

Los Angeles Universal Preschool

Facilities Development Grant Agreement

-

**Los Angeles Universal Preschool
Facilities Development Grant Agreement**

Table of Contents

Page

Los Angeles Universal Preschool Summary of Basic Grant Information	S-1
Facilities Development Grant Agreement for Child Care Centers	1
1. Grant Terms; Summary; Glossary	1
1.1 Disbursement and Use of Grant Proceeds.	1
1.2 Grant Not Repayable Generally; Recoverability	1
1.3 Disbursement Conditions.	2
2. Covenants of the Provider	3
2.1 Compliance with Facilities Development Guidelines	3
2.2 Compliance with Law	3
2.3 Application for Community Care License	3
2.4 Property Information.....	3
2.5 Permits, Licenses, and Approvals	3
2.6 Site Visits	3
2.7 Notices	3
2.8 Performance of Acts	3
2.9 Notice of Change	3
2.10 Indemnity Regarding Operation of Property and Other Risks	4
2.11 Environmental Covenants	4
2.12 Negative Covenants.....	4
2.13 Obligation to Refrain from Discrimination.....	4
3. Representations and Warranties.	4
3.1 Authority; Enforceability.....	4
3.2 Compliance; No Violation	4
3.3 No Claims.....	5
3.4 Taxes	5
3.5 No Liens	5
3.6 No Other Public Funds Available	5
4. Default and Remedies.	5
4.1 Events of Default	5
4.2 Period to Cure:	5
4.3 Remedies.	5
5. Miscellaneous Provisions.	6
5.1 No Waiver; Consents.....	6
5.2 Joint and Several Liability	6
5.3 Notices	6
5.4 Actions.....	6
5.5 Attorneys' Fees.....	6
5.6 Assignment, Successors, and Assigns.....	6

**Los Angeles Universal Preschool
Facilities Development Recoverable Grant Agreement for**

Table of Contents (cont'd)

	<u>Page</u>
5.7 Severability; Amendment; Integration.....	6
5.8 Counterparts	7
5.9 Survival	7
5.10 Time is of the Essence	7
5.11 Brokerage Commission.....	7
5.12 LAUP Not a Partner or Joint Venturer.....	7
5.13 Religious and Political Activities	7
5.14 Governing Law	7
5.15 No Third Party Beneficiaries Governing Law	7
 Glossary of Defined Terms	 9
 Exhibits	

LOS ANGELES UNIVERSAL PRESCHOOL
SUMMARY OF BASIC GRANT INFORMATION

This Summary of Basic Grant Information is hereby incorporated by reference into the attached Facilities Development Recoverable Grant Agreement for Child Care Centers. Each reference in the Agreement to any term of this Summary shall have the meaning as set forth in this Summary. In the event of a conflict between the terms of this Summary and the Agreement, the terms of the Agreement shall prevail. Any initially capitalized terms used, but not defined in this Summary, shall have the meaning as set forth in the Agreement.

<u>TERMS OF GRANT</u>		<u>DESCRIPTION</u>
1.	Effective Date:	Upon signature by Los Angeles Universal Preschool.
2.	Contract End Date:	Upon Project Completion.
3.	LAUP:	Los Angeles Universal Preschool, Inc., a California non-profit public benefit corporation, as grantor
4.	Address of LAUP:	888 S. Figueroa St., Suite, 800 Los Angeles, CA 90017
5.	Provider:	Duarte Unified School District Sofia Valdez
6.	Address of Provider:	1433 Crestfield Drive Duarte, CA 91010
7.	Facility:	
	7.1 Name:	Duarte USD Preschool-Andres Duarte Site
	7.2 Address:	1433 Crestfield Drive Duarte, CA 91010
8.	Grant Amount:	Not to exceed \$70,000.00
9.	Allocation of Costs and Expenses:	All costs incurred by LAUP in the investigation, and documentation of the Grant shall be borne by LAUP. All other costs incurred by the Provider in the application for and documentation of the Grant shall be borne by the Provider.
10.	Additional Terms:	Provider must represent and warrant that all Work has been performed in compliance with all Legal Requirements.

FACILITIES DEVELOPMENT GRANT AGREEMENT

This Facilities Development Grant Agreement is dated as of the Effective Date set forth in Section 1 of the Summary, between LAUP, and Provider.

RECITALS

A. Provider previously submitted to LAUP a Checklist to improve the outdoor play area of the Facility.

B. Provider proposes to make certain improvements to the Facility. These improvements are described in the Approved Project, and are estimated to cost the amounts set forth in the Approved Vendor Contract.

C. LAUP has agreed to make the Grant to Provider, subject to the terms and conditions set forth in this Agreement.

D. NOW THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the making of this Grant, LAUP and Provider agree as follows:

1. **Grant Terms; Summary; Glossary.** The Summary and the Glossary are hereby made a part of this Agreement and are incorporated herein by reference.

1.1 Disbursement and Use of Grant Proceeds.

(a) **Disbursements.** LAUP shall make all disbursements of the Grant subject to the conditions set forth in Section 1.3.

(b) **Use of Grant Proceeds.** Provider agrees to use the Grant Proceeds disbursed solely in conformity with the Scope of Work and the Project Budget

(c) **Soft Cost Disbursements; Failure to Commence Construction.** The parties acknowledge and agree that Provider will be entitled to receive Grant Proceeds for the payment of Soft Costs in order to determine the feasibility of pursuing the performance of the Work. If Soft Cost disbursements are used and applied as permitted by this Agreement, Provider's subsequent failure to meet the conditions precedent to the disbursement of Hard Costs thirty (30) days before the Construction Commencement Date shall not constitute an Event of Default; however, LAUP shall have the right, upon delivery of written notice, to terminate this Agreement, whereupon: (i) LAUP shall have no further obligations under this Agreement; and (ii) Provider shall be excused from any further obligations under this Agreement, with the exception of any and all indemnification provisions in this Agreement. If LAUP does terminate the agreement it will do so in writing.

1.2 **Grant Not Repayable Generally; Recoverability.** Provider shall not be obligated to repay the Grant except upon the occurrence of an Event of Default. In the event of Default, Provider shall pay to LAUP, within five (5) days after written demand, all or the portion of the Grant Proceeds disbursed hereunder. If Provider fails to pay all or any such sums within 5 days after receiving written demand from LAUP, the amount of such sums shall bear the Default Interest Rate

from the date of demand until paid, and Provider shall reimburse LAUP its attorneys' fees and other costs of collection.

1.3 **Disbursement Conditions.**

(a) LAUP shall have no obligation to disburse the Grant Proceeds until Provider fulfills all the following conditions as required by this Grant.

(i) **Initial Payment, Project Approval and Contract with Approved Vendor.** LAUP shall disburse to Provider and Initial Payment of 50% of the approved Project Budget (A-2) within thirty (30) days of submission of a signed contract with an Approved Vendor (Exhibit A) to complete the Approved Project.

(ii) **Approved Invoices.** LAUP shall disburse to Provider the amounts of any Approved Invoices from the Approved Vendor in excess of the Initial Payment for the Approved Project, up to 90% of the total Project Budget within thirty (30) days after submission to LAUP in accordance with Exhibit C. Invoices for work occurring more than ninety (90) days prior to submission to LAUP may not be approved.

(iii) **Final Payment and Approval From Licensing Authorities.** LAUP shall withhold 10% of the total project cost to be disbursed to Provider upon submission of all required licensing documents related to the completion of the Approved Project. If no licenses are required, LAUP shall disburse the final 10% of the project costs within thirty (30) days of LAUP's verification that no licenses are required, LAUP's verification not to be unreasonably delayed or withheld.

(iv) **Insurance.** Provider shall have all of the insurance required pursuant to Exhibit B.

(v) **Taxes.** All taxes and assessments levied against or affecting the Property have been or will be paid current as of the Closing.

(vi) **Miscellaneous.** Disbursement of Grant Proceeds may also be dependent on other items which are subject to the consent or approval of LAUP as needed.

(b) Provider accepts any delays in payment due to LAUP's need to verify fulfillment of all Disbursement Conditions.

(c) LAUP may waive a Disbursement Condition, but only in writing.

(d) LAUP may close the Grant and may disburse some or all of the Grant subject to Provider's compliance with any or all Disbursement Conditions. LAUP shall notify Provider in writing of any Disbursement Conditions that must be met and the time period(s) within which Provider is required to comply. If no time period for compliance is specified, then Provider shall comply within thirty (30) days after the date of Closing. Failure of Provider to comply with all Disbursement Conditions within the applicable time periods shall be an Event of Default.

2. **Covenants of the Provider.**

2.1 **Compliance with Facilities Development Guidelines.** Provider shall at all times comply with the current Facilities Development Guidelines. LAUP may amend the Facilities Development Guidelines at its sole discretion if it deems necessary to the management of the grant. Provider shall comply with all amendments noticed in accordance with Section 5.3.

2.2 **Compliance with Law.** Provider shall at all times comply with all Federal, State, and Local laws, including any requirement to pay state prevailing wages. Provider is hereby expressly advised that the Project is a "public work," as defined in Section 1720 of the California Labor Code. Provider shall bear all risks of either payment or failure to pay state prevailing wages to all laborers, workers, and mechanics employed in connection with the development of the property and/or the implementation of California Prevailing Wage Law, and/or any other provision of law.

2.3 **Application for Community Care License.** Within thirty (30) days after the Scheduled Date for Completion of Project, Provider shall submit to California Department of Social Services Community Care Licensing Division (CCLD) an application for a Community Care License review of the completed Project. Provider shall provide copies to LAUP of any notices or other materials Provider receives from CCLD with respect to the completed Project.

2.4 **Property Information.** Provider shall promptly deliver to LAUP copies of all contracts, leases, licenses and other agreements, relating to the ownership, operation, construction, renovation, and/or rehabilitation of the Property and the Facility upon request. Provider shall deliver to LAUP any and all other information and documents relating to the Property and/or the Facility that LAUP reasonably requests within 15 days.

2.5 **Permits, Licenses, and Approvals.** Provider shall at all times comply with, any and all permits, licenses, and/or approvals required from governmental bodies in order to own, occupy, rehabilitate and lease the Property and to operate the Facility as a licensed preschool. Provider shall deliver promptly to LAUP copies of all such permits, licenses, and approvals, and in any event within five (5) days after receipt thereof.

2.6 **Site Visits.** LAUP and its agents and representatives shall have the right to enter and visit the Property at any reasonable time for the purposes of observing the Project and examining all materials relating to the Project. LAUP has the right to examine, copy, and audit the books, records, accounting data and other documents of Provider and its agents and contractors relating to the Project. In each instance, LAUP shall give Provider reasonable notice before entering the Property and make reasonable efforts to avoid interfering with Provider's use of the Property or the rights of tenants in possession. No site visit, observation, or examination by LAUP shall impose any liability on LAUP. LAUP owes no duty of care to protect Provider or any other party against, or to inform Provider or any other party of any adverse condition affecting the Property.

2.7 **Notices.** Provider shall notify LAUP promptly in writing of any event which materially affects the physical, financial or legal condition of the property.

2.8 **Performance of Acts.** Upon LAUP's request, Provider shall perform all acts necessary or advisable to carry out the intent of the Grant Documents.

2.9 **Notice of Change.** Provider shall give LAUP prior written notice of any change in: (i) the location of Provider's place of business or its chief executive office; or (ii) Provider's name or business structure.

2.10 Indemnity Regarding Operation of Property and Other Risks. Provider hereby indemnifies, defends, and holds the Indemnified Parties harmless for, from, and against any and all Losses, directly or indirectly arising out of or resulting from: (i) the ownership, management, maintenance, operation, marketing, leasing, sale, or use of the Property and/or the Facility, whether such claims are based on theories of derivative liability, comparative negligence or otherwise; (ii) any development, construction or rehabilitation of or improvement to the Property and/or the Facility, including any defective workmanship or materials; (iii) any failure to satisfy any requirements of any laws, regulations, ordinances, governmental policies or standards, reports, maps, development agreements, or regulatory agreements that apply or pertain to the Property; (iv) breach of any representation or warranty made or given by Provider to any of the Indemnified Parties or to any prospective or actual lessee or buyer of all or any portion of the Property and/or the Facility; and/or (v) any claim or cause of action of any kind by any party that any Indemnified Party is liable for any act or omission of Provider or any other person or entity in connection with the ownership, management, maintenance, operation, marketing, leasing, sale, or use of the Property, or any development of or improvement to the Property and/or the Facility, excepting those arising out of, or resulting, solely from the applicable Indemnified Party's gross negligence or willful misconduct.

2.11 Environmental Covenants. Provider shall: (a) at its expense, comply with all Environmental Laws; and (b) not use or permit to be used any Hazardous Materials in the construction of the Project or operation of the Facility in violation of any Environmental Laws.

2.12 Negative Covenants. For so long as any portion of the Grant remains outstanding, Provider shall not: (a) engage the LAUP classroom(s) in any activities other than the operation of a licensed preschool unless pre-approved by LAUP; (c) lease or dispose of all or a substantial part of Provider's business or Provider's assets; (d) take any action which results in the suspension or revocation of Provider's Child Care License or any other permit or license required to continue the operation of the Facility as a licensed preschool.

2.13 Obligation to Refrain from Discrimination. Provider shall not discriminate against or segregate any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, medical condition, disability, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property and/or the Facility.

3. Representations and Warranties. Provider promises that each representation and warranty set forth below is true, accurate and correct as of the date of this Agreement.

3.1 Authority; Enforceability. Provider has complied with all laws and regulations concerning its organization, existence, and the transaction of its business. Provider is authorized to execute, deliver, and perform under the Grant Documents. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

3.2 Compliance; No Violation. Provider has properly obtained all permits, licenses, and approvals necessary to operate the Facility and to proceed toward rehabilitation and/or construction of the Project. No condition or fact exists that would cause Provider to reasonably believe that all permits, licenses, and approvals required to operate the Facility and rehabilitate and/or construct the Project, will not be readily and properly obtainable prior to the time required by this Agreement.

3.3 **No Claims.** No claims, actions, proceedings, or investigations are pending against Provider, or the Property or the Facility, except for those previously disclosed by Provider to LAUP in writing.

3.4 **Taxes.** To the extent applicable, Provider has filed all required state, federal, and local income tax returns and has paid all taxes when due and payable.

3.5 **No Liens.** There are no security agreements or financing statements affecting any of the Property other than as disclosed in writing by Providers to LAUP prior to the Effective Date.

3.6 **No Other Public Funds Available.** LAUP will not provide a Grant to a Provider where the Grant will take the place of other available state, county, local or other governmental funds. Provider represents that it has not received any other such funds for the completion of the Work and that no alternative public funding is available for the completion of the Work.

4. **Default and Remedies.**

4.1 **Events of Default.** Provider shall be in default under this Agreement upon the following events:

(a) Provider fails to cause Completion of the Project within the period set forth in Section 2 of the Summary; or

(b) Provider becomes insolvent or is the subject of an Insolvency Proceeding. For purposes of this section, an involuntary bankruptcy shall not be considered an "Insolvency Proceeding" if it is either (i) consented to by LAUP; or (ii) has been dismissed within sixty (60) days of the filing thereof; or

(c) Provider dissolves or liquidates; or

(d) Any misrepresentation has been made or given in any written materials submitted pursuant to this Agreement; or

(e) Withdrawal or suspension, of any license or permit, unless Provider takes steps to remove the effect of the order, requirement, withdrawal or suspension, and LAUP, determines that Provider is reasonably likely to prevail; or

(f) Provider defaults under any agreement in connection with any credit in the amount of Fifty Thousand and No/100 Dollars (\$50,000.00); or

(g) Any material breach of this Agreement.

4.2 **Period To Cure.**

(a) If Provider is in default as defined in this Agreement, Provider has ninety (90) days after such written notice, to cure the failure, unless LAUP, exercising reasonable judgment, determines that the cure cannot be reasonably completed at or before expiration of the Initial Cure Period.

4.3 **Remedies.**

(a) If any Event of Default occurs, LAUP's obligation to disburse any remaining Grant Proceeds under the Grant Documents shall automatically terminate, and LAUP in its sole discretion may withhold any one or more such disbursements. No disbursement of Grant Proceeds by LAUP shall cure any default of Provider, unless LAUP agrees otherwise in writing in each instance.

(b) Upon the occurrence of an Event of Default, a portion of the Grant shall be recoverable, at the sole option of LAUP, in the amounts set forth in Section 9 of the Summary.

(c) If any Event of Default occurs, LAUP reserves the right to all remedies provided in law and equity.

5. **Miscellaneous Provisions.**

5.1 **No Waiver; Consents.** Each waiver by LAUP must be in writing, and no waiver may be construed as a continuing waiver. All of LAUP's rights and remedies are cumulative.

5.2 **Joint and Several Liability.** If Provider consists of more than one person or entity, each shall be jointly and severally liable to LAUP for the faithful performance of this Agreement.

5.3 **Notices.** All notices given under this Agreement shall be in writing and be given by personal delivery, overnight receipted courier or by registered or certified United States mail, postage prepaid, sent to the party at its address appearing in Sections 3 and 5 of the Summary.

5.4 **Actions.** LAUP shall have the right, but not the obligation, to commence, appear in, and defend any action or proceeding that might affect its rights, duties, or liabilities relating to the Grant, the Property, the Facility or any of the Grant Documents. Provider shall pay promptly on demand all of LAUP's out-of-pocket costs, expenses, and reasonable legal fees and expenses of LAUP's counsel incurred in those actions or proceedings.

5.5 **Attorneys' Fees.** In any lawsuit, reference, or arbitration arising out of or relating to this Agreement, the Grant Documents or the Grant, the prevailing party will be entitled to recover from the other party reasonable attorneys' fees and expenses. In all other actions or proceedings, including any matter arising out of or relating to any Insolvency Proceeding, Provider agrees to pay all of LAUP's costs and expenses, including reasonable attorneys' fees, incurred in enforcing or protecting LAUP's rights or interests. From the time(s) incurred until paid in full to LAUP, all such sums shall bear interest at the Default Interest Rate.

5.6 **Assignment, Successors, and Assigns.** Provider shall not assign this Agreement or any Grant Proceeds, or assign or delegate any of its rights or obligations, without the prior written consent of LAUP. LAUP in its sole discretion may sell or assign participations or other interests in all or part of the Grant on the terms and subject to the conditions of the Grant Documents, all without notice to or the consent of Provider. Also without notice to or the consent of Provider, LAUP may disclose to any actual or prospective purchaser or assignee of any participation or other interest in the Grant or any other grants made by LAUP to Provider (whether under this Agreement or otherwise), any financial or other information, data or material in LAUP's possession relating to Provider, the Grant, or the Property.

5.7 **Severability; Amendment; Integration.** The invalidity or unenforceability of any one or more provisions of this Agreement shall in no way affect any other provision. This Agreement may not be modified or amended except by a written agreement signed by the parties.

The Grant Documents (a) integrate all the terms and conditions mentioned in or incidental to this Agreement;

5.8 **Counterparts.** This Agreement and any attached consents or exhibits requiring signatures may be executed in counterparts, and all counterparts constitute but one and the same document.

5.9 **Survival.** The representations, warranties, acknowledgments, and agreements set forth in sections 2.2 and 2.11, herein shall survive the date of termination of this Agreement, repayment or forgiveness of the Grant.

5.10 **Time is of the Essence.** Time is of the essence in the performance of this Agreement and the other Grant Documents.

5.11 **Brokerage Commission.** Provider shall pay any and all brokerage commissions or fees arising out of or in connection with the Grant.

5.12 **LAUP Not a Partner or Joint Venturer.** None of the covenants or other provisions contained in this Agreement shall, or shall be deemed to create a partnership, joint-venture, or common interest between Provider and LAUP. LAUP neither undertakes nor assumes any responsibility or duty to Provider with respect to the Project or the Grant, except as expressly provided in the Grant Documents. Notwithstanding any other provision of the Grant Documents: (a) LAUP is not and shall not be construed as a partner, joint venturer, or other associate of or participant of any kind of Provider; (b) LAUP shall in no event be liable for any debts, expenses or losses incurred or sustained by Provider; and (c) LAUP shall not be deemed responsible for or a participant in any acts, omissions or decisions of Provider. LAUP and Provider disclaim any intention to create any partnership, joint venture, agency or common interest between LAUP and Provider, or any intention to create any sharing of liabilities, losses, costs or expenses.

5.13 **Religious and Political Activities.** Provider agrees that funds under this Agreement will be used exclusively for performance of the work required under this Agreement, and that no funds made available under this Agreement shall be used to promote religious or political activities.

5.14 **Governing Law.** This Agreement shall be governed by the laws of the State of California.

5.15 **No Third Party Beneficiaries.** This Agreement is made and entered into for the sole benefit of the parties hereto. No other person shall have any right of action based upon any provision of this Agreement.

IN WITNESS WHEREOF, Provider and LAUP have executed this Agreement as of the date LAUP signs below.

"PROVIDER"

DUARTE UNIFIED SCHOOL DISTRICT,
Duarte USD Preschool - Andres Duarte Site

By: _____

Name: _____

Title: _____

Date: _____

"LAUP"

LOS ANGELES UNIVERSAL PRESCHOOL, INC.,
a California non-profit public benefit corporation

By: _____

Name: _____

Title: _____

Date: _____

GLOSSARY OF DEFINED TERMS

1. **Agreement** means the Facilities Development Recoverable Grant Agreement for Child Care Centers.
2. **Project Application** means the Project Application submitted for this Grant.
3. **Approved Invoices** means any invoice submitted by Provider to LAUP in connection with the Approved Project that LAUP deems reasonable and acceptable, LAUP's approval not to be unreasonably withheld or revoked.
4. **Approved Project** means any Facilities improvement approved by LAUP.
5. **Approved Vendor** means the list of pre-approved licensed construction and installation contractors that LAUP has selected as the only eligible contractors to submit bids to Provider for projects funded by this Grant.
6. **California Prevailing Wage Law** means Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time.
7. **Closing** means the full execution of the Agreement by both Provider and LAUP.
8. **Completion and Project Cost Certification** means the Ancillary Grant Document executed by a senior officer of Provider, certifying that all construction and rehabilitation has been completed in accordance with the Scope of Work and that all costs incurred in connection therewith have been paid in full (except the 10% retention fee) and that the Project Costs are less than or equal to the amounts set forth in the Project Budget.
9. **Completion of the Project** means completion of the Project in accordance with requirements set forth on Exhibit "D" of the Agreement, including delivery of the Completion and Project Cost Certification.
10. **Condition Subsequent** means any Closing Condition that Provider has not fulfilled before the Closing and which LAUP agrees may be fulfilled after the Closing.
11. **Default Interest Rate** means the rate equal to the prime rate of interest charged by Bank of America, N.A., (or if such bank ceases to exist, the largest bank headquartered in California) plus 5%, compounded quarterly, calculated on the basis of a 360 day year.
12. **Environmental Activities** means the use, generation, transportation, treatment, storage or disposal of any Hazardous Materials at any time located or present on, under or about the Property and/or the Facility.
13. **Environmental Laws** means, collectively, all applicable laws, regulations, codes and ordinances relating to any Hazardous Materials or to any Environmental Activities, including, without limitation, obtaining and filing all applicable notices, permits, licenses and similar authorizations.
14. **Event of Default** means the events set forth in Section 4.1 of the Agreement.
15. **Facility** means the preschool facility identified in Section 7 of the Summary.
16. **Facilities Development Grant Payment Request Package Policies and Procedures** is the document from LAUP summarizing LAUP's policies and procedures to be followed when Provider submits each Payment Request Package.
17. **Financial Information** means all financial statements and other financial information required under the Grant Documents and the Application.
18. **Grant** means the grant in the amount set forth in Section 8 of the Summary.
19. **Grant Documents** means the Ancillary Grant Documents together with the Agreement.
20. **Hard Costs** means all materials and labor related to construction of the improvements, and similar costs (specifically excluding all Soft Costs), as determined by LAUP in its reasonable discretion.

- 21. Hazardous Materials** means any hazardous or toxic materials, pollutants, effluents, contaminants, radioactive materials, flammable explosives, chemicals known to cause cancer or reproductive toxicity, emissions or wastes and any other chemical, material or substance, the handling, storage, release, transportation, or disposal of which is or becomes prohibited, limited or regulated by any federal, state, county, regional or local authority or which, even if not so regulated, is or becomes known to pose a hazard to the health and safety of the occupants of the Property including, without limitation: (i) asbestos, (ii) petroleum and petroleum by-products; (iii) urea formaldehyde foam insulation; (iv) polychlorinated biphenyls; and (v) all substances now or hereafter designated as "hazardous substances," "hazardous materials" or "toxic substances" pursuant to the Environmental Laws.
- 22. Indemnified Parties** means LAUP, its shareholders, members, subsidiaries, and any affiliated companies, any assignees of any of LAUP's interest in the Grant or the Grant Documents, including, without limitation, any owners of participation or other interests in the Grant or the Grant Documents, any purchasers of the Property at any foreclosure sale or from LAUP or any of its affiliates. Each party is an "Indemnified Party."
- 23. Initial Cure Period** means a period of thirty (30) consecutive days after any approval, license, or permit required for the Project and/or the operation of the Facility (including without limitation the Community Care License), is withdrawn or suspended.
- 24. Insolvency Proceedings** means any bankruptcy or other voluntary or involuntary proceeding, in or out of court, for the adjustment of debtor-creditor relationships.
- 25. Labor Code** means the California Labor Code.
- 26. LAUP** means Los Angeles Universal Preschool.
- 27. Lien Waiver** means a lien waiver in form and substance acceptable to LAUP in its reasonable discretion.
- 28. Losses** means any and all actual or threatened liabilities, claims, actions, causes of action, judgments, orders, damages (including foreseeable and unforeseeable consequential damages), costs, expenses, fines, penalties, and losses (including sums paid in settlement of claims and all reasonable consultant, expert and legal fees and expenses of counsel), and any resulting damages, harm or injuries to the person or property of any third parties.
- 29. Payment Request** means a written request signed by Provider and if required by LAUP, by any architect and/or contractor performing work for Provider, together with such documentation and information as LAUP may require.
- 30. Payment Request Package** means a package of items and information as required by LAUP for the disbursement of grant funds.
- 31. Project** means the Project Budget and Scope of Work, collectively.
- 32. Project Budget** means the amounts set forth on the budget attached as Exhibit "B-2" to the Agreement.
- 33. Project Costs** means the costs actually incurred in the Project.
- 34. Property** means the property located at the address set forth in Section 7.2 of the Summary.
- 35. Provider** means the entity set forth in Section 5 of the Summary.
- 36. Request for Payment** means a request for payment on LAUP's prescribed form setting forth, among other things, the total amount requested and a summary by budget category.
- 37. Soft Cost Invoice** means a back-up invoice for each Soft Cost item in form and substance acceptable to LAUP in its reasonable discretion. Unless otherwise agreed in writing by LAUP, each such Soft Cost Invoice shall (A) be no more than sixty (60) days old, (B) be consistent with the Scope of Work and Project Budget, and (C) be in an amount which reconciles with the applicable Request for Payment.

- 38. Soft Costs** means all costs set forth in the Project Budget for architects and engineers fees, legal and other professional fees and costs, licensing and entitlement fees (including any application fees) and other similar fees and costs (specifically excluding materials and labor related to construction of the Improvements and any LAUP program applications costs), as determined by LAUP in its sole discretion.
- 39. Summary** means the Summary of Basic Grant Information attached to the Agreement.
- 40. Unconditional Lien Waiver** means an unconditional lien waiver for Hard Cost items and shall cover an amount which (A) is at least the total amount disbursed for such Hard Cost item pursuant to the previous Payment Request, and (B) when added to all previous Unconditional Lien Waivers for such Hard Cost item, totals at least the total aggregate amount previously disbursed for such Hard Cost item.
- 41. Work** means all the work set forth in the construction drawings for all the Facility Project work set forth in the Scope of Work.

EXHIBIT "A"

APPROVED VENDOR CONTRACT

EXHIBIT "B"

INSURANCE REQUIREMENTS

(a) Provider shall provide, maintain, and keep in force any and all insurance LAUP in its reasonable judgment may from time to time require, including but not limited to:

(i) Commercial general liability insurance written on an "occurrence" basis against claims for "personal injury" and other medical liability, including bodily injury, death or property damage liability, with a limit of not less than One Million and No/100 Dollars (\$1,000,000.00). This policy shall name LAUP as an "additional insured." Coverage shall be written on an occurrence, not claims made, basis.

(ii) During any period of repair or restoration, including the initial rehabilitation of the Project, builder's "all-risk" insurance on a completed value basis is an amount equal to not less than the full insurable value of the Property, against such risks (including fire and extended coverage and collapse of the Improvements to agreed limits) as LAUP may request, in form and substance reasonably acceptable to LAUP.

(iii) Workers' compensation and employer's liability insurance with at least the minimum coverage required by State law.

(iv) Motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits per occurrence of One Million Dollars (\$1,000,000.00) if transport of children is provided to or from the Facility.

(b) Additionally, Provider shall provide, maintain, and keep in force at all times prior to repayment of the Grant, any and all additional insurance LAUP in its reasonable judgment may from time to time require, against commonly insured hazards for similarly situated properties (for example, flood or earthquake insurance).

(c) All insurance policies required under the Grant Documents shall be issued by companies approved by LAUP and shall name LAUP as additional insured.

(d) Each insurance policy required under the Grant Documents (except workers' compensation) shall provide that it may not be modified or canceled without at least ten (10) days' prior written notice to LAUP. When any required insurance policy expires, Provider shall furnish proof acceptable to LAUP that the policy has been reinstated or that a new policy acceptable to LAUP has been issued. LAUP may take action as required to ensure that Provider is properly insured, including obtaining coverage on behalf of Provider. In such a case, LAUP will treat funds advanced to Provider to pay for coverage as an expense against the Grant.

(e) Provider will inform the contractor of the insurance requirements described in this Exhibit and will provide proof of coverage to LAUP.

EXHIBIT "C"

DISBURSEMENT CONDITIONS

Disbursement Procedures. Unless otherwise agreed to in writing by LAUP, the following procedures will apply with respect to disbursements of the Grant Proceeds:

The following outlines the responsibilities of the Provider relative to the payment process. All documents to be submitted must be sent both electronically and by mail. Electronic copies should be sent to Dean Felton, dfelton@laup.net, and hard copies must be mailed to:

Dean J. Felton
P.O. Box 660922
Arcadia, CA 91066-0922

Approved Invoice Payment Request

In order to be eligible for payment of an Approved Invoice, Provider shall provide proof of the following:

- Approved Invoices

Final Payment Request

In order to be eligible for the Final Payment, Provider shall provide proof of the following:

- Completed Project Certification and Completion Form
- Proof of satisfactory Certified Playground Safety Inspection (CPSI) playground inspection obtained from contractor
- Playground recertification by CCLD