MEMORANDUM

To: CITY COUNCIL

Agenda Date: 6/15/2020

Subject: Cubberley and Extended Day Care Lease Agreements

Attached to this memorandum is a copy of the Cubberley lease that has been signed by the Landlord and the final version of the Extended Day Care Lease with Exhibit A that has been approved by the Landlord and replaces the draft version that was inserted as Attachment B in City Manager Report ID # 11386, Item # 9, on the June 15, 2020 City Council Agenda, Cubberley and Extended Day Care Lease Agreements. The Expiration Date in the final version of the Extended Day Care Lease is June 30, 2022 instead of June 30, 2021. Therefore, the portion of the “Discussion” Section of the memorandum discussing Term should read:

“July 1, 2020 to June 30, 2022”

The City will work with the Landlord to revise the lease, as the Q Building is incorrectly included in Exhibit D as space used by the Landlord. The Q Building is the modular building that is used by FOPAL and is part of the City’s leased premises as outlined in Exhibit B of the lease. Staff will return to Council at a later date with an amendment to correct the error.

DEPARTMENT HEAD: 

CITY MANAGER:
LEASE AGREEMENT

BY AND BETWEEN

PALO ALTO UNIFIED SCHOOL DISTRICT

AS LANDLORD

and

CITY OF PALO ALTO,

A CALIFORNIA CHARTERED MUNICIPAL CORPORATION

AS TENANT
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LEASE AGREEMENT

BASIC LEASE INFORMATION

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<th><strong>Lease Date:</strong></th>
<th>Dated as of [Insert date in DocuSign] for reference purposes only</th>
</tr>
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<tbody>
<tr>
<td><strong>Landlord:</strong></td>
<td>Palo Alto Unified School District</td>
</tr>
<tr>
<td><strong>Landlord’s Address:</strong></td>
<td>Palo Alto Unified School District 25 Churchill Avenue Palo Alto, CA 94306 Attn: Superintendent of Schools</td>
</tr>
<tr>
<td><strong>Tenant:</strong></td>
<td>City of Palo Alto</td>
</tr>
<tr>
<td><strong>Tenant’s Address:</strong></td>
<td>City of Palo Alto 250 Hamilton Avenue Palo Alto, CA 94301 Attn: Manager, Real Property</td>
</tr>
<tr>
<td><strong>Property:</strong></td>
<td>The 27.48-acre Cubberley School consisting of approximately 15.94 acres of outdoor recreational area and an additional 11.54 acres of land improved with walkways, a parking lot, and 104,600 square feet of buildings, as depicted in Exhibit A (“Property”).</td>
</tr>
<tr>
<td><strong>Usable Area:</strong></td>
<td>Approximately 807,486 square feet of area consisting of 15.94 acres (694,346 square feet) of outdoor recreational area and 104,600 square feet of buildings (“Usable Area”).</td>
</tr>
<tr>
<td><strong>Premises:</strong></td>
<td>A portion of the Usable Area consisting of the theater, pavilion, Gym A, Gym B, Rooms G5 and G8, JMZ (Junior Museum and Zoo), S Building, fields, and all other areas marked as Leased by City in Exhibit B, containing approximately 65,046 rentable square feet of building area and 15.94 acres of outdoor recreational area, located in the City of Palo Alto and more particularly described and depicted in Exhibit B (“Premises”). It is understood that such acreage and square footage figures are only approximate and have not been precisely determined.</td>
</tr>
<tr>
<td><strong>Length of Term:</strong></td>
<td>54 months</td>
</tr>
<tr>
<td><strong>Commencement Date:</strong></td>
<td>July 1, 2020</td>
</tr>
<tr>
<td><strong>Expiration Date:</strong></td>
<td>December 31, 2024</td>
</tr>
<tr>
<td><strong>Extension Option:</strong></td>
<td>None</td>
</tr>
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</table>
| **Monthly Base Rent:** | $208,333.33 per month for use of the theater, pavilion, Gym A, Gym B, Rooms G5 and G8, and fields  
$13,790.00 per month for use of the JMZ (Junior Museum and Zoo)  
$5,650.00 per month for use of the S Building |
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<td><strong>Tenant’s Share:</strong></td>
<td>58.81%, as reasonably adjusted for changes in the physical size of the Premises, Usable Area, or the Property occurring thereafter (“Tenant’s Share”) See breakdown of calculation in <strong>Exhibit C</strong>.</td>
</tr>
<tr>
<td><strong>Landlord’s Share:</strong></td>
<td>41.19%, as reasonably adjusted for changes in the physical size of the Premises, Usable Area, or the Property occurring thereafter (“Landlord’s Share”) See breakdown of calculation in <strong>Exhibit D</strong>.</td>
</tr>
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<td><strong>Security Deposit:</strong></td>
<td>$0</td>
</tr>
<tr>
<td><strong>Permitted Use:</strong></td>
<td>Any use permitted by law</td>
</tr>
<tr>
<td><strong>Brokers:</strong></td>
<td>None</td>
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LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into by and between PALO ALTO UNIFIED SCHOOL DISTRICT (“Landlord” or “District”) and CITY OF PALO ALTO, a California chartered municipal corporation (“Tenant” or “City”). The Basic Lease Information, the Exhibits and this Lease Agreement are and shall be construed as a single instrument and are referred to herein as the “Lease”.

1. DEMISE.

In consideration for the rents and all other charges and payments payable by Tenant, and for the agreements, terms and conditions to be performed by Tenant in this Lease, Landlord does hereby lease to Tenant and Tenant does hereby hire and take from Landlord, the Premises described below, upon the agreements, terms and conditions of this Lease for the Term hereinafter stated.

2. PREMISES.

2.1 Premises. The Premises demised by this Lease are as specified in the Basic Lease Information. The Premises have the address and contain the square footage specified in the Basic Lease Information; provided, however, that any statement of square footage set forth in this Lease is an approximation which Landlord and Tenant agree is reasonable and no economic terms based thereon shall be subject to revision whether or not the actual square footage is more or less. Tenant shall have the right to reduce the Premises by surrendering the JMZ and/or S Building back to Landlord upon 30 days written notice. City intends to surrender the JMZ Building to Landlord after completion of a new museum building (that is not located on the Property) and moving to that new building.

The portion of the Property including, but not limited to, parking, walkways, restrooms, and other portions of the Property which are non-exclusive are collectively referred to herein as the “Common Areas”. Tenant shall have the non-exclusive right during the Term to use the Common Areas along with others having the right to use the Common Areas.

2.2 Possession. Tenant accepts the Premises in its current condition and configuration without any representations or warranties by Landlord, and subject to all matters of record and all applicable laws, ordinances, rules and regulations. Tenant acknowledges that it is currently in possession and has been in possession of the Property under that certain Lease and Covenant Not to Develop, dated September 1, 1989, as amended by that certain Amendment No. 1, dated July 21, 1998, and as further amended by that certain Amendment No. 2, dated August 13, 2002, and , and as further amended by that certain Amendment No. 3, dated as of January 1, 2015 (collectively the “Original Lease”).

2.3 Termination of Original Lease. As of the Lease Commencement Date identified in the Basic Lease Information above, the Original Lease shall be deemed terminated and, except for such obligations which expressly survive termination, the parties shall have no further rights or obligations thereunder. Tenant’s right of continued occupancy of the Premises shall thereafter be solely pursuant to the terms of this Lease.
3. **TERM.** The term of this Lease ("**Term**") shall be for the period specified in the Basic Lease Information, commencing on the Commencement Date ("**Commencement Date**"). This Lease shall terminate at midnight on December 31, 2024 ("**Expiration Date**"), unless sooner terminated or extended as hereinafter provided.

4. **Rent.**

4.1 **Base Rent.**

(a) **Generally.** From and after the Commencement Date, Tenant shall pay to Landlord, in advance of the first day of each calendar month, without any setoff or deduction and without further notice or demand, the monthly installments of rent specified in the Basic Lease Information ("**Base Rent**"). If the Commencement Date should be on a date other than the first day of a calendar month, the Monthly Base Rent installment paid for any fractional month during the Term shall be prorated based upon a thirty (30) day calendar month. If Tenant exercises its right to reduce the Premises, Base Rent shall be reduced by $13,790.00 per month if the JMZ Building is surrendered and $5,650.00 per month if the S Building is surrendered.

4.2 **Additional Rent.** As used in this Lease, the term "**Additional Rent**" shall mean all sums of money, other than Base Rent, that are due and payable by Tenant under the terms of this Lease. The term "**Rent**," as used herein, shall mean all Base Rent, Additional Rent and all other amounts payable hereunder from Tenant to Landlord. Unless otherwise specified herein, all items of Rent other than Base Rent shall be due and payable by Tenant on or before the date that is thirty (30) days after billing by Landlord.

5. **TAXES.**

5.1 **Reserved.**

5.2 **Taxes.** Tenant shall reimburse to Landlord as Additional Rent Tenant’s Share of all Taxes as herein defined within thirty (30) days after receipt of an invoice and proof of payment from Landlord. Payments for any fractional period shall be prorated. For purposes of this Section 5.2, the term "**Taxes**" shall mean all taxes, assessments, fees, impositions, assessments and charges levied (if at all) upon or with respect to the Premises, personal property of Landlord used in the operation of the Premises or Landlord’s interest in the Premises. Taxes shall include, without limitation and whether now existing or hereafter enacted or imposed, all general real property taxes, all general and special bonds and assessments, all charges, fees and levies for or with respect to transit, housing, police, fire, flood control, infrastructure, or other governmental or quasi-governmental services or purported benefits to or burdens attributable to the Premises, that are now or hereafter levied or assessed against Landlord or the Premises by the United States of America, the State of California, the City of Palo Alto, or any other political or public entity, and shall also include any other tax, fee or other excise, however described, that may now or hereafter be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Taxes, whether or not now customary or in the contemplation of the parties on the date of this Lease. Taxes shall not include any increase as the result of any transfer of Premises. Tenant shall pay any taxes levied or assessed against personal property or trade fixtures placed by Tenant in or about the Premises during the Term. The interest created by this Lease may at
some time be subject to property taxation under the laws of the State of California. If property taxes are imposed, the party in whom the possessory interest is vested may be subject to the payment of the taxes levied on such interest. This notice is included in this Lease pursuant to the requirements of section 107.6 (a) of the Revenue and Taxation Code of the State of California.

5.3 Nonuse Payments. In the event any nonuse payments or taxes are levied against the Premises, or any portion thereof, in accordance with any section of the California Education Code, Landlord shall initially be responsible for the payment of any such non-use payments or taxes. Landlord may invoice Tenant for 75% of the non-use payment or taxes paid. Said invoice to Tenant shall be accompanied by proof of payment by Landlord. Tenant shall thereafter reimburse the paying party within thirty (30) days after receipt of said invoice and proof of payment.

6. UTILITIES. Tenant shall contract directly with the providers of, and shall pay all charges for water, sewer, storm water, gas, electricity, and refuse collection to be furnished to the Property, together with all related installation or connection charges or deposits (“Utilities”). If any such Utilities are not separately metered or billed to Tenant for the Premises but rather are billed to and paid by Landlord, Tenant shall reimburse Landlord, as Additional Rent, its pro rata share of the cost of such services, within thirty (30) days after receipt of Landlord’s proof of payment of the same. If any Utilities are not separately metered, Landlord shall have right to determine Tenant’s consumption by either submetering, survey, or other methods designed to measure consumption with reasonable accuracy.

7. ALTERATIONS.

7.1 Tenant Alterations. Tenant may make any alterations, improvements, additions or structural changes, exclusive of any maintenance or repair obligations of Tenant under Section 8.1 (each an “Alteration”) of whatever nature it deems necessary for its free use and enjoyment of the Premises without Landlord approval. The foregoing notwithstanding, for any Alterations for which the estimated cost will exceed Three Hundred Thousand Dollars ($300,000.00), Tenant shall be required to provide Landlord with written notice thereof not less than thirty (30) days prior to commencing work. Said notice shall include plans and specifications depicting the Alterations and, upon completion, Tenant shall furnish Landlord with a set of “as built” plans for the Alterations. Any Alterations shall be at Tenant’s sole cost and expense, unless otherwise agreed upon in writing by Landlord. Alterations shall be made in compliance with all applicable laws. In the event any such Alterations are subject to the Field Act, Ed. Code, §§39140-39159, 39210-39232, 81130-81147, it shall be the sole responsibility of Tenant to obtain such permits or approvals from the Department of General Services as may be required for any such Alterations. Landlord agrees to reasonably cooperate with Tenant in securing any such approvals.

7.2 Liens. Tenant shall pay when due all claims for labor or materials furnished Tenant for use in the Premises. Tenant shall not permit any mechanic liens, stop notices, or any other liens against the Premises, or any of Tenant’s interests under this Lease for any labor or materials furnished to Tenant in connection with work performed on or about the Premises by or at the direction of Tenant. Tenant shall indemnify, hold harmless and defend Landlord from any liens and encumbrances arising out of any work performed or materials furnished by or at the
direction of Tenant. In the event that Tenant does not, within ninety (90) days following the
imposition of any such lien or stop notice, cause such lien or stop notice to be released of record
by payment or posting of a proper bond, or otherwise Landlord shall have, in addition to all other
remedies provided herein or by law, the right, but not the obligation, to cause the same to be
released by such means as it may deem proper, including payment of the claim giving rise to
such lien. All such sums paid by Landlord and expenses reasonably incurred in connection
therewith, including reasonable attorneys’ fees and costs, shall be payable to Landlord by Tenant
within thirty (30) days of Tenant’s receipt of an invoice from Landlord, which invoice shall
document all such sums paid.

8. MAINTENANCE AND REPAIR OF PREMISES.

8.1 Maintenance and Repair by Tenant. Tenant shall maintain the Property in
substantially the same condition as of the Commencement Date of this Lease Term, subject to
Landlord reimbursement at the following rates: Landlord’s reimbursement rate for Common
Areas will be at the rate of Landlord’s share, as detailed in Basic Lease Information. Areas of the
Property that are not the Premises or Common Areas will be at the rate of 100%. Landlord shall
reimburse Tenant within thirty (30) days of receipt of invoice from Tenant. Tenant’s repair and
maintenance obligations include, without limitation, repairs to: all interior and exterior work and
Common Areas on the Property, and all janitorial, pest control, plumbing, fire sprinkler, sewage,
heating, ventilation, air-conditioning, roof repair and replacement, electrical and lighting
facilities, irrigation systems, fences, landscaping, litter collection and removal. Tenant shall
further, at its own costs and expense, repair or restore any damage or injury to all or any part of
the Property caused by Tenant or Tenant’s agents, employees, invitees, licensees, visitors or
contractors, including but not limited to repairs or replacements necessitated by (i) the
construction or installation of Alterations to the Premises by or on behalf of Tenant; (ii) the
moving of any property into or out of the Premises; or Tenant’s use and occupancy of the
Premises. In the event that any law, regulation or mandate requires the expenditure in excess of
$250,000 to bring the Property into compliance the parties shall negotiate in good faith a cost
sharing agreement as between Landlord and Tenant for any amount in excess of $250,000. If no
agreement is reached after ninety (90) days from the commencement of negotiations, the parties
agree to resolve the matter through the option available in Section 22.7 of this Lease.

8.2 Maintenance and Repair by Landlord. Landlord shall, at its own cost and
expense, perform maintenance or repair of the Property when necessitated by the negligence or
willful misconduct of Landlord, and with respect to the remediation of any Hazardous Materials
(as defined herein below) that existed on, about or under the Property as of the commencement
of the term under the Original Lease.

9. ENVIRONMENTAL PROTECTION PROVISIONS.

9.1 Hazardous Materials. “Hazardous Materials” shall mean any material,
substance or waste that is or has the characteristic of being hazardous, toxic, explosive,
radioactive or corrosive, including, without limitation, petroleum, solvents, lead, acids,
pesticides, paints, PCBs, asbestos, materials commonly known to cause cancer or reproductive
harm and those materials, substances and/or wastes, including wastes which are or later become
regulated by any local governmental authority, the state in which the Premises are located or the
United States Government, including, but not limited to, substances defined as “hazardous substances,” “hazardous materials,” “toxic substances” or “hazardous wastes” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; the Resource Conservation and Recovery Act; all environmental laws of the state where the Premises are located, and any other environmental law, regulation or ordinance now existing or hereinafter enacted. “Hazardous Materials Laws” shall mean all present and future federal, state and local laws, ordinances and regulations, prudent industry practices, requirements of governmental entities and manufacturer’s instructions relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, presence, disposal or transportation of any Hazardous Materials, including without limitation the laws, regulations and ordinances referred to in the preceding sentence.

9.2 Environmental Indemnity. Tenant shall indemnify and hold Landlord harmless from any and all costs, claims, judgments, including Landlord’s reasonable attorney’s fees and court costs, relating to the storage, placement or use of Hazardous Materials by Tenant on or about the Premises. Tenant shall reimburse Landlord for (i) all costs of cleaning up or other alterations to the Premises necessitated by Tenant’s use, storage or disposal of Hazardous Materials at the Premises; and (ii) any diminution in the fair market value of the Premises caused by Tenant’s use, storage or disposal of Hazardous Materials in the Premises. Landlord shall indemnify and hold Tenant harmless from any and all costs, claims, judgments, losses, demands, causes of action, proceedings or hearings, including Tenant’s reasonable attorney’s fees and court costs, relating to the storage, placement or use of Hazardous Materials or underground tanks existing on or about the Premises placed there by Landlord or which existed before the commencement of this Lease Term. The obligations of Tenant and Landlord under this Section 9.2 shall survive the expiration of the Lease Term.

10. ASSIGNMENT AND SUBLETTING.

Tenant may at any time, and from time to time, sublease all or any portion of the Premises without first obtaining the consent of Landlord. Landlord acknowledges that as of the Lease Date identified in the Basic Lease Information, there are various subleases entered into by Tenant under the Original Lease. Unless explicitly agreed to in writing by Landlord, no assignment or subleasing of all or any portion of the Premises shall release or discharge Tenant of or from any of its obligations hereunder.

11. INDEMNITY AND WAIVER OF CLAIMS.

11.1 Tenant Indemnification. Tenant shall indemnify, defend and hold Landlord harmless against and from all liabilities, obligations, damages, penalties, claims, actions, costs, charges, judgment and expenses (including reasonable attorneys’ fees, costs and disbursements) (collectively referred to as “Losses”), arising from (a) the use of, or any activity done, permitted or suffered in or about the Premises by Tenant, (b) any activity done, permitted or suffered by Tenant or Tenant’s agents, contractors, invitees or licensees in or about the Premises, (c) any act, neglect, fault, willful misconduct of Tenant or Tenant’s agents, or (d) from any breach or default in the terms of this Lease by Tenant or Tenant’s agents, except to the extent such claims arise out of or relate to the actions or omissions of Landlord. If any action or proceeding is brought
against Landlord by reason of any such claim, upon notice from Landlord, Tenant shall defend
the same at Tenant’s expense.

11.2 Landlord Indemnification. Landlord shall indemnify, defend and hold Tenant and
Tenant-related parties harmless against and from all Losses arising from any use of, or any
activity done, permitted or suffered by Landlord or Landlord’s agents, contractors, invitees or
licensees in or about the Premises. If any action or proceeding is brought against Tenant by
reason of any such claim, upon notice from Tenant, Landlord shall defend the same at
Landlord’s expense by counsel.

11.3 Survival/No Impairment. The obligations of Tenant and Landlord under this
Article 11 shall survive any termination or expiration of this Lease. The foregoing indemnity
obligations shall not relieve any insurance carrier of its obligations under any policies carried by
either party, to the extent that such policies cover the peril or exposure that result in the claims
that are subject to the foregoing indemnity.

12. INSURANCE.

12.1 Tenant’s Insurance.

(a) Damage Liability. Tenant shall maintain in full force throughout the
Term, commercial general liability insurance providing coverage on an occurrence form basis
with limits of not less than Five Million Dollars ($5,000,000.00) each occurrence for bodily
injury and property damage combined, covering bodily injury and property damage liability.
Said insurance obligations may be satisfied by Tenant’s insurance policy or policies, Tenant’s
self-insurance, or Tenant’s participation in a pooling program with applicable coverage, or any
combination thereof.

(b) Personal Property Insurance. Tenant shall maintain in full force and effect
on the improvements located on the Premises and its personal property, furniture, furnishings,
trade fixtures and equipment from time to time located in, on or upon the Premises in an amount
not less than one hundred percent (100%) of their full replacement value from time to time
during the Term, providing protection against all perils, included within the standard form of
“all-risk” (i.e., “Special Cause of Loss”) fire and casualty insurance policy. Landlord shall have
no interest in the insurance upon Tenant’s property or Alterations and will sign all documents
reasonably necessary in connection with the settlement of any claims or loss by Tenant. Said
insurance obligations may be satisfied by Tenant’s insurance policy or policies, Tenant’s self-
insurance, or Tenant’s participation in a pooling program with applicable coverage, or any
combination thereof.

12.2 Certificates of Insurance. Upon execution of this Lease by Tenant, and not less
than thirty (30) days prior to expiration of any policy thereafter, Tenant shall furnish to Landlord
a certificate of insurance reflecting that the insurance required by this Article is in force,
accompanied by an endorsement(s) showing the required additional insureds satisfactory to
Landlord in substance and form, or other reasonable evidence of compliance with this Article 12.
13. **DAMAGE OR DESTRUCTION.**

13.1 **Repair Obligations.** In the event of damage or destruction to the improvements on the Premises from any cause other than the negligence of Landlord, Tenant shall, at its sole cost and expense, whether or not any such casualty is covered by insurance, either promptly repair or rebuild the same so as to make said damaged improvements as nearly similar to in character and quality as the improvements existed immediately prior to such casualty. Alternatively, in the event of damage or destruction materially interferes with Tenant’s use and enjoyment of the Premises, Tenant may terminate this Lease by the giving of not less than thirty (30) days written notice to Landlord, and assigning to Landlord all insurance proceeds for the repair or replacement of the Premises.

13.2 **Abatement of Rent.** In the event of damage or destruction to the Premises not caused by the negligence of Tenant or any subtenant, the Rent payable by Tenant for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Tenant’s use of the Premises is impaired, and such abatement shall be Tenant’s sole remedy for such impairment of use. All other obligations of Tenant hereunder shall be performed by Tenant.

14. **CONDEMNATION.**

If the whole or if any material part of the Premises is taken or condemned for any public or quasi-public use under either state or federal law, by eminent domain or purchase in lieu thereof (a “Taking”), and (a) such Taking renders the Premises unsuitable, in Tenant’s reasonable opinion, for the purposes for which they were leased; or (b) the Premises cannot be repaired, restored or replaced at reasonable expense to an economically profitable unit, then Tenant may, at its option, terminate this Lease as of the date possession vests in the condemning party. If twenty-five percent (25%) or more of the Premises is taken and if the Premises remaining after such Taking would be untenantable (in Tenant’s reasonable opinion) for the conduct of Tenant’s business operations, Tenant shall have the right to terminate this Lease as of the date possession vests in the condemning party. The termination shall be effective as of the effective date of any order granting possession to, or vesting legal title in, the condemning authority. If this Lease is not terminated, Base Rent shall be appropriately adjusted to account for any reduction in the square footage of the Premises. Landlord shall be entitled to any and all compensation, damages, income, rent, awards or any interest thereon which may be paid or made in connection with any such Taking, and Tenant shall be entitled to receive a pro-rata portion of any award for the value of Tenant’s fixture, equipment and personal property (specifically excluding components of the Premises which under this Lease or by law are or at the expiration of the Term will become the property of Landlord, including, without limitation, fixtures and Alterations).

15. **DEFAULT.**

15.1 **Events of Default.** The occurrence of any of the following shall constitute a “Default” by Tenant:
(a) Tenant fails to make any payment of Rent when due, if payment in full is not received by Landlord within twenty five (25) days after written notice that it is past due.

(b) Tenant fails to perform or comply with any provision of this Lease and does not fully cure such failure within ninety (90) days after notice to Tenant or, if such failure cannot be cured within such ninety (90) day period, Tenant fails within such period to commence, and thereafter diligently proceed with, all actions necessary to cure such failure as soon as reasonably possible.

15.2 Remedies. Upon the occurrence of any Default under this Lease, whether enumerated in Section 15.1 or not, Landlord shall have the option to pursue any remedy provided by law, including:

(a) Terminate this Lease and Tenant’s right to possession of the Premises;

(b) Employ the remedy described in California Civil Code § 1951.4 (Landlord may continue this Lease in effect after Tenant’s breach and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations);

or

(c) Notwithstanding Landlord’s exercise of the remedy described in California Civil Code § 1951.4 in respect of an event or events of Default, at such time thereafter as Landlord may elect in writing, to terminate this Lease and Tenant’s right to possession of the Premises and recover an award of damages as provided above.

15.3 No Waiver. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord’s knowledge of such preceding breach at the time of acceptance of such Rent. No waiver by Landlord of any breach hereof shall be effective unless such waiver is in writing and signed by Landlord.

15.4 Landlord’s Breach. If Landlord fails to perform any obligations, covenants, agreements or provisions contained herein to be observed or performed by Landlord for a period of twenty-five (25) days after written notice thereof from Tenant, the Landlord shall be deemed to be in default hereunder, and Tenant may take whatever action, at law or at equity, may appear necessary or desirable to enforce the observance or performance of such obligations, covenants, agreements or provisions including termination of this Lease.


At the termination of this Lease or Tenant’s right of possession, Tenant shall remove Tenant’s property including any furniture, fixtures, equipment installed by or for the benefit of Tenant from the Premises, and quit and surrender the Premises to Landlord in substantially the same condition as of the Commencement Date of this Lease Term, ordinary wear and tear and damage which Landlord is obligated to repair hereunder excepted. Landlord may, by notice to Tenant not less than ninety (90) nor more than One Hundred Eighty (180) days prior to the Expiration Date require Tenant, at Tenant’s expense, remove any Alterations and repair any
damage caused by such removal. If Tenant fails to remove any of Tenant’s property, or to restore
the Premises to the required condition, Landlord, at Tenant’s sole cost and expense, shall be
entitled (but not obligated) to remove and store Tenant’s property and/or perform such
restoration of the Premises. Landlord shall not be responsible for the value, preservation or
safekeeping of Tenant’s property. Tenant shall pay Landlord, upon demand, the expenses and
storage charges incurred. If Tenant fails to remove Tenant’s property from the Premises or
storage, within sixty (60) days after notice, Landlord may deem all or any part of Tenant’s
property to be abandoned and, at Landlord’s option, title to Tenant’s property shall vest in
Landlord or Landlord may dispose of Tenant’s property in any manner Landlord deems
appropriate.

17. **HOLDING OVER.**

If Tenant fails to surrender all or any part of the Premises at the termination of
this Lease, occupancy of the Premises after termination shall be that of a month to month
tenancy. Tenant’s occupancy shall be subject to all the terms and provisions of this Lease and
Tenant shall pay an amount (on a pro-rata per month basis) equal to the amount of the Base Rent
due for the period immediately preceding the holdover.

18. **NOTICE.**

All notices shall be in writing and delivered by hand or sent by registered,
express, or certified mail, with return receipt requested or with delivery confirmation requested
from the U.S. postal service, or sent by overnight or same day courier service at the party’s
respective Notice Address(es) set forth in the Basic Lease Information ("Notice Address").
Each notice shall be deemed to have been received on the earlier to occur of actual delivery or
the date on which delivery is refused, or, if Tenant has vacated the Premises or any other Notice
Address of Tenant without providing a new Notice Address, three (3) days after notice is
deposited in the U.S. mail or with a courier service in the manner described above. Either party
may, at any time, change its Notice Address (other than to a post office box address) by giving
the other party written notice of the new address.

19. **EARLY TERMINATION BY TENANT.**

19.1 **Debt Limitation.** In the event the Palo Alto City Council does not appropriate
funds for payment of the Rent due under this Lease in any year, this Lease shall terminate upon
120-day written notice thereof.

19.2 **Gann Limit.** Tenant may terminate this Lease in any fiscal year in which Tenant
is not authorized by the Palo Alto Electorate to exceed the expenditure limitation imposed by the
California Constitution in any other State or Federal legislative act, commencing with the fiscal
year 2020-2021. In that event, Tenant may terminate this Lease upon the giving of six (6)
months written notice which must be given within thirty (30) days of an unsuccessful election
seeking such authorization.

19.3 **Restriction on Taxing Power.** If State or Federal law is enacted, an initiative
measure passed or a court decision rendered which reduces the City’s general fund revenue or
restricts the City’s authority to collect or levy general fund taxes which the City has the right to
collect or levy as of the Commencement Date of this Lease, the City may terminate this Lease in whole or in part as hereinafter set forth, by giving six (6) months prior written notice to Landlord after such law, measure or decision becomes effective; provided, however, there shall be no right of termination unless the effect of such law, measure or decision is to reduce the City’s general fund revenue or taxing authority by one million, five hundred thousand dollars ($1,500,000.00) from the previous fiscal year.

20. RESERVED.

21. Reserved.

22. MISCELLANEOUS.

22.1 Governing Law. This Lease shall be interpreted and enforced in accordance with the Laws of the State of California and Landlord and Tenant hereby irrevocably consent to the jurisdiction and proper venue of such state.

22.2 Severability. If any section, term or provision of this Lease is held invalid by a court of competent jurisdiction, all other sections, terms or severable provisions of this Lease shall not be affected thereby, but shall remain in full force and effect.

22.3 Attorneys’ Fees. In the event of an action, suit, arbitration or proceeding brought by Landlord or Tenant to enforce any of the other’s covenants and agreements in this Lease, the prevailing party shall be entitled to recover from the non-prevailing party any costs, expenses (including out of pocket costs and expenses) and reasonable attorneys’ fees incurred in connection with such action, suit or proceeding.

22.4 Force Majeure. Whenever a period of time is prescribed for the taking of an action by Landlord or Tenant (other than the payment of Rent), the period of time for the performance of such action shall be extended by the number of days that the performance is actually delayed due to strikes, acts of God, shortages of labor or materials, war, terrorist acts, pandemics, civil disturbances, extreme weather and other causes beyond the reasonable control of the performing party (“Force Majeure”).

22.5 Brokers. Landlord and Tenant each represents and warrants to the other that neither it nor its officers or agents nor anyone acting on its behalf has dealt with any real estate broker in the negotiating or making of this Lease. Each party agrees to indemnify, defend and hold harmless the other from any claim or claims, and costs and expenses, including attorneys’ fees, incurred by the indemnified party in conjunction with any such claim or claims of any broker or brokers to a commission in connection with this Lease as a result of the actions of the indemnifying party.

22.6 Access by Landlord. In addition to access provided by this Lease, Landlord shall be allowed access to the Premises at all reasonable times throughout the term of this Lease, for any reasonable purpose upon prior written notice to Tenant. Landlord shall give Tenant a minimum of one (1) business day’s prior notice of an intention to enter the Premises, unless the entry is reasonably required on an emergency basis for safety, environmental, operations or security purposes.
22.7 Waiver of Right to Jury Trial. Landlord and Tenant agree to make good faith efforts to resolve any dispute. If dispute cannot be resolved, Landlord and Tenant may assert their respective rights to a trial by jury of any contract or tort claim, counter claim, cross-complaint, or cause of action in any action, proceeding, or hearing brought by either party against the other on any matter arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, or Tenant’s use or occupancy of the Premises, including without limitation any claim of injury or damage or the enforcement of any remedy under any current or future law, statute, regulation, code, or ordinance.

22.8 Article and Section Titles. The Article and Section titles used herein are not to be consider a substantive part of this Lease, but merely descriptive aids to identify the paragraph to which they referred. Use of the masculine gender includes the feminine and neuter, and vice versa.

22.9 Quiet Possession. Landlord covenants and agrees with Tenant that, upon Tenant’s payment of Rent and observing and performing all of the terms, covenants, conditions, provisions and agreements of this Lease on Tenant’s part to be observed or performed, Tenant shall have the quiet possession of the Premises throughout the Term.

22.10 Asbestos Notification for Commercial Property Constructed Before 1979. Tenant acknowledges that Landlord has advised Tenant that, because of their age, certain improvements may contain asbestos-containing materials ("ACMs"). If Tenant undertakes any Alterations as may be permitted herein, Tenant shall undertake the Alterations in a manner that avoids disturbing ACMs present in the Premises. If ACMs are likely to be disturbed in the course of such work, Tenant shall encapsulate or remove the ACMs in accordance with an approved asbestos-removal plan and otherwise in accordance with all applicable Environmental Laws, including giving all notices required by California Health & Safety Code Sections 25915-25919.7. In the event that money becomes available from the State of California for the cleanup or abatement of asbestos, Landlord shall use good faith efforts to obtain a share of such funds to be applied to any asbestos remediation work at the Premises. Any such money thus obtained by Landlord shall be assigned by Landlord to Tenant for the purpose of asbestos abatement.

22.11 Lead Warning Statement. Tenant acknowledges that Landlord has advised Tenant that buildings built before 1978 may contain lead-based paints ("LBP"). Lead from paint, paint chips and dust can pose health hazards if not managed properly.

22.12 Certified Access Specialist Disclosure. In accordance with Civil Code Section 1938, Landlord hereby discloses that the Premises have not undergone inspection by a Certified Access Specialist for purposes of determining whether the property has or does not meet all applicable construction related accessibility standards pursuant to Civil Code Section 55.53. 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. The forgoing notwithstanding, the parties agree that Tenant shall be solely responsible for the payment of all fees for the CASp inspection and for any repairs it deems necessary to correct violations of construction-related accessibility standards within the Premises as a result of the CASp inspection.

22.13 **Time of the Essence.** Time is of the essence of this Lease and each and all of its provisions.

22.14 **Entire Agreement.** This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreements or understandings pertaining to any such matter shall be effective for any purpose. No provision of this Lease may be amended or added except by an agreement in writing signed by the parties hereto or their respective successors-in-interest.

22.15 **Counterparts.** This Lease may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.
Landlord and Tenant have executed this Lease as of the day and year first above written.

**LANDLORD:**

Palo Alto Unified School District

By: [Signature]
Name: Carolyn Chow
Title: CEO
Date: 6/7/20

Approved as to Form

By: ____________________________

**TENANT:**

City of Palo Alto

By: ____________________________
Name: ____________________________
Title: ____________________________
Date: ____________________________

ATTEST

By: ____________________________

Approved as to Form

By: ____________________________

City Attorney

Date: ____________________________
EXHIBIT A
PROPERTY OUTLINED IN RED
EXHIBIT C
SPACE USED BY CITY (IN SQ. FT.)

<table>
<thead>
<tr>
<th>PAUSD space used by City</th>
<th>Space (sq ft)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indoor area*</td>
<td>65,046</td>
</tr>
<tr>
<td>(including addl spaces)</td>
<td></td>
</tr>
<tr>
<td>Room G5</td>
<td>1,656</td>
</tr>
<tr>
<td>Room G8</td>
<td>490</td>
</tr>
<tr>
<td>Gym A</td>
<td>5,500</td>
</tr>
<tr>
<td>Gym B</td>
<td>7,200</td>
</tr>
<tr>
<td>Theater only</td>
<td>7,800</td>
</tr>
<tr>
<td>N + Pavilion</td>
<td>17,500</td>
</tr>
<tr>
<td>S</td>
<td>5,700</td>
</tr>
<tr>
<td>Auditorium (JMZ)</td>
<td>13,200</td>
</tr>
<tr>
<td>Maintenance*</td>
<td>2,000</td>
</tr>
<tr>
<td>Boiler Room**</td>
<td>-</td>
</tr>
<tr>
<td>FOPAL* (near track)</td>
<td>4,000</td>
</tr>
<tr>
<td>Total City Use</td>
<td>65,046</td>
</tr>
</tbody>
</table>

58.81%

*Estimated sq ft, confirmation pending
**Boiler room included in Common Areas
EXHIBIT D
SPACE USED BY PAUSD (IN SQ. FT.)

<table>
<thead>
<tr>
<th>PAUSD space used by PAUSD</th>
<th></th>
</tr>
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<tbody>
<tr>
<td>Indoor area</td>
<td>45,554</td>
</tr>
<tr>
<td>A</td>
<td>5,300</td>
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<tr>
<td>B</td>
<td>5,300</td>
</tr>
<tr>
<td>G4, G6, G7</td>
<td>13,354</td>
</tr>
<tr>
<td>I (two levels)</td>
<td>13,000</td>
</tr>
<tr>
<td>M2, M3, M4</td>
<td>5,000</td>
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<tr>
<td>Q</td>
<td>3,600</td>
</tr>
<tr>
<td>Total PAUSD Use</td>
<td>45,554</td>
</tr>
</tbody>
</table>

41.19%
LEASE AGREEMENT
BY AND BETWEEN THE PALO ALTO UNIFIED SCHOOL DISTRICT (LANDLORD) AND THE CITY OF PALO ALTO (TENANT) FOR EXTENDED DAY CARE SPACES

This Lease ("Lease") dated ______________, for reference purposes only, is made and entered into by and between the Palo Alto Unified School District ("District") and the City of Palo Alto ("City"), a municipal corporation.

1.0 DEFINITIONS AND PREVIOUS AGREEMENTS

1.1 Definitions

1.1.1 City. The term "City" means the City of Palo Alto, a charter city and municipal corporation duly organized and existing pursuant to the Constitution and laws of the State of California.

1.1.2 District. The term "District" means the Palo Alto Unified School District, a unified school district organized and existing pursuant to the laws of the State of California.

1.1.3 District Purposes. The term “District purposes” means that District’s using a Site for any District purpose, including but not limited to classrooms, administrative offices, and training centers for District personnel, but not for the purpose, either direct or indirect, of selling the Site or any other District school site or leasing that Site or any other District school site for non-district uses.

1.1.4 Reserved

1.1.5 Reserved

1.1.6 Reserved

1.1.7 Reserved

1.1.8 Reserved

1.1.9 Reserved

1.1.10 Reserved

1.1.11 Reserved

1.1.12 Reserved
1.1.13 **Extended Day Care.** Extended Day Care means 1) childcare services provided during the school year to grade school students for the periods a) 6:30 am and the scheduled start of school and b) the earliest scheduled end of school and 6:30 pm Monday through Friday 2) childcare services provided on non-school days from 6:30 am to 6:30 pm Monday through Friday, or as City deems appropriate.

1.1.14 **Extended Day Care Spaces.** Extended Day Care Spaces means those spaces identified in Exhibit A where Extended Day Care is intended to occur as detailed in this Lease.

2.0 **PAYMENT**

2.1 Reserved

2.2 Reserved

2.3 **Payment for Extended Day Care Spaces.** As consideration for use of the Extended Day Care Spaces, City shall pay monthly to District the rent and utilities amounts listed in Exhibit A. All payments to District by City shall be made in twelve (12) equal installments payable monthly, by the last day of the month, commencing on July 1, 2020.

2.4 **Covenant to Budget and Appropriate.** Subject to Section 6.5.1(a), City covenants to take such action as may be necessary to include Lease payments due hereunder in its annual budget and annually to appropriate an amount necessary to make such Lease payments.

2.5 **Manner of Payment.** Payment shall be payable in lawful money of the United States to the order of the District at 25 Churchill Avenue, Palo Alto, CA 94306, Attention: Chief Business Officer, or such other place as the City and the District shall mutually agree. City's obligation to make payments for any partial month shall be prorated on the basis of a thirty (30) day month.

2.6 **Late Payment Charge.** If any installment of payment or any other sum due from City is not received by District within fifteen (15) days after the due date, City shall pay to District an additional sum equal to a half percent (1/2%) of the amount overdue for each month the payment is delinquent.

2.7 Reserved

2.7.1 Reserved

2.7.2 Reserved

2.7.3 Reserved
2.7.4 Reserved
2.7.5 Reserved

3.0 Cubberley Lease - Reserved

3.1 Reserved

3.1.1 Reserved 3.1.1 – 3.1.6

3.2 Reserved

3.2.1 Reserved

3.3 Toxic Materials

3.3.1 "Toxic Materials" for the purposes of this Lease are defined as any hazardous, toxic, or radioactive materials, including, but not limited to those materials identified in Sections 66680 and 66685 of Title 22 of the California Administrative Code, Division 4, Chapter 30, as amended from time to time.

3.3.2 Reserved

3.3.3 In the event of an emergency, City may act without District approval to cure or eliminate any dangerous condition which may give rise to a claim against the City. An emergency shall be defined as an unforeseen combination of circumstances or resulting state that calls for immediate action.

3.3.4 Reserved

3.3.5 Reserved

3.3.6 In the event that money has become available from the State of California for the cleanup of asbestos, District shall attempt in good faith to obtain a share of such funds to be applied to necessary cleanup work at the Extended Day Care Spaces.

3.4 Reserved

3.4.1 Reserved

3.4.2 Reserved

3.4.3 Reserved

3.4.4 Reserved

3.5 Reserved

3.5.1 Reserved

3.5.2 Reserved

3.5.3 Reserved
5.0 EXTENDED DAY CARE SPACES

5.1 Space Provided

5.1.1 During the term of this agreement, District agrees to provide and City agrees to accept twelve (12) spaces at various elementary school sites to be used for the purpose of providing City-operated extended day child care services. Said sites are listed on Exhibit A.

Additional child care spaces may be added in the event District opens additional elementary school sites.

5.1.2 District may, with the agreement of City, consolidate two child care spaces at one site. In no event shall more than three such consolidations occur.

It is understood the District shall bear the cost of transporting students in the event of such consolidation of spaces and City shall still compensate District for each and every space pursuant to Sections 2.3 and 5.1.1.
5.1.3 District may, with the agreement of City, substitute a portable for conventional classroom space.

5.1.4 In the event City and District cannot agree on the issue of consolidation contained in Section 5.1.2 or on the issue of substitution contained in Section 5.1.3 the matter shall be resolved by a three member arbitration panel. City and District shall each promptly appoint their representative to the panel and the two representatives shall select the third panel member. The decision of the panel shall be final and binding on both parties.

5.1.5 The space provided shall include appropriate access to designated rest rooms and other ancillary facilities such as playground equipment where appropriate, and shall be available to City 24 hours a day, 7 days a week.

5.1.6 The space provided shall meet appropriate State standards for at least twenty-five students and shall have all utility connections in place except for telephone. Specifically, the rooms shall have shelving and closets in place, however no furniture, toys or other equipment shall be provided by District.

5.1.7 Portables and conventional classroom space provided shall also conform to State standards for toxic materials as defined in Section 3.3.1. District shall be responsible for compliance with the Asbestos Hazard Emergency Response Act and any other State or Federal regulations, existing or subsequently enacted, relating to asbestos conditions for the extended day care space provided.

5.2 City Responsibilities

5.2.1 If City determines, at its sole discretion, to operate an extended day child care program in the spaces provided by District, it shall be the sole responsibility of the City to provide such services in the District designated spaces to persons desiring such services. The hours for such services shall be as set forth in Section 1.1.13.

5.2.2 City shall bear cost of utilities to the space including telephone. Unless separate meters are provided, the cost shall be prorated on a square footage basis (square footage of City space to total square footage of buildings on entire Site).

5.2.3 City shall, at City's own expense, provide for minor maintenance to the space including but not necessarily limited to: electrical (ex. ballasts and switches), plumbing fixtures (ex. leaky faucets and pipes), wall and floor coverings and windows.

5.2.4 City shall, at City's own expense, provide for custodial services.

5.2.5 City shall be responsible for security of the leased space at all times and security of the rest rooms outside the customary hours of school operation. Security shall mean locking all windows and doors and turning off lights.
5.3 District Responsibilities

5.3.1 District shall maintain fire and extended coverage insurance on the structures housing the child care programs with limits of full replacement value. In the event of damage or destruction to the premises, District shall promptly restore the premises to their pre-existing condition.

5.3.2 District, at District's own expense, shall be responsible for major maintenance to the child care premises including roof, sewer and electrical hook-ups, heating, and air-conditioning and removal of toxic material where applicable.

5.4 Delay in Delivery of Possession

If the District, for any reason whatsoever, cannot deliver possession of twelve spaces to City on the commencement date, this agreement shall not be void or voidable, nor shall District be liable to City for any loss or damage resulting therefrom. In such event, City shall be relieved of its obligation to pay for a child care space in the amount equivalent to the unit value of each space not delivered. The unit value of one child care space is as listed in Exhibit A.

5.5 Hold Harmless

5.5.1 District shall indemnify and hold City harmless from any and all costs, claims, judgments, losses, demands, causes of action, proceedings or hearings, including City's attorneys' fees and court costs, relating to the storage, placement or use of Toxic Materials by District on or about the space or spaces for extended day care, whether or not the parties are aware of the existence of or any such use of Toxic Materials. District shall pro rata reduce rent and/or reimburse City for all costs of clean-up required by law or other alterations to the spaces necessitated by District's use, storage or disposal of Toxic Materials. If not required by law to so clean up a space or spaces, City shall have the right to terminate the Lease as to the specific space or spaces upon thirty (30) days’ notice and the Lease payment shall be adjusted accordingly. The obligations of District under this Section 5.5.1 shall survive the expiration of the Lease term. "Toxic Materials" shall have the same meaning as in Section 3.3.1 of this Lease.

5.5.2 City shall indemnify and hold District harmless from any and all costs, claims, judgments, losses, demands, causes of action, proceedings or hearings, including District's attorneys' fees and court costs, relating to the storage, placement or use of Toxic Materials by City on or about the space or spaces for extended day care, whether or not the parties are aware of the existence of or any such use of Toxic Materials. City shall reimburse District for (i) all costs of cleanup or other alterations to the space or spaces for extended day care necessitated by City's use, storage, or disposal of Toxic Materials; and (ii) any diminution in the fair market value of the space or spaces for extended day care caused by City's use, storage, or disposal of Toxic Materials. The obligations of City under this Section 5.5.2 shall survive the expiration of the Lease term.

5.5.3 City shall indemnify, defend and hold District harmless from any liability or expense on account of suits, verdicts, judgments, costs or claims of any nature or kind arising out of, or in any way connected with City's and any sublessees', or assignees' operations on,
possession, use, management, improvement, alteration or control of the Extended Day Care Spaces except for any claims or liability, or portions thereof, arising from the sole negligence of District, its officers, employees or agents, and except for the liability borne by District as set forth in Section 5.5.1.

5.5.4 In addition to the liability borne by District as set forth in Section 5.5.1, District shall indemnify and hold City harmless from any liability or expense on account of suits, verdicts, judgments, costs or claims of any nature or kind arising out of, or in any way connected with, District's and/or any sublessees' or assignees' other than City, operations on, possession, use, management, improvement, alteration or control of the Extended Day Care Spaces except for any claims or liability, or portions thereof, arising from the sole negligence of City, its officers, employees, agents, sublessees or assignees.

5.6 Assignment and Sublease
The City, with the written consent of the District may at any time and from time to time pledge, assign, or otherwise transfer this Lease or any interest of the City herein. City with the written consent of the District may at any time and from time to time sublease the Extended Day Care Spaces or any improvements thereon any part thereof. District hereby consents to allow City to sublease Extended Day Care Spaces to Palo Alto Community Child Care and Kids Choice. The City shall at all times remain liable for the performance of the covenants and conditions on its part to be performed hereunder notwithstanding any such assigning, transferring or subletting which may be made. Any sublease, assignment or transfer shall be coterminous in every aspect with this lease. Any transfer, assignment or encumbrance of this Lease or the Extended Day Care Spaces, in whole or in part, which is contrary to or not provided for in this Section 5.6 is void.

6.0 GENERAL CONDITIONS

6.1 Term

6.1.1 The term of this Lease shall commence on July 1, 2020 (the “Commencement Date”) and end on June 30, 2022 (the “Expiration Date”), unless sooner terminated or extended pursuant to the provisions hereof.

6.1.2 Reserved

6.1.3 Reserved

6.1.4 Reserved

6.2 Breach

6.2.1 If the City shall fail to pay any payment payable hereunder when the same becomes due and payable, or the City shall fail to keep or perform any other material term covenant or condition contained herein to be kept or performed by the City for a period of 25 days after written notice thereof from the District, the City shall be deemed to be in default hereunder and
the District, in addition to all other rights and remedies it may have at law, shall have the option to do any of the following:

(a) To terminate this Lease in the manner hereinafter provided on account of default by the City, notwithstanding any re-entry or re-letting of the Extended Day Care space as hereinafter provided for in subparagraph (b) hereof, and to re-enter the Extended Day Care space and remove all persons in possession thereof and all personal property whatsoever situated upon the Extended Day Care space. In the event of such termination, the City agrees to surrender immediately possession of the Extended Day Care space, without hindrance, and to pay the District all damages recoverable by law that the District may incur by reason of default by the City.

(b) Without terminating this lease, (i) to collect each installment of payment as it becomes due and enforce any other material term, covenant or condition contained herein to be kept or performed by the City which failure to keep or perform by the City would have a material adverse effect on the interests of the District under this Lease or (ii) to exercise any and all rights of entry and re-entry upon the Extended Day Care space. In the event the District does not elect to terminate this lease in the manner provided for in subparagraph (a) hereof, the City shall remain liable and agrees to keep or perform all terms, covenants and conditions herein contained to be kept or performed by the City and, if the Extended Day Care space is not re-let, to pay the full amount of the payment to the end of the term of this Lease or, in the event that the Extended Day Care space is re-let, to pay any deficiency in payment that results therefrom; and further agrees to make said payment and/or payment deficiency punctually at the same time and in the same manner as hereinabove provided, and if the District receives payments therefrom in any payment period in excess of the payment provided for in Section 2.0 hereof for such period, the District shall pay such excess (after expenses incurred in connection with such re-letting) to the City on the last day of said payment period. Should the District elect to re-enter as herein provided, the City hereby irrevocably appoints the District as the agent and attorney-in-fact of the City to re-let Extended Day Care space, or any part thereof, from time to time, either in the District’s name or otherwise, upon such terms and conditions and for such use and period as the District may deem advisable and remove all persons in possession thereof and all personal property whatsoever situated upon the Extended Day Care space. The City agrees that the terms of this Lease constitute full and sufficient notice of the right of the District to re-let the Extended Day Care space in the event of such re-entry without effecting a surrender of this Lease, and further agrees that no acts of the District in effecting such re-letting shall constitute a surrender or termination of this Lease irrespective of the use of the term for which such re-letting is made or the terms and conditions of such re-letting, or otherwise, but that, on the contrary, in the event of such default by the City, the right to terminate this Lease shall vest in the District to be effected in the sole and exclusive manner provided for in subparagraph (a) hereof.

Each and all of the remedies given to the District hereunder or by any law now existing or hereafter enacted are cumulative, and the exercise of any one right or remedy shall not impair the right of the District to any or all other remedies.

6.2.2 In the event that City shall default in the performance of any of the agreements, conditions, covenants or terms herein contained, which event of default remains
uncured after notice given as herein provided, District may immediately, or at any time thereafter, perform the same for the account of the City, and any amount paid, or any expense or liability incurred, but the District in the performance of the same shall be repaid to the District, in addition to base payments by the City within 30 days after demand hereunder together with interest from the date, the cost of expenses incurred at an amount equal to the lesser of 12 percent per annum or the maximum lawful rate of interest then in effect under the laws of the State of California; and the District shall have the right to enter (by force or otherwise) the Extended Day Care space for the purpose of correcting or remedying such default and to remain therein until the same shall have been corrected or remedied.

No performance by the District of any of the obligations on City’s part to be performed hereunder shall be, or be deemed to be, a waiver of the City’s default in or failure to perform the same, nor shall the performance thereof by District release or relieve City from any obligations on its part to be performed under this Lease.

6.2.3 If the District shall fail to keep or perform any obligation, covenant, agreement or provision contained herein to be observed or performed by the District for a period of 25 days after written notice thereof from the City, the District shall be deemed to be in default hereunder, and the City may take whatever action, at law or in equity, may appear necessary or desirable to enforce the observance or performance of any such obligation, covenant, agreement or provision including termination of this Lease.

6.2.4 In the event of a breach, or threatened breach, by either party of any of the agreements, conditions, covenants, or terms herein, the other party shall have the right of injunction to restrain the same, and the right to invoke any remedy allowed by law, or inequity, as if specific remedies, indemnity or reimbursements were not herein provided for. All rights and remedies herein given to either party shall be cumulative to each other and to any other legal or equitable remedy or right which the party might otherwise have in the event of any breach by the other party.

6.3 Surrender and Title to Property

6.3.1 On the last day of the term of this Lease, or any sooner termination, City shall surrender the Extended Day Care space to the district, in reasonably the same condition as City received the Extended Day Care space, ordinary wear and tear and any permitted approved and lawful changes, alterations, additions and improvements thereto excepted, except as otherwise required by Section 3.5.2. City, upon the expiration or sooner termination of this Lease, shall repair any damage to the Extended Day Care space occasioned by the removal of City’s fixtures, furnishings, equipment and other personal property. All of City’s property which is removable pursuant to the provisions on this Lease shall be removed by City on or before the last day of the term of the earlier termination of this Lease, and all property not so removed shall be deemed abandoned by City, and District shall have the right either to require City to remove said property from the land or dispose of the property pursuant to Section 6.5.3 as set forth below.

6.3.2 Title to the Extended Day Care space shall remain the District during the term of this Lease. All improvements placed upon the Extended Day Care space by City at City’s
expense shall be and remain the property of City for and during the term of this Lease. Upon expiration or sooner termination of this Lease, such improvements shall belong to and become the property of District, free from any rights, claims and liens of City or a person, agency, political subdivision, firm or corporation claiming under City, without any compensation therefore from District to City or to any other person, agency, political subdivision, firm or corporation, unless otherwise agreed to by the parties at the time the improvement is made. At the expiration or sooner termination of this Lease, such improvements shall be surrendered to District, excepting that movable furniture, personal property and trade fixtures may be removed by City at or before the expiration or sooner termination of this Lease, provided, however, that the removal of any of the property so excepted will not structurally injure the improvements or necessitate any changes or alterations in the improvements or render the improvements or any part thereof unfit for use and occupancy. City shall pay the cost of restoration of, or repairing any damage to, the Extended Day Care space arising from the removal of the property so excepted.

6.4 Naylor Bill Allocations. Nothing in this lease shall be deemed to expand, diminish, waive or otherwise limit the applicability of the Naylor Bill to applicable portions of the Extended Day Care Spaces, if any, including the obligation of the City to maintain the property, for recreational open space purposes and the right of the District to re-acquire said property pursuant to Education Code Section 39398 or its successor legislation. In the event the provisions of the Naylor Bill terminate, the applicability of “Naylor” to portions of the applicable spaces, if any, ceases.

6.5 Termination. In addition to the rights of termination for breach found in Section 6.2, this Lease may be terminated as set forth in Sections 6.5.1 and 6.5.2.

6.5.1 City Termination

(a) Debt Limitation. In the event the Council of the City does not appropriate funds for payment of the payments due under this Lease in any year, this Lease shall terminate upon 90 days written notice.

(b) Gann Limit. The City may terminate this Lease in any fiscal year in which the City is not authorized by the Palo Alto electorate to exceed the expenditure limitation imposed by the California Constitution and any other State or Federal legislative act. In that event, the City may terminate this Lease upon six (6) months written notice which must be given within 30 days of an unsuccessful election seeking such authorization.

(c) Restriction on Taxing Power. If State or Federal law is enacted, an initiative measure passed or a court decision rendered which reduces the City’s general fund revenue or restricts the City’s authority to collect or levy general fund taxes which the City has the right to collect or levy as of the Commencement Date of this lease, the City may terminate this Lease, in whole or in part as hereafter set forth, by giving six (6) months written notice to District, after such law, measure or decision becomes effective; provided, however, there shall be no right of termination unless the effect of such law, measure or decision is to reduce the City’s general fund revenue or taxing authority by $1,500,000 in comparison with the previous fiscal year.
The amount set forth in this Section shall be adjusted annually by the Consumer Price Index on the commencement anniversary date of the Lease in the manner set forth in Section 2.7 hereof.

6.5.2 District Termination. The District may terminate this Lease in part on the following conditions:

(a) Reserved.

(b) Reserved.

(c) Reduction in Payment. If the District partially terminates this lease with regard to an Extended Day Care Space under Section 6.5.3, the Payment Due under this lease shall be reduced according to the proportion of payment allocated to such space as set forth in Exhibit A.

6.5.3 Surrender Upon Termination. Upon occurrence of any termination event, this Lease will terminate, or partially terminate as set forth herein, and all City’s rights, title and interest in the Extended Day Care Spaces shall terminate. City shall surrender and vacate the said spaces in reasonably the same condition as City received them, reasonable wear and tear excepted, District shall have the right to re-enter and take possession of said spaces and remove all persons therefrom and remove City’s property and place that property in storage in a public warehouse, or store the same elsewhere, all at the expense of City, or sell the same as provided by law for the purpose of recovering any money due and unpaid hereunder by City to District, including District’s storage costs. Upon termination of this Lease, District shall have the right to recover from City all damages caused by any breach hereof by City, together with any payment due hereunder and unpaid, including all reasonable attorneys’ fees and court costs which may be incurred in recovering possession of said spaces and in collecting such damages or such payments.

6.5.4 Future Development. Upon the expiration or earlier termination of this Lease, the District shall be free to sell, lease, or otherwise dispose of the spaces which are the subject of this Lease. However, it is understood by the parties that (a) the District shall have all the same rights and obligations with respect to the development of the spaces as any other developer, and (b) the City shall have the same rights and responsibilities as it would normally have in reviewing and considering any development project that would come before it.

6.5.5 Inconsistencies with Other Agreements. If any provision regarding termination set forth in Section 6.5 hereof is inconsistent with any provision regarding termination set forth in any other agreement between City and District regarding spaces subject to this Lease, the provision in this Lease shall prevail.

6.6 Notices. Any demand or notice which either party shall be required, or may desire, to make upon or give to the other, shall be in writing and shall be delivered personally upon the other, or sent by prepaid registered or certified mail addressed to the respective parties as follows:

DISTRICT: Palo Alto Unified School District
Notice sent by registered or certified mail in accordance with this Section shall be deemed delivered 72 hours from the date of mailing.

6.7 **Attorneys’ Fees.** If any action or proceeding at law in equity, or an arbitration proceeding, shall be brought to enforce or interpret any of the terms, covenants or conditions of this Lease, the prevailing party shall be entitled to recover from the other party its reasonable attorneys’ fees. “Prevailing party” within the meaning of this paragraph shall include, without limitation, a party who brings an action against the other after the other is in breach or default, if such an action is dismissed upon the other’s payment of the sums allegedly due for performance of the covenants allegedly breached, or if the party commencing such action or proceeding obtains substantially the relief sought by it in such action, whether or not such action proceeds to a final judgment or determination.

6.8 **Holding Over.** This Lease shall terminate without further notice at the expiration of the Lease term. Any holding over on the Extended Day Care Spaces after expiration of the Lease term, with the express written consent of District, shall be construed to be a tenancy from month to month, at a monthly rental of the last applicable base payment, and shall otherwise be on the terms and conditions herein specified.

6.9 **Validity and Severability.** If for any reason any portion of this Lease shall be held by a court of competent jurisdiction to be void, voidable, or unenforceable by the District or by the City, or if for any reason it is held by such a court that any of the covenants and conditions of the City or District hereunder, including the covenant to make payments hereunder, is unenforceable for the full term hereof, then and in such event, this Lease is and shall be deemed to be a lease from year to year under which the rentals are to be paid by the City annually in consideration of the right of the City to possess, occupy and use the Extended Day Care space, and all other terms, provision and conditions of this Lease, except to the extent that such terms, provisions and conditions are contrary to or inconsistent with such holding, shall remain in full force and effect.

6.10 **Waiver.** The waiver by either party hereto of any breach by the other party of any agreement, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other agreement, covenant or condition hereof. The receipt by District of any payments with knowledge of any default on the part of City in the observance or performance of any of the provisions of this Lease shall not be deemed to be a waiver of the provisions of this Lease.
6.11 **Successors and Assigns.** This lease shall inure to the benefit of and shall be binding upon the District, the City and their respective successors and assigns, subject to the provisions of Section 5.6.

6.12 **Agreement Represents Complete Agreement.** This Lease represents the entire contract between the parties and supersedes and cancels any and all previous leases, negotiations, arrangements, representations, agreements and understandings between the District and the City concerning the Sites and matters covered hereby.

6.13 **Law Governing.** This lease shall be construed and interpreted in accordance with the laws of the State of California.

6.14 **Changes in State Law.** In the event that changes in state law occur whereby the district is not permitted, in whole or in part, to retain payments due it from any source, other than the City, because of provisions of this lease, District shall promptly notify City, and District and City agree to renegotiate terms of this Lease. Such negotiations shall be directed to assuring that payments due under this Lease will not directly or indirectly replace, or stand in lieu of, payments due District from any other source.

6.15 **Amendment.** No amendment to this Lease shall be made except in writing and executed by both the District and the City.

6.16 **Reserved.**

In witness whereof, the District and the City have caused this Lease to be executed by their respective officers as of the day and year first above written.

ATTEST:__________________________________ CITY OF PALO ALTO, Lessee:__________________________________

City Clerk Mayor

APPROVED AS TO FORM:__________________________________

City Attorney or Designee President, Board of Education

Palo Alto Unified School District, Lessor

13
ATTACHMENTS
Exhibit A – Extended Day Care Spaces and Monthly Rent and Utilities Amounts
Exhibit A
Extended Day Care Spaces and Monthly Rent and Utilities Amounts
## Exhibit A

**Extended Day Care Spaces and Monthly Rent and Utilities Amounts**

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<tr>
<th>Space Name</th>
<th>Trailer # or ID</th>
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<th>SQ. FT.</th>
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<th>UTILITIES (per month)</th>
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- Not Offered via DocuSign

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