Certified Payroll Records. The records required in Labor Code section 1776 shall be required to be kept and submitted to the City, but will not be required to be submitted online with the DIR directly. LESSEE will need to keep those records for at least three years following the completion of the contract. (Labor Code section 1771.4).

12.3. List of all Subcontractors. LESSEE and its contractors shall not be required to hire only registered subcontractors and is exempt from submitting the list of all subcontractors that is required in section 11 above. (Labor Code section 1773.3).

Exhibit E

CLASSROOM OCCUPANCY											
ROOM	AGE RANGE	CA AGE RANGE	CA MAX RATIO	CA MAX GROUP	ACTUAL MAX RATIO	ACTUAL MAX GROUP	STAFF REQ. PER PLAN	SFI CHD REQ.	AREA REQ.	ACT. AREA	
INFANT	18m-24m	18m-24m	1:1	14	1:1	14	2	35	210	217	
TODDLER	24m-36m	24m-36m	1:2	16	1:2	16	2	35	280	312	
MULTIAGE	24m-36m	18m-36m	1:2	18	1:2	18	2	35	660	736	
TOTAL							30	105	1,050	1,275	

• LAYOUT HAS BEEN DESIGNED USING KCE STANDARD AGE GROUPS.
 • ANY OTHER INFORMATION IS PROVIDED FOR REFERENCE ONLY.
 • KCE MAX RATIO AND MAX GROUP SIZES ARE BASED ON FIT FOR GROWTH.
 • BUILDING YIELDS ARE BASED ON FIT FOR GROWTH AND LICENSING CRITERIA REQUIRE FINAL DETERMINATION BY OPERATIONS.
 • SQUARE FOOTAGES HAVE BEEN CALCULATED TO EXCLUDE FURNITURE AND CASE CORNERS.
 • PLANS HAVE BEEN PREPARED WITH LIMITED INFORMATION REGARDING EXISTING CONDITIONS AND MAY ADVERSELY AFFECT THE LAYOUT AND/OR TOTAL CAPACITY. A COMPLETE AS-BUILT SURVEY NEEDS TO BE COMPLETED TO VALIDATE THE FEASIBILITY OF THIS PLAN.
 • SEE SITE PLAN FOR MORE INFORMATION.

LEGEND
 BLACK FS = QUANTITIES PER FFG MAX
 RED FS = QUANTITIES PER LICENSING MAX

BUILDING DATA PROPOSED BUILDING AREA: 23,167 PROPOSED BUILDING CAPACITY: 30 / 105 BUILDING AREA PER CHILD: 105.55 / 7.36 TOILETS/DRINKS REQUIRED: BASED ON THE TOTAL LICENSED CAPACITY, ONE TOILET AND ONE HAND WASHING FIXTURE SHALL BE MAINTAINED FOR EVERY 15 CHILDREN OR FRACTION THEREOF. #2 TOILETS/DRINKS PROVIDED: 2 TOILETS/DRINKS PLAYGROUND REQUIREMENTS THERE SHALL BE AT LEAST 75 SQUARE FEET PER CHILD OF OUTDOOR ACTIVITY SPACE BASED ON THE TOTAL LICENSED CAPACITY. PLAYGROUND REQUIRED: 22,281 / 1,010 SF PLAYGROUND PROVIDED: 48,820 SF	REVISION NOTES 08/04/2021 1. FURNITURE PLAN A 2. FURNITURE ADDED TO FIT PLAN A 08/04/2021 1. FURNITURE PLAN B 2. STAIRCASE ROOM ADDED 08/04/2021 1. FURNITURE PLAN C 2. HALLWAY ADDED TO ADULT TOILET 3. CLOSET PATHS ADDED 11/09/2021 1. REVISION 2. CLOSET PATHS REVISED
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KinderCare
 4020 MURPHY CANYON RD.
 SAN DIEGO, CA
 17710 DORSET AVENUE
 LAKELAND, OHIO 44107
 Phone (216) 521-4524
 www.adaarchitects.com

#	DATE	TYPE	REVISIONS
1	08/04/2021	FIXTURE PLAN A	
2	08/04/2021	FIXTURE PLAN B	
3	08/04/2021	FIXTURE PLAN C	
4	11/09/2021	REVISION	
5			
6			
7			
8			

FIXTURE PLAN
 DATE 04/28/21
 JOB NO. 21145
FP-1.0
 SHEET NO. 1 OF 2

DAY CARE
 EGRESS PATH
 BUILDING EGRESS
 PATH

NORTH
FIXTURE PLAN C
 SCALE: 3/16"=1'-0"

RESOLUTION NUMBER R- **314252**

DATE OF FINAL PASSAGE JUL 29 2022

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING A 60-MONTH LEASE BETWEEN THE CITY OF SAN DIEGO AND THE SAN DIEGO POLICE OFFICERS ASSOCIATION FOR APPROXIMATELY 3,000 SQUARE FEET OF OFFICE SPACE AND 3,250 SQUARE FEET OF OUTDOOR SPACE LOCATED AT 4020 MURPHY CANYON ROAD AND WAIVING A PORTION OF COUNCIL POLICY 700-10.

WHEREAS, the City of San Diego (City) owns certain real property located at 4020 Murphy Canyon Road, San Diego, California 92123, commonly known as Police Plaza, consisting of multiple buildings and outdoor areas (Property); and

WHEREAS, the San Diego Police Department (SDPD) is currently using the Property for office, repair, storage, and training purposes; and

WHEREAS, the City desires to lease a portion of the Property to the San Diego Police Officers Association (Lessee) to allow Lessee to provide a childcare facility with extended normal operating hours and emergency after-hours operating hours to serve SDPD officers; and

WHEREAS, the City and Lessee have negotiated a proposed 60-month lease (Lease) for approximately 3,000 square feet of office space and 3,250 square feet of outdoor space at the Property (collectively, Premises), and a copy of the Lease is included in the docket materials accompanying this Resolution; and

WHEREAS, under the Lease, Lessee will pay to the City administrative rent in the amount of \$4,082.50 per year, adjusted annually based on the Consumer Price Index (Rent), which is below market rental rates for comparable spaces; and

WHEREAS, the City proposes that the requirement at page 10 of Council Policy 700-10 that the City receive fair market rent for the Lease be waived, because the Lease serves the

public purpose of creating a childcare facility available to SDPD officers with extended normal operating hours, emergency after-hours operating hours, and subsidized tuition, which will serve to increase the retention of SDPD officers and the recruitment of diverse SDPD officers; and

WHEREAS, the California Department of Housing and Community Development (HCD) issued the 2021 Surplus Land Act Guidelines (SLA Guidelines) to provide guidance regarding the noticing and disposition procedures applicable to a local agency's disposition of surplus land under the California Surplus Land Act (SLA), as amended by Assembly Bill 1486 (which became effective on January 1, 2020); and

WHEREAS, Section 102(h) of the SLA Guidelines sets forth HCD's interpretation that the SLA noticing and disposition procedures apply generally to lease transactions, except with respect to a lease of land on which no development or demolition will occur, or a lease with a term of less than five years (including any extensions, amendments, or options); and

WHEREAS, HCD reviewed the Lease and determined that the Lease is not subject to the SLA because it does not involve any development or demolition within the meaning of Section 102(h) of the SLA Guidelines; and

WHEREAS, the Office of the City Attorney has drafted this Resolution based on the information provided by City staff (including information provided by affected third parties and verified by City staff), with the understanding that this information is complete, true, and accurate; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. The City's lease of the Premises to Lessee under the terms and conditions of the Lease is approved and authorized.
2. The Mayor or designee is authorized, on behalf of the City, to sign and deliver the Lease and all documents necessary or appropriate to perform the City's obligations under the

Lease. A copy of the Lease, when fully signed, shall be placed on file in the Office of the City Clerk as Document No. RR- 314252.

3. The Council finds that the Lease serves the public purpose of creating a childcare facility available to SDPD officers.

4. The Council waives the requirement in Council Policy 700-10 that the City receive fair market rent for the Lease.

5. The Chief Financial Officer is authorized and directed to accept the Rent payable to the City under the Lease and deposit such Rent into the General Fund 100000.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Julie Gough Inman
Julie Gough Inman
Deputy City Attorney

JGI:cw
7/19/22
Or.Dept: DREAM
CC No.: N/A
Doc. No. 3034270

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUL 25 2022.

ELIZABETH S. MALAND
City Clerk

By Connie Patterson
Deputy City Clerk

Approved: 7/29/22
(date)

Todd Gloria
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on JUL 25 2022, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	☐	☐	☒	☐
Jennifer Campbell	☒	☐	☐	☐
Stephen Whitburn	☒	☐	☐	☐
Monica Montgomery Steppe	☒	☐	☐	☐
Marni von Wilpert	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Raul A. Campillo	☒	☐	☐	☐
Vivian Moreno	☒	☐	☐	☐
Sean Elo-Rivera	☒	☐	☐	☐

Date of final passage JUL 29 2022.

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

TODD GLORIA

Mayor of The City of San Diego, California.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

(Seal)

By Connie Patterson Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- **314252**

Passed by the Council of The City of San Diego on July 25, 2022, by the following vote:

YEAS: CAMPBELL, WHITBURN, MONTGOMERY STEPPE, VON WILPERT,
CATE, CAMPILLO, MORENO, & ELO-RIVERA.

NAYS: NONE.

NOT PRESENT: LACAVA.

RECUSED: NONE.

AUTHENTICATED BY:

TODD GLORIA

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: Connie Patterson, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of
RESOLUTION NO. R-314252 approved on July 25, 2022. The date of final passage is
July 29, 2022.

ELIZABETH S. MALAND

City Clerk of the City of San Diego, California

(Seal)

By: Connie Patterson Deputy