

## **CHILD CARE PROGRAM AGREEMENT**

This Child Care Program Agreement (the "Agreement") is executed on the date last written below, by and between the Board of Education of Oak Park School District No. 97 (the "District") and Hephzibah Children's Association ("Hephzibah" and together with the District, the "Parties").

### **RECITALS**

A. The District is a public school district serving children in grades preschool through 8.

B. The District and Hephzibah have partnered since 1974 to provide after-school and summer child care programs for District families, and the District believes it is in the best interest of the students and families in the District for the District to cooperate with and assist Hephzibah in the continuation of an after-school and summer child care program.

C. The District's cooperation and assistance shall consist of making available for the program the necessary building space as described in this Agreement, whereas Hephzibah as a licensed provider of child care services shall be the on-site manager and administrator of the child care program in accordance with the provisions of Sections 10-22.18a, 10-22.18b and 10-22.18c of The Illinois School Code, 105 ILCS 5/10-22.18(a) - (c) (the "Child Care Program" or "Program").

NOW THEREFORE, in consideration of the obligations, promises, rights and duties set forth herein, the Parties agree as follows:

1. **Incorporation of Recitals.** The recitals set forth above are incorporated into and made a part of this Agreement.

2. **Use of Facilities.** The rooms that the District has designated for the Child Care Program are reflected on Exhibit A (the "Facilities"). During the Term of this Agreement, the District grants Hephzibah the non-exclusive right to use the Facilities for the Child Care Program, and for no other purpose. The District may reduce the number of rooms designated as Facilities if such rooms are needed for the District's own programs, and in such event the Parties shall attempt to agree upon alternate rooms or an adjustment to the Use Fee.

3. **Monthly Use and Custodial Fees.** On a monthly basis during the Term, Hephzibah shall pay the District a use fee for use of the Facilities (the "Use Fee") and provision of custodial services. Hephzibah shall pay the District a Use Fee of \$2,500 per month for a total annual amount of \$30,000. If this Agreement is terminated before expiration of the Term, the last Use Fee paid shall be prorated and the proration shall be refunded to Hephzibah based upon the number of days in the month of termination that followed such termination.

4. **Term.** The term of this Agreement shall commence on September 1, 2018, and shall expire on August 31, 2019, unless sooner terminated in accordance with this Agreement (the “Term”). Upon expiration or termination, Hephzibah’s right to use the Facilities as provided in Section 2 shall cease, but Hephzibah’s obligation of indemnity as provided in Section 8 shall remain in full force and effect.

5. **Termination.** This Agreement may be terminated as follows:

a. The District may terminate this Agreement at any time, for any reason in its sole discretion, upon thirty (30) days written notice to Hephzibah.

b. The District may terminate this Agreement at any time upon written notice to Hephzibah if:

c. Any license or permit required for Hephzibah to provide child care services is revoked or suspended or not procured; or

d. A founded allegation of child abuse or sexual offense occurs in the Program; or

e. Hephzibah does not make a good faith effort to comply with any applicable statute, law, ordinance, rule and/or regulations governing the Facilities or the Program or does not remedy any such instance of noncompliance in a reasonable period of time; or

f. Hephzibah fails to timely pay the required Use Fee as specified in this Agreement; or

g. Hephzibah fails to maintain insurance as required under this Agreement.

c. Either Party may terminate this Agreement if the other Party breaches any provision of this Agreement and such breach remains uncured more than fifteen (15) days after receipt of a written request for cure from the non-breaching Party.

6. **Hephzibah’s Obligations.** At all times during the Term, Hephzibah shall:

a. Provide a high-quality Program of after school child care and with an emphasis on developmentally appropriate practices;

b. Provide child care services during the hours of 3 p.m. to 6 p.m. on District student attendance days and 7:00 a.m. to 6:00 p.m. on non-attendance days, Monday through Friday throughout the school year in accordance with

District's School Calendar. Hours of operation may be changed based upon demand for child care services as mutually agreed in writing by District and Hephzibah from time to time, and to comply with District's occasional early school dismissal;

c. Provide child care services on a non-discriminatory, fee-for-service basis, with all fees payable by the parents or guardians;

d. Provide a qualified child care staff adequate in number to provide safe and appropriate care and with staff/child ratios of no less than may be required by DCFS or any other applicable licensing authorities or governmental regulations. Hephzibah shall provide to District in writing the names of each of its staff members who will be performing responsibilities which involve direct daily contact with students in advance of their performing any such responsibilities, and shall perform a criminal background check on each such staff member in compliance with 105 ILCS 5/10-21.9. Hephzibah shall provide the District with copies of the criminal background check results upon request and shall immediately remove any staff member who does not pass the criminal background and investigation check from all responsibilities in connection with the Program. Hephzibah further agrees to remove from participation in the Program any staff member as to whom the District reasonably requests such removal and will act in accordance with applicable legal and regulatory requirements;

e. Obtain and maintain in full force and effect at all times during the Term of this Agreement all required licenses and permits for the Program and its staff members. Hephzibah hereby represents and warrants that it has obtained all required licenses and permits applicable to the Program and its staff members. Hephzibah shall promptly furnish copies of such licenses and permits to the District, and shall maintain all such licenses and permits throughout the Term of this Agreement. If any such license or permit is at any time suspended or revoked, Hephzibah shall immediately notify the District and suspend its operation of the Program until such license or permit is reinstated, with a copy furnished to the District;

f. Operate the Program at all times in compliance with all applicable laws, ordinances, and governmental regulations, including but not limited to Section 10-22.18 of the Illinois School Code, 105 ILCS 5/10-22.18 (a) - (c);

g. Determine all staff duties and schedules for the Program, and instruct its employees to comply with District rules and regulations regarding use of the District's Facilities;

- h. Pay all salaries, other benefits, and employment taxes promptly when due to all Hephzibah employees servicing the Program;
- i. Determine which children are accepted into or removed from the Program, subject to the provisions of paragraph 2(c) above;
- j. Develop operation policies and procedures for the Program;
- k. Advertise, promote, and otherwise use best efforts to encourage the enrollment of children in the Program. All marketing material shall be furnished to the District for pre-approval;
- l. Provide regular in-service training and workshops for all staff members of the Program;
- m. Keep accurate, complete, and up-to-date records of the Program in accordance with sound business practices and all applicable governmental regulations including, but not limited to, financial and accounting records, employees records, and health/safety incident reports concerning the participants in the Program and their parents or guardians;
- n. Treat as confidential all information obtained by Hephzibah concerning the participants in the Program, any prospective participants, and their parents and guardians;
- o. Comply with the Family Education Rights and Privacy Act, 20 U.S.C. 1232g, et seq., and the Illinois School Student Records Act, 105 ILCS 10/1, et seq.;
- p. Maintain the corporate existence of Hephzibah continuously in good standing;
- q. Give immediate written notice to the District of any litigation or administrative proceedings or complaint in which Hephzibah is a party or may become a party;
- r. Immediately report to the Superintendent or designee of the District any reasonable suspicion of child abuse or sexual misconduct involving a child enrolled in the Program and abide by the requirements of the Abused and Neglected Child Reporting Act;
- s. Maintain in full force and effect at all times during this Agreement commercial general liability insurance, automobile liability insurance, umbrella / excess insurance, and workers compensation insurance covering the services

provided by Hephzibah under this Agreement. The CGL, automobile, and umbrella / excess policies shall list the District, its Board of Education, Board Members individually, officers, agents and employees as additional insureds. All policies shall provide for a minimum 30 days notice to District in the event of cancellation or material modification of coverage. All coverage shall by endorsement be primary and noncontributory to any other coverage maintained or available to the District. The CGL policy shall include the "General Liability Deluxe Endorsement: Day Care Organization." Upon execution of this Agreement, and from time to time as necessary, Hephzibah shall furnish to the District certificates of insurance, with the required policy endorsements, evidencing that such insurance has been obtained. Minimum coverage limits shall be as follows: CGL limit of \$1,000,000 per occurrence, \$3,000,000 aggregate; automobile liability limit of \$1,000,000 combined single limit; workers compensation insurance at the statutory minimum; umbrella / excess coverage of \$4,000,000;

t. Provide required equipment at all times in good, clean order and repair for the Program as is required by the Department of Public Health, State Fire Marshal or DCFS;

u. Set and collect all fees for student attendance in the Program;

v. Conduct radon testing of each licensed day care site at least once every three years and on a timetable consistent with the Day Care Center License renewal term. The radon testing will be testing done at the expense of Hephzibah.

7. **District Responsibilities.** The District shall provide Hephzibah with the following at no additional cost:

a. tables and chairs, large garbage receptacles, waste baskets, push brooms, bucket and wet mops (as needed), toilet paper, paper towels, soap and trash can liner, and individual lockers, cubicles, or separate hooks and shelves for children's personal belongings, and 1 access swipe card for each of eight sites during the school year and 4 for the summer program for use by designated Hephzibah staff and in accordance with District requirements

b. designate a point person at District 97 to contact for questions or problem resolution pertaining to day-to-day operations of the Program;

c. meet with Hephzibah staff at minimum every six months to discuss issues raised by either party, including, but not limited to, space utilization, facilities, or program operations;

d. custodial and maintenance services necessary to maintain a safe and sanitary environment consistent with District 97 standards and applicable public health, licensing, and regulatory requirements, including, but not limited to, rodent and pest control, daily garbage and refuse collection, and absence of toxic or lead paints or finishes.

f. information necessary for the Hephzibah's renewal and maintenance of the Day Care Center License for each site, including, but not limited to, fire safety clearance

8. **Prohibited Activity.** During the Term, Hephzibah shall not:

a. Assume or create relative to third parties any obligation whatsoever, express or implied, on behalf of District or in the name of District or otherwise attempt to bind District in any manner whatsoever; or

b. Disclose to third parties, other than governmental entities involved in ensuring Program conditions or payment of Program fees, the names of, or other information concerning, any of the participants in the Program, their parents or guardians, or use the names or information in any manner other than for the Program itself; or

c. Distribute any information from a third party, other than governmental entities involved in ensuring Program conditions or payment of Program fees, without District's express prior written consent; or

d. Attempt to assign any rights or delegate any duties under this Agreement to any other third party without the prior written consent of the District. Any such attempted assignment or delegation shall be void.

9. **Indemnity.** Hephzibah shall indemnify, defend, and hold harmless the District, its Board of Education, Board Members individually, officers, administrators, employees, agents, representatives, and volunteers (collectively the "Indemnitees"), from and against any and all claims, demands, causes of action, losses, liabilities, costs, expenses, and damages, including reasonable attorneys fees and court costs, which are incurred by one or more of the Indemnitees and arise from or relate in any way to Hephzibah's breach of any provision in this Agreement and/or to any negligent act or omission of Hephzibah or any of its employees or agents.

10. **Reservation of Defenses and Immunities.** No provision of this Agreement shall be construed to waive or abridge any defense or immunity provided to the District under the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101, et seq., or as otherwise provided by statute or common law.

11. **Notices.** Written notices permitted or required under this Agreement shall be sent by U.S. mail or courier service. Written notices shall be deemed received when deposited in the mail or with the courier service. Written notices shall be addressed to the designees listed below. The designees may be changed by written notice sent in accordance with this Section.

If to the District:

Attn: Superintendent of Schools  
Oak Park Elementary School District No. 97  
260 Madison Street  
Oak Park, Illinois 60302

If to Hephzibah:

Merry Beth Sheets, Executive Director  
Hephzibah Children's Association  
1144 W. Lake Street, 5<sup>th</sup> Floor  
Oak Park, Illinois 60301

12. **Miscellaneous.**

- a. This Agreement constitutes the entire agreement of the Parties with respect to its subject matter. All prior negotiations, representations, promises and agreements are void if not contained in this Agreement.
- b. This Agreement may only be modified or cancelled by a writing executed by both Parties.
- c. The failure of District to enforce any of the terms and conditions of this Agreement shall in no event be deemed a waiver of the right to do so in the future.
- d. This Agreement is made and shall be construed and interpreted in accordance with the laws of the State of Illinois.
- e. If any provision or clause of this Agreement is held to be invalid, the remainder of this Agreement shall remain in full force and effect.
- f. Titles to the paragraphs of the Agreement are for informational purposes only and do not define, limit, or construe the contents of the paragraphs.
- g. This Agreement shall bind the Parties hereto and their respective successors and assigns.

Executed on the date last written below, by:

\_\_\_\_\_  
BOARD OF EDUCATION OF OAK PARK  
ELEMENTARY SCHOOL DISTRICT NO. 97

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
HEPHZIBAH  
CHILDREN'S ASSOCIATION

By: \_\_\_\_\_  
Merry Beth Sheets

Its: \_\_\_\_\_  
Executive Director

Dated: \_\_\_\_\_