



**LEASE AGREEMENT
with
Orange County Head Start**

THIS GROUND LEASE is made and executed into this 1st day of July, 2023 (“Effective Date”), by and between the CITY OF LA HABRA, a municipal corporation (“Lessor”) and THE ORANGE COUNTY HEAD START, a non-profit organization (“Lessee”).

WITNESSETH:

WHEREAS, Lessor is the owner of that real property located at 1060 West Rambert Road, in the City of La Habra, and hereby agrees to lease to Lessee under the terms and conditions set forth herein the above-referenced real property, and Lessee hereby agrees under the terms and conditions set forth herein to lease the said real property from Lessor;

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

SECTION 1. TERM

Lessor leases to Lessee the real property in the City of La Habra, County of Orange, State of California, commonly known as 1060 West Lambert Road, La Habra, California, the ‘Property’ for a period of five (5) years commencing on July 1, 2023 and ending on June 30, 2028 for the purpose of maintaining four (4) classroom modulars to house Lessee’s Head Start Early Childhood Education Program. The relocatable buildings shall be owned, operated, and maintained at Lessee’s sole cost and expense.

SECTION 2. RENT

The rent of said premises shall be the following:

July 1, 2023 through June 30, 2024 - \$ 1,100 per month
 July 1, 2024 through June 30, 2025 - \$ 1,133 per month
 July 1, 2025 through June 30, 2026 - \$ 1,167 per month
 July 1, 2026 through June 30, 2027 - \$ 1,202 per month
 July 1, 2027 through June 30, 2028 - \$ 1,238 per month

Rent shall be due and payable to Lessor commencing July 1, 2023 unless such time as it is terminated pursuant to the provisions in Section 18 of this lease.

In addition, Lessee shall provide and pay for all maintenance, repair, upkeep, taxes, separately metered utilities, including, but not limited to water, gas, electricity, trash service, telephone, landscaping, and such other costs and expenses that are associated with the use and operation of the Real Property except for driveways and parking areas.

SECTION 3. WARRANTIES OF TITLE AND QUIET ENJOYMENT

Lessor covenants that Lessor is the owner of said Real Property and has full right to make this lease, and that Lessee shall have quiet and peaceable possession of said premises during the term hereof. It is understood and agreed that Lessor shall have the right to periodically use the premises with the permission and consent of the Lessee. Lessor's use shall be coordinated with Lessee so that each party hereto may enjoy the use of said premises with the least inconvenience to each party. However, Lessee's use of said premises is paramount and superior to Lessor's use of said premises.

SECTION 4. USE OF PREMISES

Lessee shall use said premises for the sole purpose of operating a Head Start Preschool Program serving La Habra residents on said premises and shall engage in those uses consistent with and in support of a preschool.

Lessee shall not use, or permit the use of said premises, or any part thereof, to be used for any purpose other than the purpose of which the said premises are leased. No use shall be made or permitted to be made of said premises, or acts done, which will cause the cancellation of any insurance policy covering the premises. Lessee shall, at its sole cost and expense, comply with all requirements pertaining to said premises of any insurance organization or company necessary for the maintenance of insurance on and for said premises. Lessee shall remain solely and exclusively responsible and liable for any and all damage caused to said premises by Lessee's use of said premises except for the driveways, parking areas and landscape areas during the term of this lease. The use of premises shall include all reasonable uses to assist in fundraising for the benefit of Lessee. If Lessee would like to use the premises for anything other than what the lease was intended for, it must obtain prior written consent from Lessor.

SECTION 5. MAINTENANCE

Lessee shall throughout the term of this lease, at its sole cost and expense, keep and maintain the premises in neat order, good condition and repair, and shall restore and rehabilitate any improvements which may be destroyed or damaged by any cause whatsoever. Lessor shall not be obligated to make any repairs, replacements, or renewals of any kind, nature or description whatsoever to the said premises or improvements thereon except for the driveways and parking areas. Lessee shall comply with and abide by all federal, state, county, municipal, and other governmental statutes, ordinances, laws, or any activity or conditions on or in such premises. Lessee shall also be responsible for maintenance of the roof, interior, and exterior walls, all heating and air conditioning equipment, and maintenance of kitchen facilities. Lessor retains the right to inspect the premises at any time to determine if all necessary repairs and any long-term deferred maintenance are reasonable occurring. It shall be a cause of termination of this lease if all repairs and long-term maintenance have not been reasonably accomplished by the Lessee.

SECTION 6. UTILITIES

Lessor shall be responsible for all separately metered water, gas, electricity, trash service, telephone, and other utility services used on or furnished to said premises during the term.

SECTION 7. LESSEE'S SIGNS

No sign, notice or other advertisement shall be displayed on the outside premises without the prior written consent of Lessor. All signage must be properly cared for and removed after event.

SECTION 8. LIENS

Lessee shall keep the fee estate of said premises free and clear from all mechanics and material men liens and other liens for work or labor done, services performed, materials, appliances used, or furnished or to be used in or about the premises for or in connection with any operation of Lessee, for any repairs or improvements which Lessee may make or permit to cause to be made, or any work or construction by, for or permitted by Lessee on or about said premises.

SECTION 9. INDEMNIFICATION

Lessee agrees to defend, indemnify, hold free and harmless Lessor, its elected officials, officers, agents, volunteers and employees, at Lessee's sole expense, from and against any and all damages to property or injuries to or death of any person or persons, including attorney fees, and shall defend, indemnify, save and hold harmless Lessor, its elected officials, officers, agents, volunteers and employees from any and all claims, demands, suits, actions or proceedings of any kind or nature, including, but not by way of limitation, all civil claims, workers' compensation claims, and all other claims resulting from or arising out of the acts, errors or omissions of Lessor, its elected officials, officers, agents, volunteers, employees, occupants, visitors or other users and/or authorized subcontractors, whether intentional or negligent, during the term of this lease.

Likewise, Lessor agrees to defend, indemnify, hold free and harmless Lessee, its elected officials, officers, agents, volunteers and employees, at Lessor's sole expense, from and against any and all damages to property or injuries to or death of any person or persons, including attorney fees, and shall defend, indemnify, save and hold harmless Lessee, its elected officials, officers, agents, volunteers and employees from any and all claims, demands, suits, actions or proceedings of any kind or nature, including, but not by way of limitation, all civil claims, workers' compensation claims, and all other claims resulting from or arising out of the acts, errors or omissions of Lessee, its elected officials, officers, agents, volunteers, employees, occupants, visitors or other users and/or authorized subcontractors, whether intentional or negligent, during the term of this lease.

SECTION 10. ASSIGNMENT AND SUBLETTING

Without the prior written consent of Lessor, Lessee shall not assign this Lease or sublet the premises or any part thereof.

SECTION 11. ENCUMBRANCE OF LEASEHOLD INTEREST

Lessee may not encumber or mortgage or by deed or trust or other instrument its leasehold interest and estate in said premises.

SECTION 12. DEFAULT

If Lessee shall fail or neglect to observe, keep or perform any of the covenants, terms or conditions herein contained on its part to be observed, kept or performed, and if such default shall continue for a period of thirty (30) calendar days after written notice from Lessor setting forth the nature of the Lessee’s default, then and in such event, Lessor shall have the right at its option to terminate this Lease and all rights of Lessee hereunder shall thereupon cease.

SECTION 13. NOTICES

Wherever in this Lease it shall be required or permitted that notice be given by either party, such notice must be in writing, and must be given personally or forwarded by certified mail addressed as follows:

IF TO LESSEE:

Orange County Head Start
2501 S. Pullman Street, Ste 100
Santa Ana, CA 92705
Attention: Executive Director

IF TO LESSOR:

City of La Habra
110 E. La Habra Boulevard
La Habra, CA 90631
Attention: City Manager

The effective date of any notice or written communications sent by one party to the other shall be the date received if by personal service, or forty-eight (48) hours after deposit in the US Mail as reflected by official US postmark. Either party may change its address by giving notice in writing to the other party.

SECTION 14. FORFEITURE FOR INSOLVENCY

If Lessee shall at any time during the term hereof become insolvent, or have proceedings in bankruptcy instituted by or against it, or have a receiver appointed over its property, it shall be lawful for Lessor to enter and repossess said premises. All rights of Lessee shall be thereon terminated.

SECTION 15. ABANDONMENT BY LESSEE

If Lessee shall fail to use said premises, which is fit for occupancy, for a period of thirty (30) consecutive days, said premises shall be considered abandoned and the lease term forfeited.

SECTION 16. WAIVER

The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

SECTION 17. INSURANCE

The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. If the existing policies do not meet the Insurance Requirements set forth herein, Lessee agrees to amend, supplement or endorse the policies to do so.

Without limiting the indemnity provisions of the lease agreement, the Lessee shall procure and maintain in full force and effect during the term of the agreement, the following policies of insurance.

MINIMUM SCOPE OF INSURANCE.

- (a) **Commercial General Liability (CGL)** which affords coverage at least as broad as Insurance Services Office “occurrence” form CG 00 01, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- (b) **Automobile Liability Insurance** with coverage at least as broad as Insurance Services Office Form CA 0001 covering “Any Auto” (Symbol 1) with limit no less than \$1,000,000 each accident for bodily injury and property damage. Such insurance shall include coverage for owned, hired and non-owned automobiles.
- (c) **Workers’ Compensation** as required by the State of California with statutory limits, and Employer’s Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury or disease.

- (d) **Sexual Abuse/Molestation Insurance** Lessee shall procure and maintain Sexual Abuse/Molestation Insurance Liability coverage with limits of not less than \$2,000,000 per occurrence and \$4,000,000 general aggregate. Coverage may be provided as part of Commercial General Liability coverage, Professional Liability coverage, or as a separate policy.

If the Lessee maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the lessee.

Lessor reserves the right to review industry standards and a comparison of similar buildings in the area and impose a reasonable increase of the insurance limits every three (3) years from the Effective Date of this lease.

ENDORSEMENTS

Insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval. The insurance policies shall contain or be endorsed to contain, the following provisions:

- (a) Commercial General Liability

- (1) **Additional Insured:** The City, its elected officials, officers, employees, volunteers, boards, agents and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the Lessee including materials, parts or equipment furnished in connection with such work or operations.

Additional Insured Endorsements shall not:

1. Be limited to "Ongoing Operations"
2. Exclude "Contractual Liability"
3. Restrict coverage to the "Sole" liability of contractor
4. Exclude "Third-Party-Over Actions"
5. Contain any other exclusion contrary to the Contract

Additional Insured Endorsements shall be at least as broad as ISO Form(s) CG 20 10 11 85; or CG 20 10 and CG 2037.

- (2) **Primary Insurance:** This insurance shall be primary and any other insurance whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement shall be in excess of and shall not contribute with this insurance. Coverage shall be at least as broad as ISO CG 20 01 04 13.

(b) Auto Liability

- (1) **Additional Insured:** The City, its elected officials, officers, employees, volunteers, boards, agents and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the Lessee.
- (2) **Primary Insurance:** This insurance shall be primary and any other insurance whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement shall be in excess of and shall not contribute with this insurance.

(c) Workers' Compensation

- (1) **Waiver of Subrogation:** A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

INSURANCE OBLIGATIONS OF LESSEE

The Insurance obligations under this lease agreement shall be: (1) all the Insurance coverage and/or limits carried by or available to the Lessee; or (2) the minimum Insurance coverage requirements and/or limits shown in this agreement; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the Lessor. No representation is made that the minimum Insurance requirements of this agreement are sufficient to cover the obligations of the Lessee under this lease agreement.

NOTICE OF CANCELLATION

Required insurance policies shall not be cancelled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the Lessor except ten (10) days shall be allowed for non-payment of premium.

WAIVER OF SUBROGATION

Required insurance coverages shall not prohibit Lessee from waiving the right of subrogation prior to a loss. Lessee shall waive all rights of subrogation against the indemnified parties and Policies shall contain or be endorsed to contain such a provision. This provision applies regardless of whether the Lessor has received a waiver of subrogation endorsement from the insurer.

EVIDENCE OF INSURANCE

- (1) All policies, endorsements, certificates, and/or binders shall be subject to approval by the Lessor as to form and content. These requirements are subject to amendment or waiver only if so approved in writing by the Lessor. The Lessor reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- (2) The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the Lessor. If such coverage is cancelled or reduced, Lessee shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the Lessor evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

DEDUCTIBLE OR SELF-INSURED RETENTION

Any deductible or self-insured retention must be approved in writing by the Lessor and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention. The Lessor may require the Lessee to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration and defense expenses within the retention.

CONTRACTUAL LIABILITY

The coverage provided shall apply to the obligations assumed by the Lessee under the indemnity provisions of this contract.

FAILURE TO MAINTAIN COVERAGE

Lessee agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the Lessor.

ACCEPTABILITY OF INSURERS

Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing by the City.

CLAIMS MADE POLICIES

If coverage is written on a claims-made basis, the retroactive date on such insurance and all subsequent insurance shall coincide or precede the effective date of the initial Lessee's lease agreement with the Lessor and continuous coverage shall be maintained or an extended reporting period shall be exercised for a period of at least five (5) years from termination or expiration of this lease agreement.

INSURANCE FOR SUBCONTRACTORS

Lessee shall be responsible for causing Subcontractors to purchase the same types and limits of insurance in compliance with the terms of this lease agreement, including adding the Lessor as an Additional Insured, providing Primary and Non-Contributory coverage and Waiver of Subrogation to the Subcontractor's policies. The Commercial General Liability Additional Insured Endorsement shall be on a form at least as broad as CG 20 38 04 13.

SECTION 18. TERMINATION

At all times during this lease Lessee shall operate its organization consistent with the uses in section four (4).

If at any time during this lease Lessor believes Lessee is in default of the lease it shall provide written notice to Lessee allowing thirty (30) calendar days to cure the default. If after receiving written notice of the default, Lessee fails to cure the default, Lessor may terminate this Agreement immediately.

If Lessor declares a fiscal emergency and determines that they are to liquidate assets of the city, including the underlying premises of this lease, Lessor may terminate the lease upon thirty (30) days written notice. Upon receipt of the written notice of termination, Lessee will thereafter have thirty (30) days to provide Lessor with a notice of intent to exercise its first right to purchase the underlying property at fair market value subject to the existing lease. If Lessee fails to timely provide said notice of intent then the lease shall immediately terminate upon expiration of the thirty (30) days. However, if Lessee timely provides Lessor with said notice of intent, Lessee shall have six (6) months thereafter to exercise its right by funding its purchase of the underlying property, during which time the term of the lease shall continue unless otherwise terminated under this Agreement. In the event that Lessee fails to fund such purchase within six (6) months of providing its notice of intent, then its first right to purchase and the lease shall both immediately terminate.

Under exigent circumstances, for a legitimate governmental purpose, and in order to ensure the continuity of essential city programs and services Lessor may terminate the lease. City Council is required to approve the termination with a 4/5 vote and a thirty (30) day notice to Lessee is required. At such time that use of the facility to ensure the continuity of essential City programs and services is no longer required, and under which the City Council exercised its right of termination, the terms and conditions of the lease shall be reinstated for the balance of the term of the lease.

SECTION 19. ATTORNEY'S FEES

In the event that litigation is brought by any party in connection with this Lease, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

Mediation-Arbitration Clause. Lessor and Lessee hereto agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration. Mediation fees shall be divided equally among the parties involved. If any party commences an action based on a dispute or claim to which this paragraph applies, without first attempting to resolve the matter through mediation, then that party shall not be entitled to recover attorney fees, even if fees would otherwise be available to the party in any such action.

Arbitration of Disputes. Lessor and Lessee agree that any dispute or claim in law or equity arising between them out of this agreement, or any resulting transaction, which is not settled by mediation, shall be decided by neutral, binding arbitration. The arbitration shall be under the rules of the judicial arbitration and mediation services (jams). The arbitrator shall be a retired judge or justice, or an attorney with at least 10 years of real estate law experience, unless the parties mutually agree to a different arbitrator, who shall render an award with detailed findings and conclusions in accordance with the substantive California law. In all other respects, the arbitration shall be conducted in accordance with part iii, title 9 of the California code of civil procedure. Judgment upon the award of the arbitrator(s) may be entered in any court having jurisdiction. The parties shall have the right to discovery in accordance with code of civil procedures 1283.05. Except that each party shall be entitled as a matter of right to take one deposition of the other party without the requirement or consent of the arbitrator. In any controversy or dispute requiring legal litigation/attorneys, the prevailing party shall be entitled to reasonable attorney fees and costs.

SECTION 20. REPRESENTATIVES

The City Manager or his/her designee shall be the representative of Lessor for purposes of this lease and may issue all consents, approvals, directives and agreements on behalf of Lessor, called for by this lease, except as otherwise expressly provided in this lease.

The President shall be the representative of Lessee for purposes of this lease and may issue all consents, approvals, directives and agreements on behalf of Lessor, called for by this lease, except as otherwise expressly provided in this lease.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF LA HABRA, A municipal corporation

Jim Sadro, City Manager

Date: _____

ORANGE COUNTY HEAD START, A Federal 501c3 Non-Profit

AUTHORIZED DESIGNEE

Date: _____

ATTEST:

Rhonda J. Barone, CMC, City Clerk

APPROVED AS TO FORM:

Richard D. Jones, City Attorney

Date: _____

APPROVED AS TO INSURANCE:

Elvie Balderrama, Risk Management

Date: _____