

APPROVED

MAY 06 2021

BOARD OF RECREATION AND PARK COMMISSIONERS

BOARD REPORT

NO. 21-075

DATE May 06, 2021

C.D. 5

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: ENCINO PARK - AGREEMENT WITH ENCINO PARENTS NURSERY SCHOOL, INCORPORATED FOR THE OPERATION OF A RECREATIONAL CHILD DEVELOPMENT AND PRESCHOOL PROGRAM - CATEGORICAL EXEMPTION FROM THE PROVISIONS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO ARTICLE III, SECTION 1, CLASS 1(14) [RENEWAL OF A LICENSE TO USE AN EXISTING STRUCTURE, INVOLVING NEGLIGIBLE OR NO EXPANSION OF USE] OF CITY CEQA GUIDELINES AND ARTICLE 19, SECTION 15301 OF CALIFORNIA CEQA GUIDELINES

AP Diaz _____ *M. Rudnick MR
H. Fujita _____ C. Santo Domingo _____
J. Kim _____ N. Williams _____

M. Stuee
General Manager

Approved X Disapproved _____ Withdrawn _____

RECOMMENDATIONS

- 1. Approve a proposed six (6) year agreement between the Department of Recreation and Parks (RAP) and Encino Parents Nursery School, Incorporated (EPNS), a 501(c)(3) non-profit corporation, setting forth the terms and conditions for EPNS' operation of a recreational child development and preschool program at Encino Park (Agreement or Project), in the form attached hereto as Attachment 1 and subject to approval by the City Council and the City Attorney as to form;
2. Determine that the proposed Agreement or Project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Article III, Section 1, Class 1(14) [Renewal of a license to use an existing structure, involving negligible or no expansion of use] of City CEQA Guidelines and Article 19, Section 15301 of California CEQA Guidelines and direct RAP Staff to file a Notice of Exemption (NOE) with the Los Angeles County Clerk;
3. Authorize RAP's Chief Accounting Employee to prepare a check to the Los Angeles County Clerk in the amount of \$75.00 for the purpose of filing an NOE;
4. Direct the Board of Recreation and Park Commissioners (Board) Secretary to transmit the Agreement to the City Attorney for review and approval as to form;

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5. Authorize the Board President and Secretary to execute the Agreement upon receipt of the necessary approvals: and,
6. Authorize RAP Staff to make necessary technical corrections to carry out the intent of this Report.

SUMMARY

EPNS, a parent cooperative preschool, has been in operation at Encino Park, located at 16953 Ventura Boulevard in Encino, for approximately fifty (50) years. EPNS provides a recreational, play-based early childhood development and preschool program for up to thirty (30) children ages two years and nine months to five years old at Encino Park (Program). Consistent with past arrangements for the Program, the proposed Agreement will continue to allow EPNS to use the facility year round from 9:00 a.m. to 12:30 p.m., Monday through Friday.

The annual tuition charged by EPNS for the 2020/21 school year Program was \$265 per month for five mornings. Tuition rates will remain the same for the 2021/22 school year. RAP staff performed a comparison analysis of what other nursery schools charge and determined that the EPNS tuition rate is competitive with that of what other child care operators charge in the City, and below the current market rate. EPNS is able to charge less than other operators due to their relatively low operating costs, having only one instructor and with parents or guardians contributing one workday per week. Further, EPNS does not pay rent, and costs for utilities and trash are minimal and covered through cost recovery reimbursement fees paid to RAP in the amount of One Hundred Eighty-One Dollars (\$181.00) per month. Other nursery schools currently charge in the range of \$842 to \$1,560 per month for a half day program, with the average being over \$1,100 per month. Given this and the fact that EPNS has been operating the Program at the facility for decades, going back approximately 50 years and have provided satisfactory service to the community in the view of RAP staff, RAP staff recommends continuing the collaborative relationship with EPNS through the proposed Agreement.

Under the proposed Agreement and in accordance with existing RAP Policies, EPNS will continue to pay RAP's Cost Recovery Reimbursement fees for utilities, trash disposal, and staff impacts. Parent-child activities are instructed and supervised by EPNS staff with assistance from parents. RAP Staff recommends that the Board approves the proposed six-year Agreement with EPNS in order to allow the Program to continue for the benefit of families who live in the surrounding community who are in need of an affordable, quality recreational child development program. EPNS' operation of the Program and fulfillment of its commitments will be monitored and evaluated through the Partnership Section's annual performance review process.

ENVIRONMENTAL IMPACT

The proposed Project consists of the renewal of a license to use an existing structure, involving negligible or no expansion of use. As such, RAP Staff recommends that the Board determines that it is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Article III, Section 1, Class 1(14) of City CEQA Guidelines and Article 19,

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Section 15301 of California CEQA Guidelines. RAP Staff will file a Notice of Exemption with the Los Angeles County Clerk upon the Board's approval.

FISCAL IMPACT

The proposed Agreement will have no adverse impact on RAP's General Fund as costs and expenses associated with EPNS' operation of the Program will be paid by parent tuition and RAP will be reimbursed by EPNS for the Program's impacts on RAP in the form of cost recovery reimbursement fees.

STRATEGIC PLAN INITIATIVES AND GOALS

Approval of this Report advances RAP's Strategic Plan by supporting:

Goal No. 6: Build financial strength and innovative collaborations
to help expand and improve L.A. City parks and programs

Outcome No. 2: Improved management of facilities

Result: Provision of a recreational child development and preschool program

This Report was prepared by Joel Alvarez, Sr. Management Analyst II, and Raymond Chang, Management Analyst, Partnership Section.

ATTACHMENT

- 1) Proposed Agreement

**AGREEMENT
BETWEEN CITY OF LOS ANGELES
AND
ENCINO PARENTS NURSERY SCHOOL, INCORPORATED
TO OPERATE
A RECREATIONAL CHILD DEVELOPMENT PROGRAM
AT ENCINO PARK**

This AGREEMENT (“AGREEMENT”) is entered into as of _____, 2021, (“COMMENCEMENT DATE”) by and between the City of Los Angeles, a municipal corporation acting by and through its Board of Recreation and Park Commissioners (“CITY”), and Encino Parents Nursery School, Incorporated (“ORGANIZATION”), a California 501(c)(3) non-profit corporation. CITY and ORGANIZATION may be referred to herein individually as “PARTY”, or collectively as “PARTIES”.

WHEREAS, CITY, through its Department of Recreation and Parks (“RAP”), owns property commonly known as Encino Park (“PARK”) located at 16953 Ventura Boulevard, Encino, CA 91316; and,

WHEREAS, ORGANIZATION currently operates a licensed childcare and recreational child development program at the PARK for children ages two years and nine months to five years old (“PROGRAM”); and,

WHEREAS, pursuant to prior right-of-entry permits issued to ORGANIZATION by RAP, ORGANIZATION currently uses certain portions of the PARK consisting of a building and children’s playground, as more fully shown by the Site Plan attached hereto and incorporated herein by reference as Exhibit A (“PREMISES”); and,

WHEREAS, ORGANIZATION desires to continue to operate the PROGRAM at the PREMISES under a more formal arrangement for the public good and to meet the ongoing needs of the residents of the City of Los Angeles; and,

WHEREAS, RAP is amenable to authorizing such operation pursuant to the terms and conditions of this AGREEMENT, subject to annual performance evaluations as described further herein and other terms and conditions set forth herein given ORGANIZATION’s long-standing and continuing presence at PARK and its satisfactory operation of the PROGRAM for the public benefit at fees charged to the public which are below market rates charged for similar childcare programs; and,

WHEREAS, CITY, through its Board of Recreation and Park Commissioners (“BOARD”), has approved this AGREEMENT at the BOARD meeting held on _____ **date** (Board Report No. **XX-XXX**), allowing for operation of the PROGRAM at the PREMISES.

NOW THEREFORE, in consideration of the foregoing, the anticipated benefits to the public, and the terms and conditions set forth herein and the performance thereof, PARTIES hereby agree as follows:

1. License to Use and Description of Premises.

In consideration of the anticipated benefits to the public, the sufficiency of which is mutually acknowledged, CITY grants to ORGANIZATION by this AGREEMENT, the use of the PREMISES for the operation of the PROGRAM as described herein, which shall be performed by ORGANIZATION in accordance with the terms and conditions of this AGREEMENT. RAP shall have no obligation to provide staff, supplies, equipment, services, or funding for the operation of the PROGRAM, and if such is requested from RAP by ORGANIZATION, ORGANIZATION agrees to reimburse RAP for any financial impacts resulting from RAP's provision of such, in accordance with RAP standard Schedule of Rates and Fees and/or permitting requirements.

The PREMISES shall be that portion of the PARK depicted by the site plan attached hereto as Exhibit A, to be used for purposes of operating and maintaining the PROGRAM in accordance with the terms and conditions of this AGREEMENT. The PREMISES includes certain areas which are for primary use of ORGANIZATION during normal ORGANIZATION operating hours, and for shared use between ORGANIZATION and RAP for use by the general public during ORGANIZATION's operating hours

Primary Use Area: As depicted by Exhibit A, the Primary Use Area for PROGRAM purposes, shall include the approximate 800 square foot building and a small outdoor storage area of approximately 25 square feet, located on the south end of PARK.

Shared Use Area: As depicted by Exhibit A, the restroom and children's playground shall be a shared use area by ORGANIZATION and the public during ORGANIZATION's normal operating hours, as specified in Section 7 below.

2. Term and Termination.

The term of this AGREEMENT (for ease of reference, shall be referred to herein as "TERM") shall be **six (6) years** from the COMMENCEMENT DATE, subject to annual performance evaluations ("ANNUAL PERFORMANCE REVIEWS") more fully described below in Section 3 of this AGREEMENT.

- a. Commencement and Expiration. This AGREEMENT shall take effect on the COMMENCEMENT DATE above, and shall end upon the expiration of the TERM.
- b. Termination. In addition to the CITY's right to terminate this AGREEMENT for an uncured breach or default as set forth in Section 20, CITY and ORGANIZATION may terminate this AGREEMENT upon written notice of termination given to the other party no less than sixty (60) days prior to the date

of termination. Further, City may immediately terminate this AGREEMENT in the event ORGANIZATION ceases to operate as defined below.

- c. Cease to Operate. The phrase “ceases to operate” shall mean the first to occur of any of the following: (i) the termination (but not temporary suspension) of ORGANIZATION’s corporate charter or grant of non-profit status, unless the same is reinstated within sixty (60) calendar days after such termination; (ii) a material change in ORGANIZATION’s purposes or function as contained in ORGANIZATION’s corporate charter or grant of non-profit status (“Stated Purposes”); (iii) a material change in the delivery of services by ORGANIZATION from that described herein; or (iv) the failure of ORGANIZATION to use the PREMISES for any of the PERMITTED USES or any other default of the terms and conditions or other obligations contained in this AGREEMENT, for a consecutive period of sixty (60) calendar days; unless prevented from doing so because of damage, destruction, major repairs or refurbishment of the improvements within the PREMISES, or for reasons beyond ORGANIZATION’s control. Under such circumstances, ORGANIZATION shall immediately cease and desist from all use of the PREMISES, and this AGREEMENT shall be deemed terminated upon ORGANIZATION’s receipt of such notification of immediate termination from RAP.

3. Annual Performance Reviews.

PARTIES mutually agree to a series of ANNUAL PERFORMANCE REVIEWS, which shall be conducted by RAP to determine the feasibility and benefit of continuing the collaborative relationship between PARTIES under this AGREEMENT.

- a. Continuance of CITY’s collaboration with ORGANIZATION shall be contingent upon a favorable ANNUAL PERFORMANCE REVIEW, which shall include, but not be limited to:
 - (i) An evaluation of ORGANIZATION’s compliance with the terms and conditions of this AGREEMENT;
 - (ii) Fulfillment of ORGANIZATION’s obligations under this AGREEMENT for the operation of the PROGRAM as more fully described under the PERMITTED USES specified in Section 5, and maintenance of the PREMISES under this AGREEMENT;
 - (iii) Adequacy of ORGANIZATION’s funding and financial resources to continue operating the PROGRAM for the benefit of the public throughout the TERM of this AGREEMENT;

- (iv) The affordability, accessibility and reasonableness of any rates and fees charged in connection with the PROGRAM, the determination of which shall be in the sole discretion of the CITY; and,
 - (v) ORGANIZATION's cooperation with CITY staff.
- b. Every year during the life of this AGREEMENT, for purposes of completing the ANNUAL PERFORMANCE REVIEW process, ORGANIZATION shall submit to RAP during the period of July 1st through August 30th of each year, an annual performance or program report ("PERFORMANCE REPORT"), generally describing ORGANIZATION's PROGRAM activities, issues, accomplishments, etc., to provide RAP with an understanding of ORGANIZATION's performance during the prior fiscal year (July through June). This PERFORMANCE REPORT shall specifically include, but not be limited to:
 - (i) Annual Financial Statement (Revenue and Expenditures for prior fiscal year);
 - (ii) Annual Budget for upcoming fiscal year (July through June);
 - (iii) PROGRAM participant data describing the number of persons served during the prior fiscal year and all fees charged; and,
 - (iv) Discussion of PROGRAM changes or challenges.
- c. RAP reserves the right to request reasonable additional materials or clarifying information upon review of the submitted PERFORMANCE REPORT.
- d. CITY's approval to continue the collaborative relationship shall be based on findings obtained through the ANNUAL PERFORMANCE REVIEW, evaluation of the PERFORMANCE REPORT, and a review of compliance with the terms and conditions of this AGREEMENT, including interviews with RAP's recreational and operations and maintenance staff at the PREMISES. A Sample Annual Performance Report Questionnaire is attached hereto and incorporated herein by reference as Exhibit B. Results of the ANNUAL PERFORMANCE REVIEW may be used in determining future collaborations with ORGANIZATION. CITY shall not unreasonably withhold its determination of the ANNUAL PERFORMANCE REVIEW.

4. Access to Premises.

ORGANIZATION and any authorized third-party associated with ORGANIZATION's PROGRAM at the PREMISES, will abide by the terms and conditions expressed in this AGREEMENT and will cooperate fully with RAP and its employees in the performance of their duties. Any third-party participation in the PROGRAM shall be supervised by ORGANIZATION at all times while such party is present at the PREMISES, and RAP on-site staff shall be made aware of such third-party activities.

Authorized representatives, agents and employees of CITY will have the right to enter the PREMISES for purposes of fulfilling normal duties, and performing inspections or in response to emergencies. RAP shall make a reasonable effort to provide the ORGANIZATION with twenty-four (24) hours prior notice. However, no such advance notice by RAP to ORGANIZATION shall be required in the case of emergencies. If a governmental body with jurisdiction over the PREMISES and/or the CITY or RAP determines that a certain activity, or all of the activities, conducted on the PREMISES, are material threats to public safety as may be determined by the CITY, CITY may immediately suspend and/or terminate ORGANIZATION's right to conduct such activities at the PREMISES by providing written notice to ORGANIZATION of such suspension. Such activities shall remain suspended until they are no longer deemed a threat to public safety, at which time the CITY shall promptly provide written notice to ORGANIZATION of same.

PARTIES agree to allow CITY access to and use of any portion of the PREMISES in case of a natural disaster or emergency such as an earthquake, fire, etcetera, as a designated public emergency shelter site or showering facility for the homeless. Such use shall take precedence over regularly scheduled ORGANIZATION activities and CITY shall not be charged a fee for such use; provided, however, that ORGANIZATION's obligation to pay the CRRF (defined below) to the CITY shall be suspended during such time period that CITY has taken over the PREMISES for the above use.

5. Permitted Uses and Use Restrictions.

ORGANIZATION shall not expand and/or change the scope of PERMITTED USES set forth in this Section without the prior written approval and consent of the BOARD through an amendment to this AGREEMENT. ORGANIZATION is authorized to use the PREMISES in accordance with the following conditions:

- a. ORGANIZATION, in compliance with the California Child Care Center General Licensing Requirements, shall operate a licensed preschool program for children ages two years and nine months through five years old. ORGANIZATION shall provide recreational child development services, including extended childcare services, for a maximum of thirty (30) children from the surrounding neighborhood, at no cost to RAP. ORGANIZATION shall be responsible for all costs related to the operation of this PROGRAM and maintenance of the PREMISES throughout the TERM of this AGREEMENT.
- b. ORGANIZATION shall provide sufficient staff to maintain a staff-to-student ratio in accordance with childcare licensing requirements for the operation of preschool related programs in accordance with State of California childcare licensing regulations and requirements and RAP Childcare Guidelines.
- c. ORGANIZATION shall ensure that no photographs of minors or depiction of their likeness is included in any publication without obtaining prior written consent from the child's parent or legal guardian.

- d. ORGANIZATION shall not sub-let or issue any permit for use of the PREMISES.
- e. ORGANIZATION is solely responsible for the actions of all individuals and/or organizations participating in the PROGRAM at the PREMISES, and shall ensure that such individuals and/or organizations agree in writing to abide by all conditions set forth in this AGREEMENT.
- f. The dispensing and /or consumption of beer, wine or other intoxicating liquors (commonly referred to alcoholic beverages) shall not be permitted on the PREMISES.
- g. No merchandise shall be sold or authorized to be sold by ORGANIZATION on the PREMISES.

6. Obligations of ORGANIZATION.

ORGANIZATION shall:

- a. Operate on the PREMISES only during the specified days and hours listed below in Section 7 of this AGREEMENT.
- b. Maintain the PREMISES in accordance with Section 9 of this AGREEMENT.
- c. Provide all staff, materials, supplies, and equipment for the PROGRAM, and consistently use reasonable efforts to obtain funds necessary to operate it.
- d. Ensure ORGANIZATION's protocol for selecting and authorizing any person participating in the provision of PROGRAM activities on the PREMISES complies with applicable local, State, and/or Federal protocols for employees, volunteers, contractors and subcontractors engaging in the PERMITTED USES described herein, including background checks, finger printing, and any certifications, licenses and approvals to the extent required by applicable law. ORGANIZATION shall comply, and ensure any of its employees, volunteers and authorized third parties complies with all applicable CITY, State and Federal rules, laws and regulations in the performance of this AGREEMENT and in the operation of the PROGRAM.
- e. Obtain any and all operating permits and/or licenses that may be required in connection with its operations, including but not limited to, tax permits, business licenses, health permits, certifications, etc.
- f. Punctually pay or cause to be paid all ORGANIZATION financial obligations incurred in connection with the operation and maintenance of the PREMISES as set forth in this AGREEMENT. ORGANIZATION shall discharge or provide for the discharge of all claims authorized or incurred for labor, equipment, materials, and supplies furnished in connection with ORGANIZATION's use of

the PREMISES to the extent such claims do not arise due to any CITY action or omission.

- g. Prohibit and prevent the dispensing and/or consumption of beer, wine or other intoxicating liquors (commonly referred to as alcoholic beverages), which is NOT one of the PERMITTED USES authorized herein, and therefore shall not be permitted to occur on the PREMISES under any circumstances.
- h. Comply with all RAP policies and procedures as well as all Federal, State, County, and local regulations, orders and mandates, including but not limited to health and safety orders and guidelines related to COVID-19, and background checks and fingerprinting for any volunteer or paid staff participating in the PROGRAM at the PREMISES, throughout the TERM of this AGREEMENT. In doing so, ORGANIZATION shall maintain regular communication with RAP staff to ensure ORGANIZATION's compliance with such policies, procedures, regulations, orders and requirements and ORGANIZATION shall be solely responsible for all costs related to ensuring such compliance.
- i. ORGANIZATION shall not charge or impose any rates and fees in connection with the PROGRAM which are in excess of rates and fees that are charged for participation in other similar recreational child development and preschool programs. At all times, ORGANIZATION shall use its best efforts to charge fees and rates for the PROGRAM that are affordable and accessible for all members of the public regardless of income level. ORGANIZATION shall provide RAP no less than sixty (60) days advance written notice of any changes in the scope of the PROGRAM or any change in the fees and rates charged for the PROGRAM prior to the effective date for any such change. Notwithstanding anything to the contrary, RAP shall have the sole discretion to determine whether any rates or fees charged for the PROGRAM is affordable, accessible and reasonable for members of the public and to determine whether continued collaboration with the ORGANIZATION under this AGREEMENT is in the best interest of the CITY in connection thereto.

7. Days and Periods of Use.

ORGANIZATION shall be entitled to use the PREMISES year round to operate the PROGRAM during the times specified herein (PERMITTED TIMES).

- a. PERMITTED TIMES are 9:00 a.m. to 12:30 p.m., Monday through Friday. ORGANIZATION shall be allowed to enter PREMISES one (1) hour before and stay one hour (1) hour after operation times for set-up and clean-up purposes.
- b. ORGANIZATION will be allowed to conduct Board/Parent meetings, maintenance, and fundraising events between the hours of 12:30 p.m. – 7:00 p.m., Monday through Friday, but limited to two times per month; and one weekend quarterly per annum, between the hours of 8:00 a.m. to 4:30 p.m., Saturday or Sunday, provided Organization receives prior written approval from

RAP no less than thirty (30) days from such proposed scheduled event.

- c. ORGANIZATION shall not be allowed onto the PREMISES without RAP's prior written authorization, during hours other than those authorized above. ORGANIZATION is aware that PARK staff are unavailable on Federal Holidays and that the PARK is subject to closures at the sole discretion of RAP.
- d. ORGANIZATION shall cooperate with RAP personnel and staff on all matters relative to the conduct of operations or any activity, event, and/or special use, including concerns related to parking, traffic, security, and attendance.

8. Vacating the Premises

Upon termination of this Agreement, ORGANIZATION shall vacate the PREMISES and remove from the PREMISES all of its belongings, furniture, and other items owned by ORGANIZATION. Should any items be left behind and not removed within seven (7) days after the termination of this Agreement, RAP shall reserve the right to remove and discard such items at its discretion.

9. Parking.

During the TERM of this AGREEMENT and during PERMITTED TIMES specified above in Section 7 of this AGREEMENT, ORGANIZATION, its staff, and public patrons and/or guests, whether or not involved in ORGANIZATION activities at the PREMISES, shall have the non-exclusive right to park vehicles within any publicly available parking spaces at the PARK on a first-come-first-served basis. If such parking is metered or normally requires a fee, ORGANIZATION, its staff, and public patrons and/or guests shall be required to adhere to established parking requirements. Exclusive or designated parking shall not be allowed, unless previously approved in writing by RAP.

10. Maintenance and Repair of Premises.

During the TERM of this AGREEMENT, and subject to the terms and conditions contained herein, ORGANIZATION, at its sole cost and expense, shall perform the functions of maintenance and/or repair of the PREMISES as described herein.

- a. ORGANIZATION accepts PREMISES in its current condition and hereby assumes all risk of injury, loss or damage, which may result from any defective conditions of the PREMISES or which may otherwise arise by reason of the use of PREMISES, and releases and discharges the CITY from any claims therefore. CITY shall not have any obligation to repair, remodel, replace, and/or reconstruct any building, facility, feature, or portion of the PREMISES, nor any appliance or fixture thereon, whether installed by CITY or ORGANIZATION, and regardless of cause.
- b. ORGANIZATION, in performing any required maintenance and repair of the building at PREMISES, shall provide all staff and materials, supplies, equipment, and funds necessary to perform appropriate maintenance and/or repairs. All maintenance and/or repair shall be performed to the reasonable

satisfaction of CITY and in consultation with CITY's designated representative, or by CITY's written request and/or instruction.

- c. ORGANIZATION shall perform the following maintenance duties on daily basis:
 - i. Maintain PREMISES in a clean condition removing all debris and trash;
 - ii. Keep the PREMISES and the nearby areas clean at all times;
 - iii. Pick up and dispose of trash and debris whether by ORGANIZATION activity or activity of a contracted vendor;
 - iv. Prevent any trash or debris matter or material from being or accumulating upon said PREMISES such that it is clearly visible to public view; and,
 - v. Maintain PREMISES in a manner that is consistent and in compliance with all Federal, State, County and local regulations, orders and guidelines, including but not limited to health and safety orders and guidelines related to COVID-19.
- d. ORGANIZATION shall ensure that no offensive or dangerous materials, nor any substance constituting an unnecessary, unreasonable or material hazard detrimental to the public health, is permitted or allowed to remain on PREMISES.
- e. ORGANIZATION shall be responsible for securing ORGANIZATION's equipment and materials at the PREMISES during PERMITTED TIMES and ensuring the same during non-operating hours. CITY and/or RAP shall not be responsible for the security of ORGANIZATION personal property before, during, or after PERMITTED TIMES.
- f. ORGANIZATION shall immediately repair, or cause to be repaired, any damages to the PREMISES which occur during ORGANIZATION's operations, or that is caused by ORGANIZATION's use of the PREMISES; ORGANIZATION acknowledges that any damage which remains unrepaired may constitute a hazard to public safety, requiring that all use of the PREMISES immediately cease
- g. To the extent that needed repairs are not made, ORGANIZATION waives any and all claims against CITY for damages or indemnification as a result of the failure to make repairs.

11. Fundraising.

ORGANIZATION may hold fundraising activities on the PREMISES, but must obtain prior written approval for the date and time from the RAP staff listed in Section 21 for each fundraising event, no fewer than thirty (30) calendar days prior

to the scheduled activity. ORGANIZATION may have no more than four (4) fundraising events per year with a maximum of one (1) fundraising event per quarter. All monies raised from fundraising conducted at the PREMISES must be used only in support of the activities authorized under this AGREEMENT. Fundraising activities shall not include the distribution and/or the consumption of alcoholic beverages.

12. Consideration and CRRF.

The consideration for this AGREEMENT in exchange for ORGANIZATION's use of the PREMISES shall be ORGANIZATION's provision of the PROGRAM for the benefit of the general public and maintenance and/or repair of the PREMISES, at no cost to RAP or the CITY, pursuant to the terms and conditions of this AGREEMENT. However, in addition to the cost of operations and maintenance, ORGANIZATION is also responsible for the cost of utility services, solid waste disposal, and any fiscal impacts to RAP. In accordance with RAP policies, ORGANIZATION shall be responsible for such expenses, either through direct payments to applicable service providers or payment of Cost Recovery Reimbursement Fees (CRRF) to RAP, as described in further detail below.

- a. Cost Recovery Reimbursement Fees: ORGANIZATION shall pay a CRRF to RAP for costs incurred by RAP, as related to ORGANIZATION use of the PREMISES, which do not include any costs paid directly to applicable utility or service providers. The CRRF for use of PREMISES shall be One Hundred Eight-One Dollars (\$181.00) per month. Non-payment of the CRRF shall be considered a default of this AGREEMENT and cause for immediate termination of this AGREEMENT
- b. Electricity and Water. Pursuant to RAP policy regarding utility fees for services provided at park facilities operated by non-profit organizations and other collaborations, approved by the Board on July 13, 2011 (Report No. 11-202), ORGANIZATION pro-rata cost of electricity and water at the PREMISES Twenty-Five Dollars (\$25.00) shall be the responsibility of ORGANIZATION and shall be reimbursed to RAP as part of the CRRF amount in Section 12(a) above.
- c. Trash and Solid Waste Disposal. Pursuant to RAP policy regarding trash and solid waste disposal for services provided at park facilities operated by non-profit organizations and other collaborations, approved by the Board on February 1, 2012 (Report No. 12-028), ORGANIZATION pro rata cost of waste disposal at the PREMISES of Thirty-Six Dollars (\$36.00) shall be the responsibility of ORGANIZATION and shall be reimbursed to RAP as part of the CRRF amount in Section 12(a) above.
- d. Staff Impact. Pursuant to the RAP Policy regarding Staff Impacts related to services provided at park facilities operated by non-profit organizations and other collaborations, approved by the Board on July 19, 2012 (Report No. 12-217), ORGANIZATION shall be responsible for reimbursing RAP for

administrative and common area maintenance costs incurred by RAP in the amount of One Hundred and Twenty Dollars (\$120.00). The CRRF for Staff Impacts is inclusive of and shall be reimbursed to RAP as part of the total monthly CRRF in paragraph 12(a) above.

- e. Telephone and Data Lines. ORGANIZATION shall be responsible for the cost of telephone and data lines utilized within PREMISES and shall pay the service provider directly.
- f. Monthly payments of the CRRF shall be made by the tenth day of the month for the current month. ORGANIZATION is wholly responsible for timely payment of the monthly fee.
- g. All CRRF payments must be made by check or money order made payable to:

“City of Los Angeles Department of Recreation and Parks”

- h. All CRRF payments must be mailed or delivered to:

City of Los Angeles Department of Recreation and Parks
Attention: Partnership Section
221 North Figueroa Street, Suite # 180
Los Angeles, California 90012

13. Insurance.

Before accessing and using the PREMISES under this AGREEMENT, and periodically as required during its TERM, ORGANIZATION shall furnish CITY with evidence of insurance on an annual basis, from firms reasonably acceptable to CITY and approved to do such business in the State of California. ORGANIZATION or any third party providing work or services under this AGREEMENT shall name the City of Los Angeles and its boards, officers, agents, employees, assigns and successors in interest as an additional insured for all required coverage(s), as applicable. ORGANIZATION will ensure that like insurance will be maintained by any such third party. Evidence of required coverage shall be on forms reasonably acceptable to CITY’s Risk Manager and shall include the types and minimum limits set forth in Exhibit C attached hereto and incorporated herein by reference.

- a. ORGANIZATION shall maintain all such insurance at its sole cost and expense throughout the TERM of this AGREEMENT. CITY may, by applying generally accepted risk management principles, change the required amounts and types of insurance to be effective at the renewal date of the insurance then in effect by giving ORGANIZATION sixty (60) calendar days written notice, provided that such amounts and/or types shall be reasonably available to ORGANIZATION.
- b. If any of the required insurance contains aggregate limits or applies to other operations of ORGANIZATION outside of this AGREEMENT, ORGANIZATION

shall give CITY written notice of any incident, occurrence, claim, settlement or judgment against such insurance that in ORGANIZATION's best judgment may diminish the protection such insurance affords CITY within thirty (30) calendar days of the knowledge of same. ORGANIZATION shall further restore such aggregate limits or shall provide other replacement insurance for such aggregate limits within sixty (60) calendar days of the knowledge of same.

- c. If an insurance company elects to (i) cancel insurance before the stated expiration date, (ii) declines to renew in the case of a continuous policy, (iii) reduces the stated limits other than by impairment of an aggregate limit, or (iv) materially reduces the scope of coverage, thereby affecting CITY's interest, ORGANIZATION shall provide CITY at least thirty (30) calendar days prior written notice of such intended election by the insurance company, or ten (10) calendar days prior written notice if such cancellation is for non-payment of premium.

Such notice shall be sent by receipted delivery addressed as follows:

City Administrative Officer, Risk Management
200 North Main Street, Room 1240, City Hall East
Los Angeles, California 90012

Or to such address as CITY may specify by written notice to ORGANIZATION.

- d. ORGANIZATION's failure to procure and maintain the required insurance shall constitute a material breach of this AGREEMENT under which CITY may either (i) provide ORGANIZATION five (5) calendar days written notice of such failure, upon receipt of which ORGANIZATION shall have five (5) calendar days to cure such failure or CITY shall have the right to terminate the AGREEMENT or, (ii) at its discretion, pay to procure or renew such insurance to protect CITY's interest. ORGANIZATION agrees to reimburse CITY for all money so paid.
- e. Self-insurance programs and self-insured retention in insurance policies are subject to separate approval by CITY upon review of evidence of ORGANIZATION's financial capacity. Additionally, such programs or retention must provide CITY with an equivalent protection from liability.

14. Indemnification.

Except for the active negligence or willful misconduct of CITY, or any of its boards, officers, agents, employees, assigns and successors in interest, ORGANIZATION shall defend, indemnify and hold harmless CITY and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, (1) attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by CITY, including but not limited to, costs of experts and consultants), (2) damages or liability of any nature whatsoever, (3) for death or injury to any person, including ORGANIZATION's

employees and agents, or (4) damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by OPTONS, its subcontractors, or their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this AGREEMENT. This provision will survive expiration or termination of this AGREEMENT.

ORGANIZATION is aware of the condition of the PREMISES and accepts the PREMISES in its present condition, and agrees to abide by all health and safety regulations and orders. ORGANIZATION has carefully reviewed this document, understands its contents, and signs it voluntarily, without being subject to coercion.

ORGANIZATION further acknowledges and agrees that it knowingly and freely assumes all COVID-19 related risks, both known and unknown, relating to exercising the terms and conditions of this AGREEMENT and ORGANIZATION hereby forever releases, waives, relinquishes, and discharges CITY, along with its officers, agents, employees, or other representatives, and their successors and assigns, from any and all COVID-19 related claims, demands, liabilities, rights, damages, expenses, and causes of action of whatever kind or nature, and other losses of any kind, whether known or unknown, foreseen or unforeseen, as a result of ORGANIZATION's performance under this AGREEMENT, including but not limited to personal injuries, death, disease or property losses, or any other loss, and including but not limited to claims based on the alleged negligence of any City Representative or any other person related to COVID-19 sanitization. ORGANIZATION further promises and agrees to indemnify and hold CITY harmless from any and all damages resulting from the contraction of COVID-19.

15. Casualty and Condemnation.

ORGANIZATION shall be excused from its obligations in this AGREEMENT including, without limitation, the payment of the CRRF, the operation, maintenance and repair of any portion of the PREMISES or any improvement thereon that is damaged by casualty or taken by condemnation until any such portion or improvement is restored to at least its condition prior to said casualty or condemnation. CITY shall not be obligated to restore the PREMISES damaged by casualty in whole or in part. If CITY chooses not to restore the PREMISES, CITY shall provide notice to ORGANIZATION thereof within thirty (30) days of such casualty, and this AGREEMENT shall terminate upon ORGANIZATION's receipt of such notice. If the PREMISES is taken by condemnation, CITY shall provide notice to ORGANIZATION thereof within thirty (30) days of such taking, and this AGREEMENT shall terminate upon ORGANIZATION's receipt of such notice, and CITY shall not be obligated to provide ORGANIZATION a replacement property for ORGANIZATION's use.

16. Publicity.

Should there be the need, CITY and ORGANIZATION agree to cooperate and

coordinate with respect to the nature, text, and timing of any press release or public announcement(s) concerning the existence of this AGREEMENT, the use of the PREMISES or promotion of the PROGRAM, or construction of any improvements at the PREMISES in connection with this AGREEMENT or PROGRAM, except as may be legally required by applicable laws, regulations, or judicial order. Such cooperation and coordination shall occur prior to the release of any such press release or public announcement(s). CITY and ORGANIZATION agree to notify each other in writing prior to the release or use of any press release, public announcement, marketing or promotion of the PREMISES with respect to the ORGANIZATION's use of the PREMISES. Further, any such press release, public announcement, marketing materials, or brochures prepared by ORGANIZATION shall appropriately acknowledge the contributions of both CITY and ORGANIZATION. To the extent stipulated in any grant agreement, with respect to the PROGRAM and the use of the PREMISES in connection thereto, the CITY and ORGANIZATION shall duly notify any grantors, and each other, prior to any public or media event publicizing the accomplishments funded by any grant agreement, and shall provide the opportunity for attendance and participation by grantor representatives. Further, CITY and ORGANIZATION shall coordinate the scheduling and organization of any public or media event with respect to the PROGRAM and the use of the PREMISES in connection thereto, to provide the opportunity for attendance and participation by officials and/or representatives of both CITY and ORGANIZATION; including elected officials and public officials. Similarly, any document, written report, or brochure prepared by either CITY or ORGANIZATION, in whole or in part, with respect to the PROGRAM and the use of the PREMISES in connection thereto, shall contain any acknowledgements required under any grant agreement.

17. Signage.

No signs or banners of any kind shall be displayed by ORGANIZATION unless previously approved in writing by RAP, and the BOARD when required pursuant to RAP policy and protocol(s), and/or the RAP General Manager or his or her designee. RAP may require removal or refurbishment, at ORGANIZATION's expense, of any sign previously approved by RAP and installed, or caused to be installed, by ORGANIZATION.

18. Filming.

It is the policy of the City of Los Angeles to facilitate the use of City-controlled properties as film locations when available and appropriate. RAP has established a Park Film Office to coordinate and document the use of park property for film production purposes. Any commercial filming at the PREMISES shall be subject to approval by RAP and the Film Office. All fees for use of the PREMISES by film production companies shall be established and collected by the Film Office in accordance with CITY and RAP policies. The Park Film Office may be reached at (323) 644-6220. ORGANIZATION shall not charge any fees for film production conducted at the PREMISES.

19. Taxes and Possessory Interest.

ORGANIZATION shall pay all taxes of whatever character that may be levied or charged upon the rights of ORGANIZATION to use the PREMISES, or upon ORGANIZATION's improvements, fixtures, equipment, or other property thereon or upon ORGANIZATION's operation hereunder. In addition, by executing this AGREEMENT and accepting the benefits thereof, a property interest may be created known as a "Possessory Interest" and such property interest will be subject to property taxation. ORGANIZATION, as the party in whom the Possessory Interest is vested, may be subject to the payment of the property taxes levied by the State and County upon such interest.

20. Breach or Default by ORGANIZATION.

Upon the occurrence of one or more events of breach or default of this AGREEMENT by ORGANIZATION, CITY may, at its election and without waiving any right to select any other remedy provided in this Section or elsewhere in this AGREEMENT, initiate any of the following:

- a. Notice to Cure Breach or Default. CITY may issue a written notice of breach or default to ORGANIZATION, and if ORGANIZATION does not cure said breach or default within thirty (30) calendar days of receipt of said notice, CITY may terminate this AGREEMENT without further delay, whereupon BROTHERHOOD shall immediately terminate its activities at the PREMISES. For a breach or default involving sanitary or safety conditions, the cure period is reduced to seven (7) calendar days.
- b. CITY's Right to Cure. CITY at its sole discretion and with no obligation to do so, subject to any applicable conditions and limitations set forth elsewhere in this AGREEMENT, may, after a continuing breach or default by ORGANIZATION, perform or cause to be performed any of ORGANIZATION's unperformed obligations under this AGREEMENT. CITY may enter the PREMISES and remain there for the purpose of correcting or remedying the continuing breach or default. Such action by CITY shall not be deemed to waive or release said breach or any default or CITY's right to take further, preventative action.

21. Notices.

Any notice, request for consent, or statement ("NOTICE"), that RAP or ORGANIZATION is required or permitted to give or cause to be given to the other, shall be in writing and shall be delivered or addressed as set forth below. Either RAP or ORGANIZATION may designate a different address for any NOTICE by written statement to the other in accordance with the provisions of this Section. NOTICES shall be delivered personally or sent by confirmed facsimile transmission, by reliable courier providing tracking services, or by deposit with the United States Postal Service with postage prepaid and return receipt requested. All NOTICES shall be addressed as follows:

ORGANIZATION: Ms. Joanny Iaccino, Director and Teacher
Encino Parents Nursery School
P.O. Box 261025
Encino, CA 91316

Phone: (818) 788-4582

RAP: Mr. Robert De Hart, Acting Superintendent, Valley Region
6335 Woodley Avenue
Van Nuys, CA 91406
Email: Rob.DeHart@lacity.org

Phone: (818) 756-8060

22. Representations and Warranties.

CITY and ORGANIZATION each represents and warrants to the other that it has full power and authority to execute this AGREEMENT and to perform its obligations and requirements hereunder. This AGREEMENT constitutes the valid and legal binding obligation of CITY and ORGANIZATION, enforceable in accordance with its terms and conditions.

23. No Joint Venture or Agency Relationship.

Nothing herein contained shall be construed to place the PARTIES to this AGREEMENT in the relationship of a joint venture, association, partnership, or other form of a business organization or agency relationship. ORGANIZATION shall have no power to obligate or bind CITY in any manner whatsoever. Under no circumstances will ORGANIZATION represent itself to be an agent of the CITY or any of its departments. Nothing in this AGREEMENT may be construed to have authorized or vested in ORGANIZATION the power to be an agent of the CITY or an actor under the color of law, be it civilly or criminally.

24. Relationship of Parties.

PARTIES agree that no other party shall have any right, power, or authority to assume, create, or incur any expense, liability, or obligation, expressed or implied, on behalf of any other party, except as expressly provided herein.

25. Sub-Lease Restriction.

No sub-lease for space shall take effect at the PREMISES unless approved in advance and in writing by RAP. ORGANIZATION shall require all individuals and organizations providing programs or services within the PREMISES to agree to abide by all conditions set forth in this AGREEMENT, as applicable to such programs or services.

26. Safe Practices.

ORGANIZATION shall correct violations of safety practices during its PERMITTED USE immediately and shall cooperate fully and in good faith with CITY in the investigation of accidents or deaths occurring on the PREMISES. In the event of

death or serious injury (requiring an emergency room hospital visit), ORGANIZATION must notify the RAP contacts referenced in Section 14 as soon as possible but no later than twenty-four (24) hours after ORGANIZATION has knowledge of the incident by telephone call, with a follow up email notice. Notice of non-serious injuries occurring at the PREMISES shall be provided to the RAP within seventy-two (72) hours. ORGANIZATION shall maintain at the PREMISES a record of non-serious injuries occurring on the PREMISES, copies of which shall be provided to RAP upon receipt of a written request therefor. ORGANIZATION shall keep internal documentation of the incident(s) occurring during the previous two (2) years and provide RAP with such information upon request.

27. Suspected Child Abuse.

ORGANIZATION must promptly contact the Los Angeles County Child Protection Hotline to report any suspected child abuse at the PREMISES. ORGANIZATION shall notify the RAP contacts specified in Section 21 within 24 hours after a report has been made.

28. Hazardous Substances

PARTIES agree that the PREMISES shall be used in a manner consistent with its intended public recreational purposes and within the scope of use set forth above. ORGANIZATION shall use the PREMISES in compliance with laws pertaining to hazardous substances and ensure that no pesticides, insecticides, herbicides and rodent poisons not in compliance with this section are used at the PREMISES. As used herein, "hazardous substances" shall mean any product, chemical, material or waste whose nature, quantity and/or intensity of presence, use, manufacture, disposal, transportation, spill, release or effect, either by itself or in combination with other such substances, is either: (a) potentially injurious to public health, safety or welfare or injurious to the environment; (b) regulated or monitored by any governmental authority; or (c) a basis for liability of CITY or ORGANIZATION to any governmental agency or third party under applicable statute. No lead or oil-based paint, paint thinner, varnishes, lacquers and stain shall be brought onto or stored at the PREMISES.

29. Ordinances and Standard Provisions.

The "Standard Provisions for City Contracts (Rev. 10/17)[v.3]" (Standard Provisions) are incorporated herein by reference and attached hereto as Exhibit D. If there is any conflicting language between the "Standard Provisions for City Contracts (Rev. 10/17)[v.3]" and this AGREEMENT, the language of this AGREEMENT shall prevail. In addition, ORGANIZATION will provide documentation of compliance with all required Ordinance Provisions as determined by CITY. For purposes of the Standard Provisions, the term "Contractor" shall mean ORGANIZATION.

30. Incorporation of Documents.

This AGREEMENT and incorporated documents represent the entire integrated agreement of the PARTIES and supersedes all prior written or oral representations, discussions, and agreements. The following documents are incorporated and made a part hereof by reference.

Exhibit A: Site Plan

Exhibit B: Sample Annual Performance Report Questionnaire

Exhibit C: Insurance Requirements and Instructions for Submission

Exhibit D: Standard Provisions for City Contracts (Rev. 10/17)[v.3]

The order of precedence in resolving conflicting language, if any, in the documents shall be: 1) This AGREEMENT exclusive of attachments; 2) Exhibit A; 3) Exhibit B; 4) Exhibit C; 5) Exhibit D.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT as of the day and year first above written.

CITY OF LOS ANGELES, a municipal corporation, acting by and through its BOARD OF RECREATION AND PARK COMMISSIONERS

Encino Parents Nursery School, Inc., a 501(c)(3) non-profit corporation

By: _____
President

By: _____

By: _____
Secretary

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

By: _____
Deputy City Attorney

Date: _____

EXHIBIT A Site Plan

Encino Parents Nursery School is operated at Encino Park, 16953 Ventura Boulevard, Encino, CA 91316.

The PREMISES is delineated below within the red lines. The PREMISES includes a building of roughly 500 sq. ft. and a small storage area. The adjacent outdoor playground is a shared use area by Encino Parents Nursery School and the public.

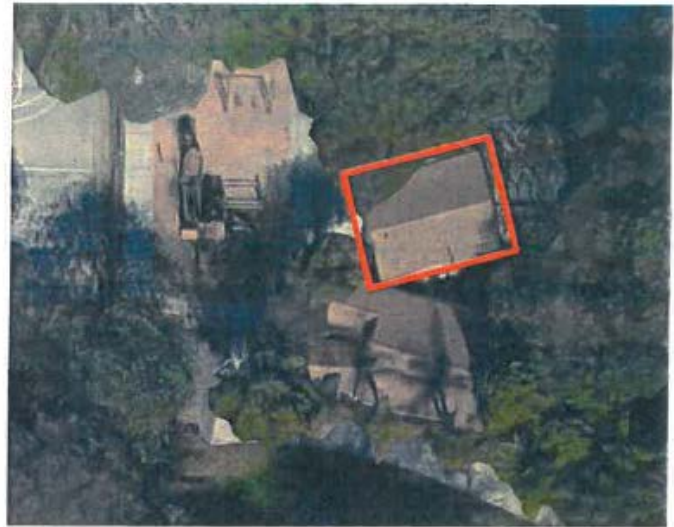


Diagram not to scale

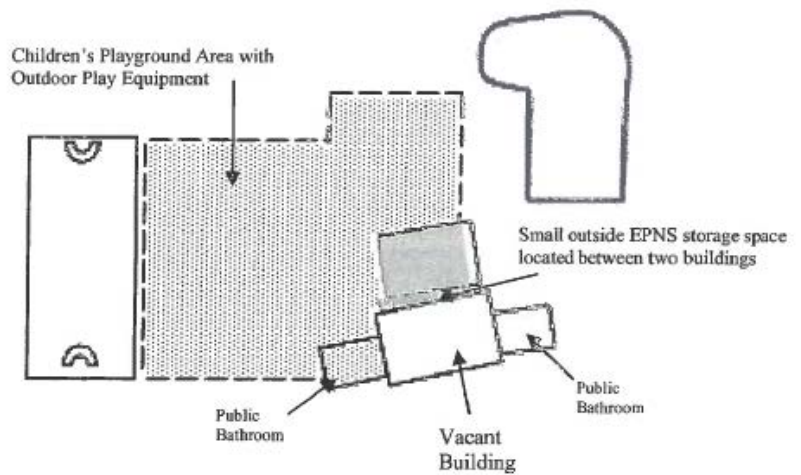
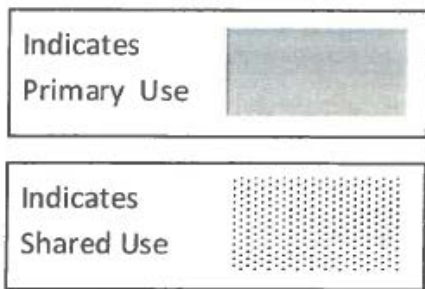


EXHIBIT B
Sample Annual Performance Report Questionnaire



City of Los Angeles Department of Recreation and Parks
Partnership Section

ANNUAL PERFORMANCE REPORT

ORGANIZATION NAME: _____

ADDRESS: _____

CONTACT NAME: _____ **PHONE NUMBER:** _____

Pursuant to your Organization's Agreement with the Department of Recreation and Parks and the required Annual Performance Report, please provide responses to the following questions (if applicable) regarding the public services and programs provided by your organization on park property. You may include additional information as deemed necessary.

Please send the completed Report to the Partnership Section at rap.partnerships@lacity.org, with "Annual Performance Report – *organization name*" on the subject line. You may contact Partnership Section staff at (213) 202-5600, should you have any questions.

A. PROGRAM

1. Describe the program and/or service(s) offered.
2. What are the hours of operation/sessions for the facility?
3. How many participants were enrolled during the performance period?
4. How many of the enrolled participants are from the community (within a 5-mile radius)?
5. How many employees does the organization have?
6. How many volunteers does the organization have?
7. Are any of the staff specialized, licensed, certified, or extraordinarily experienced in a specific field? Please explain briefly.
8. Is the organization able to accommodate participants who have special needs?
 - If so, what needs can be met?
 - Do any of the current, enrolled participants have special needs?
9. List the achievements and/or challenges that occurred during this performance period.
10. Please provide a copy of the schedule of events and activities that occurred during the performance period.

B. FINANCIAL

1. Provide the schedule of rates and fees for the public programs and services offered.
2. Did the rates/fees increase during this performance period?
3. Please provide a performance period Profit and Loss Report.
4. Please provide the Annual Budget for the upcoming performance period (fiscal year).
5. Please provide a copy of the organization's IRS most recent 990 form filed with the Internal Revenue Service (IRS).

Partnership Section
Annual Performance Report

C. OUTREACH

1. Did the organization operate at full capacity during this review period?
2. Does the organization have a waiting list?
 - Are potential participants charged a fee to be added to the waiting list?
 - What is the organization's method for choosing an individual from the waiting list to fill an available spot?
3. What effort did the organization make during this review period to recruit new participants?
4. Does the organization collect demographic information from the participants?
5. Does the organization survey participants about the program?

D. SAFETY COMPLIANCE

1. Are the organization's employees and volunteers fingerprinted under a Department of Justice background check?
2. What is the ratio of staff to participants?
 - Does this ratio satisfy applicable requirements for supervision and safety under industry regulations/guidelines?
3. Does all of the equipment and instructional supplies adhere to the appropriate safety specifications and requirements under standard industry guidelines and/or regulations?

E. ORGANIZATION COMPLIANCE

1. Is the organization in good legal standing as a nonprofit organization?
2. Does the organization sub-let any space to another entity?
3. Has the organization received any complaints?
 - If so, please describe the situation and how it was addressed/resolved.
4. Were any improvements or repairs to the facility performed by the organization or RAP? Please list the date(s) and name(s) of the entities involved, including RAP staff.
5. Does the organization have any staff or volunteer comments/issues/requests that the organization would like to discuss with RAP?

REQUIRED ATTACHMENTS (as applicable)

1. Annual Profit & Loss Report
2. Annual Schedule of Events and Activities
3. Program Handbook
4. Annual Budget for Upcoming Fiscal Year
5. Copy of IRS 990 form
6. Copies of:
 - Waiting List
 - Demographic Information (if applicable)
 - Annual Surveys of Participants
 - Marketing Materials
 - Insurance Confirmation Number (from Risk Management website)
 - Proof of 501(c)(3) status

Thank you for your cooperation in completing this process.

Revised April 2020

EXHIBIT C

Required Insurance and Minimum Limits

Name: Encino Parents Nursery School

Date: 04/21/2021

Agreement/Reference: Licensed Cooperative Childcare and Child Development Program within the grounds of Encino Park
Evidence of coverages checked below, with the specified minimum limits, must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits ("CSLs"). For Automobile Liability, split limits may be substituted for a CSL if the total per occurrence equals or exceeds the CSL amount.

Limits

Workers' Compensation - Workers' Compensation (WC) and Employer's Liability (EL)

	WC	Statutory
		<u>\$1,000,000</u>

Waiver of Subrogation in favor of City

Longshore & Harbor Workers
 Jones Act

General Liability City of Los Angeles must be named as an additional insured party \$1,000,000

Products/Completed Operations

Fire Legal Liability 100,000

Sexual Misconduct 1,000,000

___ **Automobile Liability** (for any and all vehicles used for this contract, other than commuting to/from work) _____

___ **Professional Liability** (Errors and Omissions) _____

Discovery Period _____

___ **Property Insurance** (to cover replacement cost of building - as determined by insurance company) _____

All Risk Coverage

Flood _____

Earthquake _____

Boiler and Machinery

Builder's Risk

___ **Pollution Liability** _____

___ **Surety Bonds - Performance and Payment (Labor and Materials) Bonds** 100% of the contract price

___ **Crime Insurance** _____

Other: If a contractor has no employees and decides to not cover herself/himself for workers' compensation insurance, please complete the form entitled "Request for Waiver of Workers' Compensation Insurance Requirement" located at <http://cao.lacity.org/risk/InsuranceForms.htm>.
In the absence of imposed auto liability requirements, all contractors using vehicles during the course of their contract must adhere to the financial responsibility laws of the State of California.

CITY OF LOS ANGELES

INSTRUCTIONS AND INFORMATION
ON COMPLYING WITH CITY INSURANCE REQUIREMENTS

(Share this information with your insurance agent or broker)

1. **Agreement/Reference** All evidence of insurance should identify the nature of your business with the CITY. Clearly show any assigned number of a bid, contract, lease, permit, etc. or give the project name and the job site or street address to ensure that your submission will be properly credited. Provide the **types of coverage and minimum dollar amounts** specified on the Required Insurance and Minimum Limits sheet (Form Gen. 146) included in your CITY documents.

2. **When to Submit** Normally, no work may begin until a CITY insurance certificate approval number ("CA number") has been obtained, so insurance documents should be submitted as early as practicable. For **As-needed Contracts**, insurance need not be submitted until a specific job has been awarded. **Design Professionals** coverage for new construction work may be submitted simultaneously with final plans and drawings, but before construction commences.

3. **Acceptable Evidence and Approval** Electronic submission is the required method of submitting your documents. **KwikComply** is the CITY's online insurance compliance system and is designed to make the experience of submitting and retrieving insurance information quick and easy. The system is designed to be used by insurance brokers and agents as they submit client insurance certificates directly to the City. It uses the standard insurance industry form known as the **ACORD 25 Certificate of Liability Insurance** in electronic format. **KwikComply** advantages include standardized, universally accepted forms, paperless approval transactions (24 hours, 7 days per week), and security checks and balances. The easiest and quickest way to obtain approval of your insurance is to have your insurance broker or agent access **KwikComply** at <https://kwikcomply.org/> and follow the instructions to register and submit the appropriate proof of insurance on your behalf.

Contractor must provide City a thirty (30) day notice of cancellation (ten (10) days for non-payment of premium) AND an Additional Insured Endorsement naming the CITY an additional insured completed by your insurance company or its designee. If the policy includes an automatic or blanket additional insured endorsement, the Certificate must state the CITY is an automatic or blanket additional insured. An endorsement naming the CITY an Additional Named Insured and Loss Payee as Its Interests May Appear is required on property policies. All evidence of insurance must be authorized by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter.

Additional Insured Endorsements DO NOT apply to the following:

- Indication of compliance with statute, such as Workers' Compensation Law.
- Professional Liability insurance.

Verification of approved insurance and bonds may be obtained by checking **KwikComply**, the CITY's online insurance compliance system, at <https://kwikcomply.org/>.

4. **Renewal** When an existing policy is renewed, have your insurance broker or agent submit a new Acord 25 Certificate or edit the existing Acord 25 Certificate through **KwikComply** at <https://kwikcomply.org/>.

5. **Alternative Programs/Self-Insurance** Risk financing mechanisms such as Risk Retention Groups, Risk Purchasing Groups, off-shore carriers, captive insurance programs and self-insurance programs are subject to separate approval after the CITY has reviewed the relevant audited financial statements. To initiate a review of your program, you should complete the

Applicant's Declaration of Self Insurance form (<http://cao.lacity.org/risk/InsuranceForms.htm>) to the Office of the City Administrative Officer, Risk Management for consideration.

6. **General Liability** insurance covering your operations (and products, where applicable) is required whenever the CITY is at risk of third-party claims which may arise out of your work or your presence or special event on City premises. **Sexual Misconduct** coverage is a required coverage when the work performed involves minors. **Fire Legal Liability** is required for persons occupying a portion of CITY premises. Information on two CITY insurance programs, the SPARTA program, an optional source of low-cost insurance which meets the most minimum requirements, and the Special Events Liability Insurance Program, which provides liability coverage for short-term special events on CITY premises or streets, is available at (www.2sparta.com), or by calling (800) 420-0555.

7. **Automobile Liability** insurance is required only when vehicles are used in performing the work of your Contract or when they are driven off-road on CITY premises; it is not required for simple commuting unless CITY is paying mileage. However, compliance with California law requiring auto liability insurance is a contractual requirement.

8. **Errors and Omissions** coverage will be specified on a project-by-project basis if you are working as a licensed or other professional. The length of the claims discovery period required will vary with the circumstances of the individual job.

9. **Workers' Compensation and Employer's Liability** insurance are not required for single-person contractors. However, under state law these coverages (or a copy of the state's Consent To Self Insure) must be provided if you have any employees at any time during the period of this contract. Contractors with no employees must complete a Request for Waiver of Workers' Compensation Insurance Requirement (<http://cao.lacity.org/risk/InsuranceForms.htm>). A **Waiver of Subrogation** on the coverage is required only for jobs where your employees are working on CITY premises under hazardous conditions, e.g., uneven terrain, scaffolding, caustic chemicals, toxic materials, power tools, etc. The Waiver of Subrogation waives the insurer's right to recover (from the CITY) any workers' compensation paid to an injured employee of the contractor.

10. **Property** Insurance is required for persons having exclusive use of premises or equipment owned or controlled by the CITY. **Builder's Risk/Course of Construction** is required during construction projects and should include building materials in transit and stored at the project site.

11. **Surety** coverage may be required to guarantee performance of work and payment to vendors and suppliers. A **Crime Policy** may be required to handle CITY funds or securities, and under certain other conditions. **Specialty coverages** may be needed for certain operations. For assistance in obtaining the CITY required bid, performance and payment surety bonds, please see the City of Los Angeles Contractor Development and Bond Assistance Program website address at <http://cao.lacity.org/risk/BondAssistanceProgram.pdf> or call (213) 258-3000 for more information.

12. **Cyber Liability & Privacy** coverage may be required to cover technology services or products for both liability and property losses that may result when a CITY contractor engages in various electronic activities, such as selling on the Internet or collecting data within its internal electronic network. Contractor's policies shall cover liability for a data breach in which the CITY employees' and/or CITY customers' confidential or personal information, such as but not limited to, Social Security or credit card information are exposed or stolen by a hacker or other criminal who has gained access to the CITY's or contractor's electronic network. The policies shall cover a variety of expenses associated with data breaches, including: notification costs, credit monitoring, costs to defend claims by state regulators, fines and penalties, and loss resulting from identity theft. The policies are required to cover liability arising from website media content, as well as property exposures from: (a) business interruption, (b) data loss/destruction, (c) computer fraud, (d) funds transfer loss, and (e) cyber extortion.

EXHIBIT D

Standard Provisions for City Contracts

TO BE ATTACHED SEPARATELY