

**CONTRACT NAME: AGREEMENT BETWEEN CHILD
DEVELOPMENT CENTERS AND DAVIS JOINT UNIFIED
SCHOOL DISTRICT**

BRIEF DESCRIPTION OF CONTRACT: This is a renewal of the facility use agreement between Child Development Centers and DJUSD to use the District elementary sites for Child Development services.

Child Development Centers pay a use fee of \$383 for a 2,000 square foot space and \$186 for a 960 square foot space.

The term of this agreement is from July 1, 2017 to June 30, 2018.



DJUSD

DAVIS JOINT UNIFIED
SCHOOL DISTRICT

John A. Bowes, Ed.D.
Superintendent

526 B Street ♦ Davis, CA 95616 ♦ (530) 757-5300 ♦ FAX: (530) 757-5323 ♦ www.djUSD.net

USE AGREEMENT AND LICENSE
CHILDCARE FACILITIES AND SERVICES
DAVIS JOINT UNIFIED SCHOOL DISTRICT ELEMENTARY SCHOOL SITES

This Use and Licensing Agreement ("Agreement"), dated July 1, 2017, is made and entered into, by and between the Davis Joint Unified School District, a governmental subdivision of the State of California, hereinafter referred to as "District" and Child Development Centers hereinafter referred to as "CDC."

RECITALS

Whereas, pursuant to Education Code section 38131, the District, upon the terms and conditions it deems proper, may enter into a use agreement for a child care services program pursuant to section 38131(b)(4);

Whereas, the District has determined that it is beneficial to locate child care service facilities at specific elementary schools in the district;

Whereas, the District hereby grants a license to CDC for the use of District property (land) as described herein, with the exception of Willett Elementary School, for which CDC must negotiate a separate contract with the City of Davis.

NOW, THEREFORE, the District and CDC enter into this Agreement on the following covenants, terms and conditions.

AGREEMENT

Section 1. Description of Property. The term "District Property" shall mean the real property of the District, including land, landscaping, fencing and other accoutrements associated with CDC's placement of its own property on District Property. The term "CDC Building" shall mean the relocatable building owned by CDC and installed and developed on specific elementary campuses in the District.

Section 2. Payments for Use; Term.

(a) Land Use Payments by CDC. CDC shall pay to the District a land use fee according to the fee schedule below. Each year, said fee shall automatically be adjusted by the statewide COLA for school districts and rounded up to the nearest dollar.

Fees below reflect the land use fee schedule for the 2017-2018 fiscal year. This use fee shall include the general use of the site and access to playground equipment. The land use fee for the 2017-2018 school year is based on a \$383.00 monthly charge for a 2,000 square foot space and a \$186.00 charge for a 960 sq. foot space.

Site	CDC Building(s)	Amount
Birch Lane Elementary	1 – 2000 sq. ft. bldg.	\$383.00
César Chávez Elementary	1 – 2000 sq. ft. bldg. 1 – 960 sq. ft. bldg.	\$569.00
Korematsu Elementary	1 – 2000 sq. ft. bldg.	\$383.00
Montgomery Elementary	1 – 2000 sq. ft. bldg.	\$383.00
North Davis Elementary	1 – 2000 sq. ft. bldg. 1 – 960 sq. ft. bldg.	\$569.00
Pioneer Elementary	1 – 2000 sq. ft. bldg.	\$383.00
Patwin Elementary	1 – 2000 sq. ft. bldg.	\$383.00
Willett Elementary	n/a (on city property)	\$0.00
TOTAL		\$3,053.00

(1) The District reserves the right to charge CDC additional land use fees if CDC increases its square footage of space at any given site or adds a new CDC site to a new district site.

(2) Monthly use fees shall be paid to District on the first day of each respective month. In the event the first day of any month commences on a day other than a regular business day, then such payment shall be due on the next business day.

(3) The use fee shall be paid to District, without deduction or offset except as specified in Section 10 below, in lawful money of the United States of America at District's address for notices as set forth in Section 23 herein or to such other person or at such places as District may from time to time designate in writing. All use fees payable by CDC to District hereunder, if not paid when due, shall bear interest from the due date until paid at the maximum rate permitted by law.

(4) The land use fee shall be increased at the rate of the statewide COLA on an annual basis. CDC shall pay all fees (and increases) for nonprofits associated with Board Policy 8,2-1: Public Use of School Facilities.

(b) The term of this Agreement shall be from July 1, 2017 through June 30, 2018.

Section 3. Utilities. CDC shall provide all basic utility services to the District Property, including, water, sewer, electric and garbage disposal. CDC shall arrange to have its own telephone service available. In the event that separate meters or services cannot be arranged, CDC, at its own expense, shall install meters or other measures to enable the District to monitor the use of utilities. The District shall bill CDC semiannually for any utilities that CDC receives through District resources.

Section 4. Use. Except as provided by this Agreement, the District Property and the CDC Building thereon shall be used for childcare services consistent with the operation of CDC and other uses necessary and compatible therewith and for no other reason. CDC shall not do or permit to be done in or about the District Property or the CDC Building, nor bring into or keep in or permit to be brought into or kept therein, anything which is prohibited by or will in any way conflict with any applicable law, statute, ordinance or governmental rule or regulation now in force or prohibited by the standard form of fire and extended coverage insurance policy, or will in any way increase the existing rate of its contents, or cause a cancellation of any insurance policy covering the Building or any part thereof or any of its contents. CDC shall not do or permit anything to be done in or about the District Property or the CDC Building which will in any way obstruct or interfere with the rights of District to use its adjacent school site, or use or allow the District Property to be used for any improper, immoral, unlawful or objectionable purpose, nor shall cause, maintain or permit any nuisance in, on or about the District Property or commit or suffer to be committed any waste in, on, or about the District Property.

Section 5. Condition of Property. Except as provided by this Agreement, CDC has inspected the District Property or has had an opportunity to do so and agrees to accept the same "*as is*" without any agreements, representations, understandings or obligations on the part of District to perform any alterations, repairs or improvements currently or during the term of the Agreement other than those agreed to in advance by the District.

Section 6. Alterations. CDC will not make or suffer to be made any alterations, additions or improvements to or of the District Property, the CDC Building or any part thereof, or attach any fixtures or equipment thereto, without first obtaining District's written consent, which consent shall not be unreasonably withheld. Upon the expiration or sooner termination of the term hereof and provided that CDC is not then in default hereunder, CDC may remove its trade fixtures and other personal property, provided that CDC promptly shall repair, at its sole cost and expense, any damage to the Property caused by such removal.

Section 7. Liens. CDC shall keep the District Property and the CDC Building free from any liens arising out of any work performed, materials furnished or obligations incurred by CDC. District shall have the right to post and keep posted on the District Property any notices that may be provided by law or which District may deem to be proper for the protection of District, the District Property and the CDC Building from such liens.

Section 8. Repairs.

(a) By entering into this Agreement, CDC accepts the District Property as being in the condition in which District is obligated to deliver the District Property for the CDC Building. At all times during the term hereof and at CDC's sole cost and expense, CDC shall keep the District Property and every part including the CDC Building in good condition and repair, ordinary wear and tear, damage thereto by fire, earthquake, act of God or the elements excepted.

(b) At the end of the term of this Agreement, CDC shall surrender to District the District Property in the same condition as when received or when first installed, ordinary wear and tear and damage by fire, earthquake, act of God or the elements excepted.

(c) Except as provided at Section 6 above, District has no obligation and has made no promise to alter, remodel, improve, repair, decorate or paint the District Property, the CDC Building or any part thereof. No representations respecting the condition of the District Property or the CDC Building have been made by District to CDC.

(d) Notwithstanding any other provision of this Agreement, the District will maintain and provide grounds services. CDC will provide its own custodial service and will maintain the CDC Building in good repair, free of safety hazards.

Section 9. Destruction or Damage

(a) In the event of damage to District Property and/or CDC Building by fire, earthquake, act of God, the elements or other casualty, this Agreement and License shall remain in full force and effect. An abatement of use fees as determined by District shall be allowed CDC for such part of the District Property as shall be rendered unusable by CDC in the conduct of its business during the time such part is not unusable.

(b) If such repairs cannot, in District's opinion, be made within ninety (90) days of such damage, District may elect, upon notice to CDC within thirty (30) days after the date of such damage to cancel this Agreement, and, if District does not so elect to cancel the Agreement and License, District may elect, upon notice to CDC within thirty (30) days after the date of such damage to repair or restore such damage, in which event this Agreement shall continue in full force and effect, but rent shall be partially abated in the manner provided for above. If District does not so elect to make such repairs, this Agreement shall terminate as of the date of such damage.

(c) A total destruction of the Building upon the Property automatically shall terminate this Agreement.

(d) If the Property is to be repaired under this Section, CDC will be responsible for restoring the CDC Building to usable condition; the District shall restore District Property surrounding the building.

Section 10. Insurance.

(a) At all times during the term of this Agreement, CDC, at its sole expense, shall procure and maintain the following types of insurance coverage:

(1) Comprehensive Liability Insurance against any and all damages and liability, including attorney's fees and other costs and expense, on account or arising out of injuries to or the death of any person or damages to the Property including the Building, however occasioned, in, on or about the Property or the Building, in the minimum amount of \$1,000,000.00 for injuries to or the death of persons and for damage to property in any one accident. Such comprehensive general liability insurance shall insure the performance by CDC of the indemnity agreement set forth in Section 12 herein;

(2) Insurance Against Damage By Fire and Other Perils excluding earthquake and flood, adequate in an amount to cover damages to the improvements on the District Property other than CDC installed improvements, and CDC's fixtures, furnishings, and equipment in the Property.

(b) The insurance required under this Section and all renewals thereof shall be issued by such good and responsible companies qualified to do and doing business: in the State of California as may be approved by District, which approval shall not be unreasonably withheld. All such insurance shall name District and CDC as parties insured. At District's election, the insurance shall also name the holder of any financial lien on the Building as an insured party as its interest may appear under a standard endorsement. Each policy shall provide expressly:

(1) That the policy shall not be canceled or altered in such a manner as to adversely affect the coverage afforded thereby without sixty (60) days prior written notice to District and any lien-holder to whom a loss thereunder may be payable;

(2) That the coverage shall be primary and noncontributing with any insurance that may be carried by District;

(3) If procurable, that any loss shall be payable notwithstanding any act of negligence of District that might otherwise result in a forfeiture of coverage; and

(4) That the word "insured" is used therein severally and not collectively and insurance coverage thereunder shall apply as though a separate policy were issued to each insured, although the inclusion of more than one insured party shall not operate to increase the limits of the insurer's liability.

(c) Each policy of insurance required to be carried under this Section 11, or duplicate or certificate thereof, shall be delivered to District for retention by District. In the event that CDC fails to insure or fails to furnish District any such policy, duplicate policy or certificate as herein required, District may, after fifteen (15) days written notice to CDC, elect to terminate this Agreement. The District also reserves the right to such insurance from time to time.

(d) District and CDC shall obtain from their respective insurers under all policies of fire, theft, public liability and other insurance now or hereafter maintained by either of them at any time during the term hereof insuring or covering the Building or any portion thereof or operations therein, a waiver of all rights of subrogation which the insurer of one party might have against the other party, provided such waiver is available. The cost of obtaining any such waiver shall be borne by the party who bears the cost of the policy to which such waiver is attached. District and CDC each shall indemnify the other against any loss or expense, including reasonable attorneys' fees, resulting from the failure to obtain any such waiver, provided the same is available.

Section 11. Indemnification. CDC hereby waives all claims against District for damages to any property or injury to or death of any person in, upon or about the District Property or the CDC Building arising at any time and from any cause other than by reason of the willful misconduct of District, its employees or contractors, and CDC shall hold District harmless from any damage to any property or injury or death of any person arising from the use of the District Property or the CDC Building by CDC, except such as is caused by the willful misconduct of District, its employees or contractors. The foregoing indemnity obligations of the CDC shall include reasonable attorney's fees, investigation costs and all other reasonable costs and expenses incurred by District from the first notice that any claim or demand is to be made or may be made. The provisions of this Section shall survive the termination of this Agreement with respect to any damage, injury or death occurring prior to such termination.

Section 12. Compliance with Legal Requirements. CDC, at its sole cost and expense, shall comply promptly with all laws, statutes, ordinances, District regulations, and governmental rules, regulations or requirements now in force or which may hereafter be in force, with the requirements of any board of fire underwriters or other similar body now or hereafter constituted, with any direction or occupancy certificate issued pursuant to any law by any public officer, as well as the provisions of all recorded documents affecting the Property, insofar as any thereof relate to the condition, use or occupancy of the Property, or the Building, excluding requirements for structural changes not related to or affected by improvements made by or for CDC or CDC's acts. District is not aware of any current violation of any law, statutes, ordinances, governmental rules or regulations or requirements now in force.

Section 13. Entry by District.

(a) District may enter CDC Building at reasonable hours (which shall be deemed to include all normal business hours) to:

- (1) Inspect the same;
- (2) Determine whether CDC is complying with all its obligations hereunder; and
- (3) Make repairs required of District under the terms hereof, provided, however, that all such work shall be done as promptly as reasonably possible and so as to cause as little interference with the operation of CDC's use as reasonably possible.

(b) CDC hereby waives any claim for damages for any injury or inconvenience to or interference with CDC's business, any loss of occupancy or quiet enjoyment of the District Property or any other loss occasioned by such entry.

(c) District shall at all times have and retain a key with which to unlock all of the doors in or about the Property (excluding CDC's vaults, safes and similar areas designated in writing by CDC in advance); and District shall have the right to use any and all means which District may deem proper to open said doors in an emergency in order to obtain entry to the Property, and any entry to the Property obtained by District by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into or detainer of the Property or an eviction, actual or constructive, of CDC from the Property, or any portion thereof.

Section 14. Assignments.

(a) CDC shall not assign or hypothecate this Agreement or any license interest herein or assign use rights granted to CDC on the District Property or any part thereof, or permit the use of the District Property by any party other than CDC.

Section 15. Events of Default. The occurrence of any one or more of the following events of default shall constitute a breach of this Agreement by CDC:

(a) If CDC shall default in its obligation to pay any use fees due hereunder and such failure shall continue for more than fifteen (15) days after written notice thereof from District; or

(b) If CDC shall fail to perform or observe any other term hereof or of the rules and regulations to be performed or observed by CDC, such failure shall continue for more than thirty (30) days after notice thereof from District, and CDC shall not within such period commence with due diligence and dispatch the curing of such default, or having so commenced, thereafter shall fail or neglect to prosecute or complete with due diligence the curing of such default; or

(c) If CDC shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due or shall file a petition in bankruptcy, or shall be adjudicated as bankrupt or insolvent or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or shall fail timely to contest the material allegations of a petition filed against it in any such proceeding, or shall seek or consent to or acquiesce to the

appointment of any trustee, receiver or liquidator of CDC or any material part of its property; or

(d) If within ninety (90) days after the commencement of any proceeding against CDC seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation such proceeding shall not have been dismissed, or if within ninety (90) days after the appointment without the consent or acquiescence of CDC, of any trustee, receiver or liquidator of CDC or of any material part of its properties, such appointment shall not have been vacated; or

(e) If this Agreement or any estate of CDC hereunder shall be levied upon, and any attachment or execution of such attachment is not vacated within ten (10) days.

Section 16. Termination.

(a) This Agreement for the Property shall be deemed for all purposes a revocable license, which may be revocable by the District at any time by giving thirty (30) days written notice to CDC. However, so long as CDC is not in default of the provisions of this Agreement, unless the parties mutually agree to terminate this Agreement, the license will continue so long as CDC is not in default during the term of this Agreement as specified in the appropriate sections above.

(b) Upon default by CDC of any provision of this Agreement as determined by District, District in its sole discretion may elect to terminate this Agreement and to revoke the license given unto this Agreement after giving thirty (30) days' notice of termination of this revocable license. District shall have the right to exercise any and all remedies to enforce revocation of the license and termination of this Agreement as provided by law including, if the District so chooses, to institute unlawful detainer proceedings as if the revocable license were a month-to-month tenancy under California law. District shall have the right to recover all use fees due to District.

(c) In addition to use fees as described herein, District shall be entitled to additional damages as follows:

(1) The worth at the time of award of the unpaid use fees which had been earned at the time of termination, and not yet paid, of this Agreement and the revocable license;

(2) The worth at the time of award of the amount of the unpaid use fees which would have been earned after termination of this Agreement and the license until the time of award exceeds the amount of use fees loss that CDC proves could reasonably have been avoided;

(3) The worth at the time of award of the amount by which the unpaid use fees for the balance of the term of this Agreement after the time of award exceeds the amount of such use fees loss that CDC proves could be reasonably avoided; and

(4) Any other amount necessary to compensate District for all the detriment proximately caused by CDC's failure to perform its obligations under this Agreement or which in the ordinary course of things would be likely to result therefrom.

(d) Termination Without Cause, Provided CDC is not in default under this Agreement, District may not terminate this Agreement or revoke the revocable license without cause during the term specified in Section 2 above. CDC or the District may terminate without cause the Agreement with a one-year (12 months) written notification before June 30 of any year.

Section 17. Continuation After Default. Even if CDC has breached this Agreement and License and abandoned the District Property, this Agreement shall continue in effect for so long as District does not terminate CDC's License, and District may enforce all its rights and remedies under this Agreement, including the right to recover use fees as they become due under this Agreement. Acts of maintenance or preservation of the District Property or the appointment of a receiver upon initiative of District to protect District's interest under this Agreement shall not constitute a termination of CDC's License if not revoked as provided herein.

Section 18. Other Relief. The remedies provided for in this Agreement are in addition to any other remedies available to District at law or in equity, by statute or otherwise.

Section 19. District's Right to Cure Defaults.

(a) All agreements and provisions to be performed by CDC under any of the terms of this Agreement shall be at its sole cost and expense and without reduction of the use fees. If CDC shall fail to pay any sum of money, other than use fees, required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder and such failure shall continue for thirty (30) days after notice thereof by District, District may, but shall not be obligated to do so, and without waiving or releasing CDC from any obligations of CDC, make any such payment or perform any such other act on CDC's part to be made or performed as in this Agreement provided.

(b) All sums so paid by District and all necessary incidental costs shall be deemed additional use fees hereunder and shall be payable to the District on demand, and District shall have (in addition to any other right or remedy of District) the same rights and remedies in the event of the nonpayment thereof by CDC as in the case of default by CDC in payment of use fees.

Section 20. Eminent Domain. This Agreement and revocable license does not vest in CDC any property rights such as to entitle CDC to any portion of any award in any eminent domain proceedings or acquisition of property in lieu of eminent domain. To the extent CDC has any property rights notwithstanding this provision, CDC waives any entitlement to sale proceeds in lieu of eminent domain or judgment proceeds in the event eminent domain proceedings are prosecuted to judgment or otherwise the subject of settlement. To the extent provided by law, CDC shall be entitled to relocation assistance benefits and compensation for any personal property owned by CDC. In the event eminent domain proceedings are instituted, District shall have the right to terminate this Agreement and the revocable license by giving thirty (30) days' notice to CDC. Institution of eminent domain proceedings shall mean adoption of a resolution of necessity and the filing of a lawsuit to acquire the District's property through eminent domain proceedings.

Section 21. Relocation of Facility and License. If the District, during the term of this Agreement, must use the Property that is the subject of the license for other educational purposes, the District shall have the right to relocate the site of this use Agreement and license. If such a situation should arise, District and CDC shall meet and confer on the relocation. If the parties cannot agree, the parties agree to mediate the issues regarding relocation. The costs of the mediator shall be equally borne by the District and CDC. If, after mediation, there is no resolution, the parties hereby agree to submit the relocation issues to an arbitrator for a binding decision. The District agrees to honor this Agreement, and all the provisions herein provided CDC is not in default, notwithstanding the relocation of the site of the Property and license.

Section 22. Possessory Interest Taxes. The use of government property by a nongovernmental agencies or entities may give rise to possessory interest taxes levied by the local taxing

jurisdiction. In the event such possessory interest taxes are levied against CDC, CDC agrees to pay such possessory interest taxes to the extent required by law for the use of property as described herein.

Section 23. Miscellaneous.

(a) No Air or View Easement. Any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Building shall in no way affect this Agreement or impose any liability on District.

(b) Holding Over After Revocation of License Shall Constitute a Trespass. If CDC fails to vacate the Property after termination of this Agreement and revocation of the license described herein, CDC shall be deemed a trespasser which shall entitle District to all remedies in equity and at law, including damages, to remove CDC as a trespasser including the use of unlawful detainer remedies if the District so chooses, as a procedure by which to remove CDC.

(c) Waiver.

(1) The waiver by District or CDC of any agreement, condition or provision herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other agreement, condition or provision herein contained, nor shall any custom or practice which may grow up between the parties in the administration of the terms hereof be construed to waive or to lessen the right of District or CDC to insist upon the performance by CDC or District in strict accordance with the terms hereof.

(2) The subsequent acceptance of use fees hereunder by District shall not be deemed to be a waiver of any preceding breach by CDC or District of any agreement, condition or provision of this Agreement, other than the failure of CDC to pay the particular rental so accepted, regardless of District's or CDC's knowledge of such preceding breach at the time of acceptance of such rental.

(d) Notices. All notices, consents, demands and other communications from one party to the other given pursuant to the terms of this Agreement or under the laws of the State of California, shall be deemed to have been delivered when deposited in the United States Mail, certified or registered, postage prepaid, and addressed to CDC or District at the respective addresses specified below or to such other place as CDC or District may from time to time designate in a written notice to the other:

If to District:

Davis Joint Unified School District
526 B Street
Davis, CA 95616
Attn: Chief Business & Operations Officer

If to CDC:

Child Development Centers
20 Great Oaks Boulevard, Suite 200
San Jose, CA 95119-1399
Attn: Facilities Department

Nothing herein shall prevent service of notice by other reliable means, except to the extent required by law, including but not limited to personal service, Express Mail, or other forms of reliable mail service other than the U.S. Postal Service.

(e) Limitation of Liability. No board member, officer, employee or agent of District, or any representative of District shall be personally liable in any manner or to any extent under or in connection with this Agreement, and CDC and its successors and assigns and, without limitation, all other persons, partners, corporations and entities, hereby waive any and all such personal liability and agree to look solely to District's interest in the Property and the Building for the payment of any claim or for any performance.

(f) Finder's Fees and Commissions. Each party represents and warrants that no finder's fees or other commission or cost have been incurred by either party in the consummation of this Agreement. Each party agrees to indemnify and hold harmless the other party in the event any third parties claim such fees.

(g) Complete Agreement. There are no oral agreements between District and CDC affecting this Agreement, and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between District and CDC or displayed by District to CDC with respect to the subject matter of this Agreement or the Building. There are no representations between District and CDC other than those contained in this Agreement and all reliance with respect to any representations are based solely upon the terms of this Agreement.

(g) Authority. Each of the persons executing this Agreement does hereby covenant and warrant that he is authorized to do so. This Agreement shall only be binding upon the District upon ratification by the District's governing board.

(h) Severability. If any provisions of this Agreement shall be determined to be illegal or unenforceable, such determination shall not affect any other provision of this Agreement and all such other provisions shall remain in full force and effect. In the event the entire Agreement is unenforceable, then this Agreement shall immediately terminate and the revocable license described herein shall be deemed revoked.

(i) Choice of Law/Venue. This Agreement shall be governed by and construed pursuant to the laws of the State of California. Venue for any action brought to resolve any dispute relating to this Agreement shall be a state court of competent jurisdiction, whether it is the Superior Court or a consolidated court system from the County of Yolo.

(j) Exhibits. The exhibits and addenda, if any, specified in the Agreement are attached to this Agreement and by this reference made a part hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement, at Davis, California.

DAVIS JOINT UNIFIED SCHOL DISTRICT

By: _____

Its: _____

CHILD DEVELOPMENT CENTERS (CDC)

By: _____

Its: _____

Approval: This Agreement was approved by Davis Joint Unified School District at its Board of
Trustees meeting of _____.