

RESOLUTION R-5611

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING AN AGREEMENT WITH THE LEARNING CARE GROUP TO PROVIDE CITY EMPLOYEES WITH PRIORITY ACCESS TO CHILDCARE.

1 WHEREAS, lack of access to reliable, high-quality, and
2 affordable childcare negatively affects working families and inhibits the
3 ability of employers to recruit and retain talent; and
4

5 WHEREAS, City of Kirkland employees have identified that
6 access to reliable, high-quality, and affordable childcare is a desired
7 benefit that could improve recruitment and retention efforts; and
8

9 WHEREAS, the Learning Care Group (LCG) operates over 20
10 centers in the Puget Sound Region, providing childcare for children ages
11 18 months to six years; and
12

13 WHEREAS, LCG is willing to partner with the City to provide City
14 employees with a discounted tuition rate and priority access to the
15 Learning Care Group's network of childcare facilities in Washington; and
16

17 WHEREAS, contracting with LCG will complement the City's
18 partnership with the Lake Washington Institute of Technology that is
19 providing access to childcare near City facilities, as LCG's large network
20 of childcare facilities will provide City employees with choices in
21 childcare facilities, including more opportunities to access childcare near
22 their homes; and
23

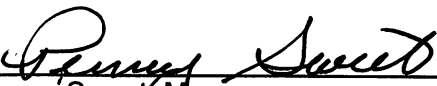
24 WHEREAS, entering into an agreement with the LCG supports
25 the City Council's 2023-2024 City Work Program priority to ensure that
26 Kirkland is a preferred employer that attracts and retains talented and
27 diverse employees.
28

29 NOW, THEREFORE, be it resolved by the City Council of the
30 City of Kirkland as follows:
31

32 Section 1. The City Manager is hereby authorized and directed
33 to execute an agreement with the Learning Care Group to provide
34 discounted tuition and priority childcare access for City of Kirkland
35 employees substantially similar to the agreement attached hereto.
36

37 Passed by majority vote of the Kirkland City Council in open
38 meeting this 12th day of December, 2023.
39

40 Signed in authentication thereof this 12th day of December,
41 2023.


Penny Sweet, Mayor

Attest:

Kathi Anderson
Kathi Anderson, City Clerk

CHILD CARE SERVICES AGREEMENT

This Child Care Services Agreement (the “Agreement”) is effective as of the date this agreement is fully executed (the “Effective Date”) and entered into by and between CITY OF KIRKLAND with its principal place of business at 123 5th Avenue, Kirkland, Washington 98033 (“Client”), and LEARNING CARE GROUP (MI), INC., with its principal place of business at 21333 Haggerty Road, Suite 300, Novi, Michigan, 48375 (“LCG”).

RECITALS

WHEREAS, Client desires to provide its employees and their beneficiaries with a child care benefit at LCG’s child care centers, and LCG desires to provide the child care benefit in accordance with the term and conditions of this Agreement.

NOW THEREFORE, in consideration of the foregoing and the agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Client and LCG (collectively, the “Parties”) agree as follows:

AGREEMENT

1. **TERM.** LCG shall commence providing the selected Benefits on January 2, 2024. This agreement shall expire on December 31, 2025, which is two (2) years from the commencement date of LCG providing the Benefits. This Agreement shall auto-renew for one (1) year terms, but not to extend beyond December 31, 2029, unless either party provides the other party with written notice of non-renewal at least ninety (90) days prior to the expiration of the term then in effect.

2. **SCOPE OF SERVICES.** The base level Benefit to be provided Client is a tuition discount, and Client may elect one or more of the following additional Benefits:

Provider will offer Client employees with a ten percent (10%) tuition discount off LCG’s standard enrollment rates for each child ages 6 weeks – 12 years. As part of this selected benefit, LCG agrees to waive its initial registration fee for Client employees; Client employees shall pay all subsequent yearly registration fees. Additional fees such as camp fees, extracurricular activities, diaper fees, etc. are not subject to discount, and the tuition discount cannot be combined with any other offer or discount. Discounts shall not be applied retroactively. _____ (Client initials)

In addition to any other Benefit selected above, Client elects to provide its employees with priority enrollment for each child ages six (6) weeks to twelve (12) years. Client’s employees seeking to enroll shall be moved to the top of any such waitlist at LCG schools to be considered for enrollment. _____ (Client initials)

3. **PROCESSES AND PROCEDURES.**

3.1. **Benefit Availability and Limitations.** Subject to space and geographic

availability, and except for any location or brand which LCG might separately identify for Client, the selected Benefits shall be provided at all LCG locations in the state of Washington.

3.2. **Client Employee Eligibility.** Client employees are required to provide proof of employment with Client to obtain the selected Benefits. In most instances, providing a copy of a valid and current Client employment identification badge and/or a recent pay stub satisfies this proof of eligibility requirement. Where requested by LCG, Client shall assist in confirming eligibility and employment status of those individuals seeking to obtain the selected Benefits

3.3. **Tracking; Reporting.** LCG shall provide to Client a written report of Client employee utilization of the selected Benefits; the reports shall be provided on a quarterly basis starting the first quarter after the Effective Date and each quarter thereafter during the term of this Agreement. Reports shall include the following information: (a) the number of employees and their beneficiaries utilizing the selected Benefits; (b) the gross tuition saved as a result of employee utilization of the selected Benefits; (c) locations of LCG child care centers where Client employees are using benefits; and (d) such other information as Client may reasonably request.

4. **CLIENT DUTIES; ACKNOWLEDGEMENTS.**

4.1. **Fees; Collection of Employer Contributions.**

4.1.1. Annual Administration Fee. In consideration of the selected Benefits provided to its employees and their beneficiaries, Client shall pay an Annual Administration Fee to LCG in the amount of Two-thousand five hundred dollars (\$2,500.00). The Annual Administration shall be paid within thirty (30) days after Client's receipt of an invoice.

4.1.2. Client payments to LCG shall be made by check or Automated Clearing House; Client shall provide information and complete forms reasonably necessary to effectuate payment of same. Client shall provide information and complete forms reasonably necessary to effectuate payment of same.

4.2. **Marketing.** Client shall (a) furnish LCG an opportunity to participate in benefit fairs, vendor fairs, lobby and/or cafeteria events at least once per year (if applicable), and conduct at least one annual presentation to employees regarding the benefits the subject of this Agreement; (b) include Tuition Discount information to all new and current employees via company newsletter, social media, and employee handbook, as applicable; (c) supply LCG information and advertising documents on display in Human Resources office, company bulletin boards, and/or employee lounges or meeting rooms; and (d) provide information relating to the benefits that are the subject of this Agreement on the corporate intranet and provide a link to the LCG website.

4.3. If this Agreement is terminated, Client's employees will no longer be eligible for the selected benefits or any other promotions or discounts otherwise the subject of this Agreement. Upon termination of this Agreement, Client's employees will be required to pay full tuition beginning with the next billing period following the termination date.

4.4. Client acknowledges and agrees that LCG will maintain the exclusive control of the operation of child care services at its affiliated locations.

5. **DEFAULT; TERMINATION.**

5.1. **Default.** In addition to any other act or failure to act identified as an event of default elsewhere in this Agreement, the following shall be events of default:

5.1.1. The failure of either party to pay or reimburse the other party any monetary amount in accordance with terms and conditions of this Agreement; or

5.1.2. The failure by either party to comply with any material term or condition or fulfill any other material obligation of this Agreement after the expiration of any applicable notice and cure periods.

5.2. **Termination.**

5.2.1. This Agreement may be terminated by either party for a failure to pay or reimburse the other party any monetary amount when due; or in the event of a breach by a party of any material terms hereof that remains uncured after thirty (30) days written notice to the party alleged to have breached this Agreement.

5.2.2. Either party may terminate this Agreement due to a Force Majeure event (as further discussed below) existing more than sixty (60) days.

5.3. Upon termination of this Agreement, the Parties agree to immediately cease promoting the benefits that are the subject of this Agreement.

6. **INDEMNITY AND INSURANCE.**

6.1. Each party shall indemnify, defend and hold harmless the other party from and against any and all third party liabilities (including reasonable attorney's fees) to the extent arising from the indemnifying party's (or its employees', agents or contractor's) negligent or intentionally wrongful acts or omissions hereunder, and for breach of any provision in this Agreement, misrepresentation of the other's products, services or prices, and unauthorized or illegal acts of the indemnifying party, its agents or independent contractors. The Parties further agree to indemnify, defend and hold harmless the other party from and against any and all third party liabilities (including reasonable attorney's fees) to the extent arising from the purchase of indemnifying party's services, marketing efforts, including but not limited to claims of unfair and/or deceptive trade practices and claims relating to any alleged violation of federal and/or state advertising laws and regulations.

6.2. LCG maintains commercial insurance against claims for injuries to persons or damage to property that may arise from or in connection with the performance of services. Within fifteen (15) days of the execution of this Agreement, LCG will deliver original certificates evidencing such insurance coverage.

7. **LIMITATION OF LIABILITY.** Notwithstanding anything contained herein to the contrary, in no event shall either party be liable to the other party for indirect, incidental, consequential, exemplary, special or punitive damages, including loss of profit or goodwill, for any matter arising out of or relating to this Agreement or its subject matter, whether such liability is asserted on the basis of contract, tort or otherwise.

8. **NOTICES.** All notices required or permitted to be given under this Agreement shall be in writing. Notices may be served by certified or registered mail, postage prepaid with return receipt requested; by private courier, prepaid; by email or personally. Mailed notices shall be deemed delivered three (3) days after mailing, properly addressed. Couriered notices shall be deemed delivered when delivered as addressed, or if the addressee refuses delivery, when delivery is refused. Emailed notices shall be deemed delivered when receipt is either confirmed by confirming transmission equipment or acknowledged by the addressee or its office. Personal delivery shall be effective when accomplished. Unless a party changes its address by giving notice to the other party as provided herein, notices shall be delivered to the Parties at the following addresses:

If to LCG: Learning Care Group (MI), Inc
21333 Haggerty Rd., Suite 300
Novi, MI 48375
Attention: Chief Business Development Officer

With a copy to: Learning Care Group (MI), Inc
21333 Haggerty Rd., Suite 300
Novi, MI 48375
Attention: General Counsel

If notice to CLIENT: City of Kirkland
123 5th Avenue
Kirkland, WA 98033
Attention: Human Resources Department

With a copy to: City of Kirkland
123 5th Avenue
Kirkland, WA 98033
Attention: City Manager's Office

For Payments and/or Invoices to CLIENT:
City of Kirkland
123 5th Avenue
Kirkland, WA 98033
Attention: Human Resources Department

9. **MISCELLANEOUS PROVISIONS.**

9.1. **Force Majeure.** "Force Majeure" means and includes any of the following: strike, lockout, labor trouble, failure of power, riot, insurrection, casualty, condemnation, war, terrorism, act of God, pandemic, national emergency, weather event or any other reason beyond a Party's reasonable control that prevents the party so affected from performing its material obligations under this Agreement by reason thereof, and for more than sixty (60) consecutive days. If the party adversely affected by a Force Majeure event is prevented from performing its obligations under this Agreement for less than sixty (60) days, the Parties' obligations hereunder shall be suspended

during the pendency of such Force Majeure event, and such time period during which the party was so prevented shall be added to the term of this Agreement; payment or monetary amounts that accrue during the suspension period shall be paid within thirty (30) days after the expiration of the Force Majeure event. This Agreement shall terminate in the event of a Force Majeure event that has a duration of more than sixty (60) days, unless mutually extended in writing by the Parties. Space and geographic unavailability do not constitute a Force Majeure event. It is understood and acknowledged by the Parties that LCG's child care centers are often the subject of construction, renovation and/or remodeling, and that such construction, renovation and/or remodeling will not be deemed to constitute a Force Majeure.

9.2. **Confidentiality.** Neither party will issue any press release or make other such public statements relating to this Agreement without the prior written consent of the other party. The Parties agree and acknowledge that non-public, confidential and/or proprietary information of each party ("Confidential Information") may be exchanged as part of this Agreement and that all Confidential Information is and will remain the sole and exclusive property of the disclosing party, and that as a condition to the receipt of the Confidential Information, a receiving party shall: (a) maintain the secrecy of the Confidential Information; (b) take all reasonable steps and precautions to preserve the Confidential Information, including but not limited to, identifying and marking documents as confidential in nature and subject to confidentiality; (c) notify the disclosing party of any unauthorized release of Confidential Information within five (5) business days of the receiving party becoming aware of a possible and/or actual unauthorized disclosure; (d) except as expressly intended in connection with this Agreement, not use any of the Confidential Information for the benefit of the receiving party, any third parties, including competitors of the disclosing party; and (e) not disclose, directly or indirectly, to any third party any part of the Confidential Information unless required to do so by an order from a court with competent jurisdiction. A receiving party shall be responsible and liable for any disclosure of Confidential Information inconsistent with this Agreement by the receiving party or its agents. "Confidential Information" does not include any records that that Client is required to disclose publicly pursuant to the Washington State Public Records Act, chapter 42.56 RCW. Client will provide LCG with notice if Client receives a public records request for records directly related to LCG's proprietary information and will, prior to any disclosure of such records, notify LCG about what records Client intends to disclose, redact, or withhold in response to the request. To the extent authorized by law, Client will make reasonable efforts to disclose the requested records only after any legal challenge by LCG to the public records request is denied or LCG provides its consent to such disclosure.

9.3. **Intellectual Property.** The use by either party of any trademark, service mark, trade name, logo, graphics or other intellectual property that architecturally and/or visually communicates brand identity or information of the other party, including, without limitation, interior and exterior creative elements such as decals, dimensional graphics, shelving, display holders, photographs, for any printed materials, signs, press releases, promotional materials and/or advertisements (collectively, "Intellectual Property") must be authorized and approved in writing in advance by the party owning the Intellectual Property. Each party reserves the absolute right to condition, approve or deny the use of its Intellectual Property by the other party. The Parties acknowledge and agree that all right, title, and interest in and to their Intellectual Property, are the sole and exclusive property of the respective Parties. The Parties further acknowledge and agree that each may suffer irreparable harm in an amount not easily ascertained if the other party breaches this provision. The Parties agree that injunctive relief may be sought to restrain such breach, whether threatened or actual. Notwithstanding the foregoing, Client grants LCG the limited right to use Client's business name and logo for marketing and sales materials.

9.4. **Non-Discrimination Policy.** It is LCG's policy to provide an environment that is free from unlawful discrimination of any type, including discrimination based on race, color, religion, sex, national origin, age, disability, veteran status, or any other characteristic protected by law. This policy governs all aspects of our school's operations.

9.5. **Children With Special Needs.** LCG adheres to the Americans with Disabilities Act and other applicable federal, state, or local laws pertaining to the provision of services to children with disabilities. LCG's goal is to meet the individual needs of the child within the structure of our program, while maintaining a healthy and safe environment for all the children and staff. Prior to enrolling a child, whether on a full-time, part-time or back-up care basis, LCG asks that families with a special needs child complete and submit an ADA packet, which can be obtained from center management. LCG's Inclusion Team will make an individual assessment to determine if we can meet each child's need in our group child care setting. We will make reasonable accommodations to afford children with disabilities full and equal enjoyment of our programs and services in the most integrated setting appropriate to their needs.

9.6. **Independent Contractors.** The Parties and their respective employees are and shall be independent contractors and are not partners, joint ventures or agents of one another and no party by virtue of this Agreement shall have any right, power or authority to act or create any obligation, express or implied on behalf of the other party. The Parties agree not to assume or create any obligations on behalf of the other or make any representations or warranties about the other, other than those authorized in this Agreement.

9.7. **Assignments; Amendments; Successors; and Waivers.** Neither party shall assign this Agreement, including any or all of its rights or obligations hereunder, without the prior written consent of the other party hereto. This Agreement may not be amended or supplemented except in writing signed by both Parties. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assignees, if any. No waiver of any term or condition of this Agreement shall be enforceable unless it is in writing and signed by the party against whom it is sought to be charged. No express waiver of any prior breach of this Agreement shall constitute a waiver of any subsequent breach hereof and no waiver shall be implied.

9.8. **Duty to Cooperate.** Each party will provide the other party with such information and assistance as may be reasonably requested from time to time in connection with this Agreement.

9.9. **Venue; Choice of Law.** The Superior Court of King County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement. This Agreement will be governed by the laws of the State of Washington, and the rights and obligations hereunder are binding on the successors and assigns of Parties. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby. Each term and provision of this Agreement shall be construed and enforced to the fullest extent permitted by law.

9.10. **Severability.** If any of the provisions of this Agreement are deemed to be invalid under any applicable statute or rule of law, these portions shall be deemed omitted, and the validity of the remaining portions of this Agreement shall not be affected thereby.

9.11. **Authorized Signers.** The parties hereto represent that the respective persons executing this Agreement on their behalf are fully authorized to execute this Agreement. The Parties represent and warranty that they have the full legal right and corporate power and authority to enter and perform all their obligations under this Agreement and to comply with all terms and conditions of this Agreement.

9.12. The Parties acknowledge and agree that no oral statements or prior written matter not specifically incorporated herein shall be of any force or effect. The Parties agree that in entering this Agreement, each party relies solely upon the representations and agreements contained in this Agreement and no others. This Agreement shall not be modified except by a writing executed by the Parties.

9.13. This Agreement may be executed in two or more counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument. An electronic transmission by one party to the other party of an executed signature page of this Agreement shall have the same effect as delivery of an original signature page.

[Remainder of page intentionally blank, signature page follows.]

IN WITNESS WHEREOF, this Agreement has been signed by authorized representatives of the Parties on the dates stated below.

LEARNING CARE GROUP (MI), INC.

CITY Of KIRKLAND

By: Sean Sondreal
Its: Chief Business Development Officer
Dated:

By: Trucmai Nguyen-Dever
Its: Human Resources Director
Dated: