

LEASE
 BETWEEN THE CITY OF WATSONVILLE
 AND
 YWCA OF WATSONVILLE, A CORPORATION

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1. PARTIES

This LEASE, made and entered into this 1st day of, January 2021, between the City of Watsonville, a municipal corporation, hereafter referred to as “City,” and YWCA of Watsonville, a corporation, hereafter referred to as “Tenant.”

2. PREMISES

City hereby leases to Tenant, and Tenant hereby hires and takes possession from City that certain improved real property, known as the “Marinovich Park Child Care Center” at 118 Second Street in the City of Watsonville, California on the terms and conditions as hereafter set forth and hereafter called “Premises” and as depicted on Exhibit “A”.

3. TERM

The term of this Lease shall be for five (5) years, which term will commence on January 1, 2021, and shall expire on December 31, 2025, unless sooner terminated under the provisions of this Lease.

4. RENT

4.1 Base Rent

Tenant shall pay to City the sum of Two Hundred (\$200.00) Dollars per month. Said rent payment shall be due on the first (1st) day of each and every month during the Lease term. The rent shall be adjusted annually, every July 1st beginning the first year of the lease and each July 1st thereafter using the rate of April to April change in the Consumer Price Index (CPI) for All Urban Consumers San Francisco-Oakland-San Jose, California.

All rents shall be paid by check payable to the City of Watsonville, by delivering or mailing to the City of Watsonville Finance Department, 250 Main Street, Watsonville, California, 95076.

5. USE OF PREMISES

The Premises may be used for operation of a pre-school program licensed by the Tenant. Tenant shall not use or permit the Premises, or any part thereof to be used, for any other purpose or purposes without first obtaining the written consent of the Landlord.

6. OPERATIONS AND SCHEDULING

Tenant shall be in charge of scheduling the use of the Premises. The Tenant shall provide the City’s Director of Parks & Community Services with an annual operating schedule and shall notify the Director five days prior to any operating time changes.

7. LANDLORD’S IMPROVEMENTS

7.1 Compliance with Accessibility Standards

Landlord agrees to maintain any improvements to the Premises so as to satisfy all required State and Federal accessibility standards.

8. OWNERSHIP OF TENANT IMPROVEMENTS

At the expiration or termination of the Lease, all fixtures and physical repairs or improvements to the building and grounds shall become Landlord’s property free of all claims to or against them by Tenant or any third person.

At the normal expiration or termination of the Lease term, provided Tenant is not in default, Tenant shall have the right to remove any and all furniture and equipment. All personal property such as stoves, refrigerators and other appliances, chairs, tables and equipment provided by Tenant shall remain the property of Tenant.

9. WORKS OF REPAIR AND IMPROVEMENT

9.1 Protection of Landlord against Cost or Claim

Tenant shall pay or cause to be paid the total cost and expense of all works improvements and repairs, as the phrase is defined in the mechanic's lien law in effect at the place of construction when the work begins. No such payment shall be construed as rent. The City shall be notified, at least 7 days prior to the date of construction so that the City can post a proper Notice of Non-Responsibility.

9.2 Notice of Non-Responsibility

Tenant shall not suffer or permit to be enforced against the Premises or any part of it any mechanic's, materialman's, contractor's, or subcontractor's lien arising from any work or improvement, however it may arise. However, Tenant may in good faith and at Tenant's own expense contest the validity of any such asserted lien, claim, or demand, provided Tenant has furnished the bond required in California Civil Code Section 3143.

9.3 Defense and Indemnity

Tenant shall defend, indemnify and hold the City harmless against all liability and loss of any type arising out of work performed on the Premises by Tenant, or a Tenant's request, together with reasonable attorney's fees and all costs and expenses incurred by City in negotiating, settling, defending, or otherwise protecting against such claims.

9.4 Restrictions on Tenant's Repairs and Improvements

Any remodeling or construction work by Tenant on the Premises shall be first subject to written approval by Landlord and will require appropriate City building permits. Tenant shall submit plans and specifications for improvements to Landlord. Any such work shall be done and performed in the lawful manner and in conformity with all applicable laws, ordinances, codes and regulations.

Tenant shall keep the Premises free from any and all liens and charges on account of labor and materials used in contributing to any improvement installed by Tenant upon the Premises, and Tenant shall hold harmless the Landlord for any such liens and charges. No consent given by Landlord to Tenant however shall be construed to make Landlord a "participating owner: and therefore ineligible for the protection offered under Civil Code Section 3094 and 3129 (Notices of Non-responsibility).

9.5 Notices of Completion

On completion of any work improvement, Tenant shall file or cause to be filed a notice of completion. Tenant hereby appoints landlord as Tenant's attorney in fact to file the notice of completion on Tenant's failure to do so after the work of improvement has been substantially completed.

10. NO SUBORDINATION

City shall not subordinate title to the Premises to any security transaction. The Premises are now and shall remain free and clear of any liens, encumbrances, or other Tenant obligations to third persons.

11. COMPLIANCE WITH RULES, REGULATIONS, AND LAWS

In the use and occupancy of the Premises and in the conduct of all business, activities and transactions thereon, Tenant will comply with all applicable laws, ordinances, rules, regulations, and orders of the County of Santa Cruz, City or any governmental subdivision, body, or authority, including all federal, state, and municipal laws and ordinances.

12. MAINTENANCE AND REPAIRS OF PREMISES

LANDLORD'S OBLIGATIONS

Landlord shall maintain in good condition the exterior of the Premises, including outside walls and roof, heating, electrical systems for the facility (excluding internal lights and fixtures) except in the event that repairs or replacements are necessary thereto because of negligence or misconduct of the Tenant or if Tenant fails to notify Landlord in writing within three (3) days of the need to repair.

TENANT'S OBLIGATIONS

Tenant shall maintain Premises, including, but not limited to, interior plumbing (i.e., sanitary sewer obstructions), interior walls, doors, hardware, alarms, internal lights and fixtures, etc., in as good order, condition and repair as they shall be upon the commencement of the term of this Lease. Any addition to the electrical system installed by Tenant shall remain the responsibility of the Tenant. Tenant shall keep drainage ditches and gutters free of debris.

13. HOLDING OVER

If Tenant shall hold possession of the Premises after the term of this Lease between Landlord and Tenant; Tenant shall become a Tenant from year to year upon the terms and conditions specified herein, except at the option of Landlord and after notice, if Tenant shall hold over without the consent of Landlord, rent may be increased from the two hundred dollars per month base rent to fair market rent or as amended and agreed between Landlord and Tenant, and shall continue to be such Tenant until the tenancy shall be terminated by Landlord on thirty (30) days notice or until Tenant shall have given at least (30) days notice of Tenant's intention to terminate the tenancy. The events scheduled beyond the term of this lease shall be negotiated between the tenant and the City. During the hold over term use of the facilities for the scheduled events will be honored by the Landlord, provided that the premises are in such condition to house/host such events and providing Tenant pays any applicable increase rent if required by City.

14. ABANDONMENT

Tenant shall not vacate or abandon the Premises at any time during the term thereof; if Tenant shall abandon, vacate or surrender the Premises or be dispossessed by process of law, or otherwise, any personal property belonging to Tenant and left on the Premises shall be deemed to be abandoned and at the option of City shall become City's property free from all claims of Tenant.

15. ASSIGNMENTS AND SUBLETTING

Tenant represents and agrees that it shall not assign this Lease, or any interest therein, and shall not lease or sublet the Premises, or any part thereof, or any privilege appurtenant thereto, without the prior written consent of Landlord first. A consent to one assignment or subletting shall not be construed as a consent to any subsequent assignment or subletting.

16. SIGNS, POSTERS, BUILDINGS

No political or religious signs of any kind may be displayed on the Premises. No advertising signs, posters, or similar devices shall be erected, displayed or maintained in, on, about, or above the Premises or the structure thereon without the prior written approval of the City Manager. Tenant in its operations shall not unreasonably interfere with the property, interests, operations, or activities of the City or of other tenants of the Landlord.

17.TAXES

Tenant will pay all taxes, assessments and license levied, imposed or required by a governmental subdivision, body, or authority on or in respect to its use and occupation of the Premises, including but not limited to:

PERSONAL PROPERTY TAXES

Any improvements or property placed on the Premises by Tenant or any person with its permission; and

POSSESSORY USE TAX

Pursuant to section 107.6(a)¹ of the State Revenue and Taxation code the City hereby gives notice that the property interests to Tenant under this Lease may be subject to property taxation as a possessory interest and the Tenant acknowledges that it shall be subject to payment of property tax if a possessory interest tax is levied on the property interest.

18.WAIVER OF DAMAGES AND INDEMNIFICATION

Landlord shall not be liable to tenant for any injury or damage that may result to any person or property by or from any cause whatsoever, including results from acts of negligence on the part of Landlord, its agents, servants, employees, or invitees. Said waiver is expressly extended to injury or damage caused by fire, water leakage of any character from the roof(s), wall(s), basement, or any other part of the property, or caused by gas, oil, electricity, or any other cause in or about the Premises or the building(s). Landlord however, shall be responsible for any such conduct as may occur during scheduled City activities as set forth in section 6.

Tenant shall hold Landlord harmless from, and defend Landlord against, any and all claims or liability for any death or injury to any person or damage to any property, whatsoever, occurring in, on or about the Premises or any part thereof, or occurring in, on about any other areas of facilities of the building, including without limiting the foregoing, walkway(s), driveway(s), parking area(s), stairways, or passageways if such death, injury or damage shall be caused in part or in whole, directly or indirectly, by the act, negligence or fault of, or omission of any duty, with respect to the Landlord, or by Tenant, its agents, servants, employees, or invitees.

19.INSURANCE

All policies required to be maintained by Tenant pursuant to the terms of this Lease shall be issued by companies authorized to do business in the State of California with a financial rating of at least A plus three A status as rated in the most recent edition of Best Insurance Reports. Tenant shall pay premiums therefore and shall deliver annually to Landlord Endorsements naming the Landlord as additional loss payee as to the fire and property damage and additional insured as to the liability policy. If Tenant fails or refuses to procure or maintain the insurance coverage required hereunder, or fails or refuses to furnish

¹ R & T Section 107.6. (a) The state or any local public entity of government, when entering into a written contract with a private party whereby a possessory interest subject to property taxation may be created, shall include, or cause to be included, in that contract, a statement that the property interest may be subject to property taxation if created, and that the party in whom the possessory interest is vested may be subject to the payment of property taxes levied on the interest.

(b) Failure to comply with the requirements of this section shall not be construed to invalidate the contract. The private party may recover damages from the contracting state or local public entity, where the private party can show that without the notice, he or she had no actual knowledge of the existence of a possessory interest tax.

The private party is rebuttably presumed to have no actual knowledge of the existence of a possessory interest tax. In order to show damages, the private party need not show that he or she would not have entered the contract but for the failure of notice.

(c) For purposes of this section:

(1) "Possessory interest" means any interest described in Section 107.

(2) "Local public entity" shall have the same meaning as that set forth in Section 900.4 of the Government Code and shall include school districts and community college districts.

(3) "State" means the state and any state agency as defined in Section 11000 of the Government Code and Section 89000 of the Education Code.

(4) "Damages" mean the amount of the possessory interest tax for the term of the contract.

Landlord with proof that coverage has been procured and is in full force and paid for, Landlord shall have the right, at Landlord's election and without notice to Tenant, but without any obligation to do so, to procure and maintain such coverage. Tenant shall reimburse Landlord on demand for any premiums Landlord so pays in connection with such procurement. Failure to so reimburse Landlord within thirty days of request shall be just cause for Landlord to terminate this Lease.

19.1 Fire and Property Damage Insurance Policy

Tenant shall procure and keep in force a fire and extended coverage insurance upon all structural improvements (buildings) owned by Landlord on the Premises in an amount of eighty (80%) percent of the replacement value thereof with Landlord named as beneficiary thereof.

Tenant shall be responsible for any and all fire insurance coverage for personal contents.

19.2 Commercial General Liability Insurance

Tenant shall procure and keep in force a commercial general liability policy of insurance at all times during the term of the lease as provided below with a minimum coverage limit of one million dollars (\$1,000,000.00) and shall provide an endorsement to said commercial general liability policy

During the rental term, Tenant, at Tenant's sole expense, shall secure and maintain in force such policies of insurance as will protect it and Landlord from claims for damages or injury resulting from bodily injury, including death, and for the loss or damage to property of other which may arise from operations of this Lease. Such insurance shall contain statements that:

- These policies shall also apply to Landlord, as an additional named insured by way of endorsement to the policy, not a certificate of insurance;
- The insurance afforded by these policies applies severally as to each insured, except that the inclusion of more than one insured shall not operate to increase the limit of the company's liability, and the inclusion hereunder of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included;
- The insurance shall be primary insurance over any other insurance carried by Landlord, which other insurance shall be considered excess only;
- The above policies specifically include contractual indemnity coverage indemnifying Landlord;
- The policies shall provide that they may not be canceled, nor the coverage reduced until thirty (30) days after a written notice of such cancellation or reduction in coverage is delivered to Landlord at the address contained herein;
- The policies of insurance shall specifically say that the insurance companies waive any and all right of subrogation against Landlord.
- Such liability insurance shall be written with limits of at least One Million (\$1,000,000) Dollars combined single limits, and shall be written by companies acceptable to City.
- The limit of liability insurance coverage may be unilaterally adjusted up or down at Landlord's reasonable discretion commensurate with inflation and other liability factors upon adoption of resolution of the City Council of City.
- Endorsements evidencing the above obligations shall be delivered to the City Clerk on execution of the Lease Agreement.

20. DESTRUCTION OF PREMISES

In the event the structure on the premises is destroyed to the extent of fifty (50%) or more of the replacement cost thereof, the City may elect to terminate this lease. A total destruction of the structure on the premises shall terminate this lease.

21. BREACH

After service of ten (10) days written notice thereof by City on Tenant any one of the following shall constitute a breach of this Lease by Tenant:

- The appointment of a Receiver to take possession of all or substantially all of the assets of Tenant; or
- A general assignment by Tenant for the benefit of creditors; or
- Any action taken or suffered by Tenant under any insolvency or bankruptcy; or
- A default in the payment of the rent herein reserved or any part thereof, for a period of twenty (20) days; or
- A default in the performance of any other covenant or condition of this Lease on the part of Tenant to be performed for a period of twenty (20) days; or
- At the option of Landlord, failure to satisfy any condition set forth in this lease.

22. LITIGATION EXPENSES

If either party shall bring an action against the other by reason of the breach of any covenant, warranty, or condition hereof, or otherwise arising out of this Lease, whether for declaratory or other relief, the prevailing party in such suit shall be entitled to its costs of suit and reasonable attorney fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing Party" within the meaning of this paragraph shall include without limitation a party who brings an action against the other after the other's breach of default, if such action is dismissed upon other's breach or default, if such action is dismissed upon the other's payment of the sums allegedly due or performance of the covenant's allegedly breached, or if the plaintiff obtains substantially the relief sought by it in the action.

23. SURRENDER OF PREMISES

Tenant agrees to surrender the Premises at the expiration or termination of the tenancy herein created in the same condition as the Premises were in at the beginning of the tenancy, reasonable use and were thereof and damage by act of God or the elements excepted. The voluntary or other surrender of this Lease by Tenant or a mutual cancellation thereof shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subleases or sub-tenancies, or may, at the option of Landlord, operate as an assignment to Landlord of any or all such subleases or sub-tenancies.

24. DISCRIMINATION

Tenant shall not nor shall it allow it's permitted users to discriminate in the use or occupancy of the premises based on age, race, sex, ethnicity or religion or any other state or federally protected class of persons.

25. WAIVER

Any waiver, expressed or implied, by either party of any breach by the other party of any agreement, term or condition of this Lease shall not be, or be construed to be, a waiver of any subsequent breach of a like or other agreement, term of conditions hereof; and the acceptance of rent hereunder shall not be, or be construed to be, a waiver of any breach of any agreement, term or condition of this Lease, except as to the payment of rent so accepted. The rights and remedies of either party under this Lease shall be cumulative and in addition to any and all other rights and remedies which either party as or may have.

26. QUIET ENJOYMENT

City covenants and warrants that upon Tenant's paying the rent and observing and performing all of the terms, covenants, and conditions on Tenant's part to be observed and performed hereunder, Tenant shall and may peaceably and quietly enjoy the Premises hereby demised, subject nevertheless to the terms and conditions of this Lease.

27. NOTICES

All notices, consents, waivers, or other communications which this Lease requires or permits either party to give to the other shall be in writing and shall be served personally and forwarded by registered or certified mail, return receipt requested, made upon or addressed to the respective parties or such other

address as may be contained in a notice from either party to the other given pursuant to this paragraph, as follows:

City of Watsonville
City Clerk's Office
275 Main Street, Suite 400 (4th Floor)
Watsonville, CA 95076

YWCA of Watsonville
Executive Director
340 E. Beach Street
Watsonville, CA 95076

28. RIGHT OF CITY TO ENTER FOR INSPECTION

City shall have the right to enter upon the Premises at all reasonable times during the term of this Lease for the purpose of making any inspection it may deem expedient to the proper enforcement of this Lease.

29. RIGHT OF CITY TO AUDIT

City shall have the right to audit and inspect the books and business records of Tenant to determine the frequency and identity of persons and organizations using the Premises for both profit and non-profit activities, and to determine Tenant's profit and loss, expenses and costs, and generally accepted audit objectives. Such audit shall be conducted not more frequently than monthly upon ten (10) days written notice of intent to conduct audit given by the City Administrative Services Director.

30. CONDEMNATION

If the whole or any substantial part of the Premises shall be taken by any paramount public authority under the power of eminent domain then the term of this Lease shall cease as the part so taken from the date the possession of that part shall be taken for any public purpose, and from that day Tenant shall have the right either to cancel this Lease or to continue in the possession of the remainder of the Premises under the term herein provided, except that the square foot rental shall be reduced in proportion to the amount of the Premises taken.

Damages awarded for such taking shall be awarded the City and Tenant waives any claim or interest in remaining term of the leasehold. Provided, however, that City shall not be entitled to any portion of the award made for loss of business installation, relocation, or improvements belonging to Tenant.

31. GENERAL PROVISIONS

- All the provisions of this Lease shall be deemed and construed to be "covenants" as though the words imported such covenants were used in each separate paragraph hereof, except when expressed as conditions.
- This Lease shall be construed and enforced in accordance with the laws of the State of California.
- This Lease and the covenants and agreements herein contained shall bind and insure to the benefit of the parties hereof, their heirs, successors, executors, administrators, and when permitted assigns.
- Time is of the essence of this Lease.
- Whenever consent or approval of either party is required, that party shall not unreasonably withhold such consent or approval.
- Tenant shall deliver to City on execution of this Lease, that party shall not unreasonably withhold such consent or approval.
- Tenant shall deliver to City on execution of this Lease, a certified copy of a resolution of its governing body authorizing the execution of this Lease and naming the officers that are authorized to execute this lease on behalf of the corporation.
- This Lease contains all the agreements of the parties and cannot be amended or modified except by a written agreement.
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32. SIGNATURES

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

CITY

TENANT

City of Watsonville, a municipal corporation

YWCA of Watsonville, a corporation

By: _____
Matthew D. Huffaker, City Manager

By: _____
Diane Munoz, President, Board of Directors

ATTEST:

Beatriz V. Flores, City Clerk

By: _____
Leticia Mendoza, Executive Director

APPROVED AS TO FORM:

Alan J. Smith, City Attorney

EXHIBIT "A"

PREMISES

