

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO
AND THE SAN FRANCISCO AIRPORT COMMISSION GUARANTEEING
REVENUE FOR CHILDCARE FACILITIES

THIS AGREEMENT IS between the **COUNTY OF SAN MATEO** ("County"), a political subdivision of the State of California, and the **CITY AND COUNTY OF SAN FRANCISCO** ("City"), a municipal corporation and political subdivision of the State of California, acting by and through its Airport Commission ("Commission"), and is dated as of July 1, 2002.

RECITALS

1. The Commission manages and operates the San Francisco International Airport ("Airport").
2. The County presently owns the building ("the Building") located at 945 California Avenue in Burlingame.
3. The County rents the Building to a provider of childcare services ("Palcare") for extended hour childcare services.
4. For the benefit of Airport employees, the Commission has previously guaranteed payment of a certain portion of the actual, direct operating costs of Palcare and has agreed to reimburse the cost of renovations to expand Palcare's capacity and services.
5. Due to the unforeseen budgetary constraints and additional safety and security obligations arising from September 11th and its aftermath, the Commission is unable to continue its previous level of financial support to the County for Palcare's childcare services.
6. Nonetheless, the Commission wishes that funds already provided to the County under previous agreements continue to be used for Palcare's services until June 30, 2003.

THEREFORE, THE COUNTY AND THE COMMISSION AGREE as follows:

1. **The Fund.**

The Commission has made deposits into the Palcare Fund ("Fund") in support of childcare in accordance with previous agreements between the parties for the benefit of persons employed at the Airport.

As used in this Agreement, the term "persons employed at the Airport" shall mean and include persons employed by the Commission or by any lessee or permittee of the Commission.

As of May 21, 2002, the Fund totals \$416,312. The Fund will be used for the above purpose until June 30, 2003. The Commission will make no further payments into the Fund.

2. **Payments to Palcare.**

A. **Operating Costs.** Each month, monies in the Fund will pay for the actual direct operating costs of Palcare using either method (1) or (2), whichever results in the lesser amount. For both methods (1) and (2) the Commission payment will be reduced by the amount of fees paid by persons employed at Airport.

- (1) The Fund will pay for one-half of the childcare slots reserved monthly for use by persons employed at Airport. These slots shall be invoiced in the format shown below:

	<u>Cost of Each Slot</u>		<u>Slots Reserved for Airport Employees</u>		<u>Airport Employee Tuition</u>		<u>Commission Payment</u>
Infant	(Actual	X	Actual)	-	Actual Paid	=	Net Commission Payment
Toddlers	(Actual	X	Actual)	-	Actual Paid	=	Net Commission Payment
Pre-School	(Actual	X	<u>Actual)</u>	-	<u>Actual Paid</u>	=	<u>Net Commission Payment</u>
			Total		Actual Paid		Net Total

- (2) The Fund will pay for a total of 134 slots. These slots shall be invoiced in the format shown below:

	<u>Cost of Each Slot</u>		<u>Slots Reserved for Airport Employees</u>		<u>Airport Employee Tuition</u>		<u>Commission Payment</u>
Infant	(Actual	X	Actual)	-	Actual Paid	=	Net Commission Payment
Toddlers	(Actual	X	Actual)	-	Actual Paid	=	Net Commission Payment
Pre-School	(Actual	X	<u>Actual)</u>	-	<u>Actual Paid</u>	=	<u>Net Commission Payment</u>
			Total		Actual Paid		Net Total

- (3) **Emergency Childcare.** \$2,084 per month is available for emergency childcare slots to be used by persons employed at Airport not regularly enrolled at Palcare. The Fund payment will be reduced by the amount of fees paid by persons employed at the Airport for use of the emergency childcare slots.
- (4) The County will provide the Commission within 30 days of the end of each month, documentation of actual cost billed under methods (1) and (2) above. The Commission will advise the County as to the appropriate sum to be remitted to Palcare. The Commission reserves the right to make adjustments to amounts due to County if documentation of costs do not substantiate amounts billed.

(5) **Charges.**

The minimum charges to be paid by users shall be as follows:

	<u>For Childcare of 21 Full Days Monthly (9 hours per day)</u>		
	<u>Hourly Rate</u>	<u>Daily Rate</u>	<u>Monthly Rate</u>
Infant	\$4.06	\$36.52	\$767
Toddler	\$3.50	\$31.48	\$661
Pre-school	\$3.15	\$28.38	\$596

	<u>For Childcare of 13 Full Days Monthly (9 hours per day)</u>		
	<u>Hourly Rate</u>	<u>Daily Rate</u>	<u>Monthly Rate</u>
Infant	\$4.84	\$43.54	\$566
Toddler	\$4.23	\$38.08	\$495
Pre-school	\$3.85	\$34.61	\$450

B. **Definitions of Terms in this Section.**

"Direct Operating Cost" is defined as the total cost of operations excluding depreciation and amortization of construction and renovations but including costs of equipment purchases which costs \$1,000 or less or have a useful life of less than three years. County will require Palcare to not exceed their annual operating budget which has been approved by the Commission.

"Slot" is defined as a schedule of time created and reserved and staffed to care for One Full Time Equivalent Child.

"Full Time Equivalent Child" is defined as a child receiving childcare services at least 9 hours per day, 21 days per month.

"Slot Reserved for Airport Employees" is defined as a reservation based on the number of full time equivalent children of persons employed at Airport to be served per month, and not assigned to children of persons not employed at Airport.

C. **Limitation on Payments to Palcare.**

Monthly payments to Palcare from the Fund shall be specified by the County based upon the Commission's advice as to the appropriate sum; provided, however, that no monthly payment shall ever exceed \$30,000.

3. **Budgetary and Financial Reports.**

Commission, at its own expense and upon reasonable notice, shall have the right to inspect the books, records, and other data of the County and Palcare relating to the direct operating costs of Palcare. Within six (6) months of the end of each fiscal year, the County shall provide the Commission with a copy of an audit report of the direct operating costs of Palcare and the allocation of such costs to the Airport.

4. **Commencement and Termination of Fund Payments; Refund to Commission**

The obligation to pay for a portion of the direct monthly operating costs of Palcare from the Fund, as specified in Section 2, not to exceed \$30,000 per month, also as specified in Section 2, shall commence on July 1, 2002, and terminate on June 30, 2003. Any monies remaining in the Fund upon termination of the Agreement shall be returned to the Commission within sixty (60) days.

5. **Term of the Agreement.**

This Agreement shall become effective July 1, 2002 and shall terminate on June 30, 2003.

6. **Compliance with Laws.**

The County will require Palcare at all times comply with all laws applicable to the operation of a childcare facility.

7. **Hold Harmless.**

County shall require Palcare to defend, indemnify, and hold harmless City, including its officers, employees and agents from any and all damages, claims, demands, obligations, suits, judgments, penalties, causes of action, losses or liabilities at any time received, incurred or accrued by City as a result of or arising out of the acts, omissions, use, or operations of Palcare at the Building.

If either party to this Agreement receives a claim, demand, suit, or judgment for which the City is entitled to the benefits of the preceding paragraph, the party receiving such claim, demand, suit or judgment shall promptly notify the other party.

8. **Commission Access to Records.**

In its Agreement with Palcare at the Building, County shall require that (a) Palcare maintains books and records showing all expenses incurred and fees received and (b) Commission shall have the right, at its own expense and upon reasonable notice, to inspect and audit such books and records.

9. **Notices and Communications.**

Any notice, request, demand or other communication required or permitted hereunder shall be deemed to be properly given when deposited in the United States mail, postage prepaid, addressed:

- 1) In the case of County, to:

County Manager
County of San Mateo
400 County Center
Redwood City, CA 94063

or to such person or address as County may, from time to time furnish to Commission.

- 2) In the case of Commission or City, to:

Airport Director
Administration Offices, 5th Floor
International Terminal
San Francisco International Airport
P.O. Box 8097
San Francisco, CA 94128

10. **Insurance.**

A. Without in any way limiting County liability pursuant to Section 11 "Hold Harmless," of this Agreement, County will require Palcare to maintain in force, during the full term of this Agreement, insurance in the following amounts and coverages:

- (1) Workers' Compensation with Employer's Liability limits not less than \$1,000,000 each accident.
- (2) Comprehensive General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Commercial Liability, Personal Injury, Products, and Completed Operations.
- (3) Comprehensive Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned and Non-owned and hired auto coverage, as applicable.
- (4) Excess Liability Insurance with limits not less than \$2,000,000 each occurrence Umbrella Form.

B. Comprehensive General Liability and Comprehensive Automobile Liability and Excess Liability Insurance policies shall be endorsed to provide the following

- (1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.
- (2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of the contract, and that insurance applies separately to each insured against whom claim is made or suit is brought.

C. All policies shall be endorsed to provide:

Thirty (30) days advance written notice to City of cancellations, non-renewal or reduction in coverage, mailed to the following addresses:

San Francisco International Airport
Financial Services
P.O. Box 8097
San Francisco, CA 94128

and

Controller
City and County of San Francisco
City Hall, Room 109
San Francisco, CA 94102-4694

- D. Should any of the required insurance be provided under a claims-made form, Palcare shall maintain such coverage continuously throughout the term of this contract and without lapse, for a period of three years beyond the contract expiration, to the effect that, should occurrences during the term give rise to claims made after expiration of the contract, such claims shall be covered by such claims-made policies.
- E. Should any of the required insurance be provided under a form of coverage that included a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.
- F. Certificates of insurance, in form and with insurers satisfactory to City evidencing all coverage above shall be furnished to City before commencing any operations under this contract, with complete copies of policies promptly upon City request.
- G. Approval of the insurance by City shall not relieve or decrease the liability of Palcare hereunder.

- H. The Agreement shall terminate immediately, without notice to County, upon any lapse of required insurance coverage.
- I. In the performance of this Agreement, County agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with County, in any of County's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social or other establishments or organizations operated by County.

IN WITNESS WHEREOF, County and Commission have caused this Agreement to be executed by their duly authorized representatives on the dates as shown below:

COUNTY OF SAN MATEO

Date: _____

BY: _____
President, Board of Supervisors
County of San Mateo
State of California

ATTEST:

Clerk of said Board

CITY AND COUNTY OF SAN FRANCISCO
AIRPORT COMMISSION

Date: _____

BY: _____
Airport Director

APPROVED AS TO FORM:

AUTHORIZED BY AIRPORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

DENNIS J. HERRERA
City Attorney

Resolution:

Adopted:

BY: _____
Deputy City Attorney

ATTEST: _____

Certificate of Delivery
(Government Code Section 25103)

I certify that a copy of the original document filed in the Office of the Clerk of the Board of Supervisors of San Mateo County has been delivered to the President of the Board of Supervisors.

Clerk of the Board of Supervisors

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO
AND PALCARE GUARANTEEING
REVENUE FOR CHILDCARE FACILITIES**

THIS AGREEMENT IS between the COUNTY OF SAN MATEO (“County”), a political subdivision of the State of California, and PALCARE (“Palcare”), a non-profit corporation organized under California law.

RECITALS

1. On May 12, 1998, County entered into an agreement for the operation of a child care facility on County owned property at 945 California Avenue, Burlingame, which agreement was amended on December 7, 1999.
2. On April 14, 1998, County entered into an agreement with the City and County of San Francisco (“City”) by and through its Airports Commission (“Commission”) in which the Commission agreed to share in the cost of renovations to the building and guaranteed that it would pay for one half of the available child care slots to be provided at the 945 California Avenue site, which agreement was amended on December 7, 1999.
3. Due to the unforeseen budgetary constraints and additional safety and security obligations arising from September 11 and its aftermath, the Commission is unable to continue its previous level of financial support for Palcare’s childcare services.
4. Nonetheless, the Commission wishes that funds already provided to the County under previous agreements continue to be used for Palcare’s services until June 30, 2003.
5. The County and Commission are entering into an agreement to provide that funds previously provided to Palcare for future renovation costs may be used to pay for Palcare’s services.

6. County and Palcare desire to enter into a new agreement, replacing the Agreement dated on May 12, 1998, as amended, to reflect the new arrangement.

THEREFORE, THE COUNTY AND PALCARE AGREE as follows:

1. The Fund

Palcare shall maintain a fund known as the Palcare Fund ("the Fund") into which Palcare shall deposit all remaining funds paid to Palcare in support of childcare in accordance with previous agreements between the parties for the benefit of persons employed at the Airport.

As used in this Agreement, the term "persons employed at the Airport" shall mean and include persons employed by the Commission or by any lessee or permittee of the Commission.

As of May 21, 2002, the Fund totals \$416,312. The Fund will be used by Palcare for the purposes specified in this Agreement until June 30, 2003. The Commission will make no further payments into the Fund.

2. Payments to Palcare

A. Operating Costs - Each month, Palcare may deduct from the Fund the amount that will pay for the actual direct operating costs of Palcare using either method (1) or (2), whichever results in the lesser amount. For both methods (1) and (2) the payment from the Fund will be reduced by the amount of fees paid by parents employed at the Airport.

(1) An amount may be deducted from the Fund to pay for one-half of the child care slots reserved monthly for use by persons employed at the Airport. These slots shall be invoiced in the format shown below.

	Cost of	Slots Reserved	Airport	Airports
	Each Slot	for Airport	Tuition	Commission
		Employees		Payment
Infants	(Actual X Actual)	-	Actual Paid	= Net Airport Payment
Toddlers	(Actual X Actual)	-	Actual Paid	= Net Airport Payment

Pre-School	(Actual	X	<u>Actual</u>	-	<u>Actual Paid</u>	=	Net Airport Payment
			Total		Actual Paid		Net Total

(2) An amount may be deducted from the Fund to pay for a total of 134 slots.

These slots shall be invoiced in the format shown below.

	Cost of	Slots Reserved	for Airport	Airport	Airports	Commission
	<u>Each Slot</u>	<u>Employees</u>	<u>Tuition</u>	<u>Payment</u>		
Infants	(Actual	X	Actual)	-	Actual Paid	= Net Airport Payment
Toddlers	(Actual	X	Actual)	-	Actual Paid	= Net Airport Payment
Pre-School	(Actual	X	<u>Actual</u>)	-	<u>Actual Paid</u>	= <u>Net Airport Payment</u>
			Total		Actual Paid	Net Total

(3) Emergency Child Care - \$2,084 per month for emergency child care slots

to be used by persons employed at the San Francisco International Airport not regularly enrolled at Palcare. The Commission payment will be reduced by the amount of fees paid by persons employed at the San Francisco International Airport for use of the emergency child care slots.

(4) The County will provide, within 30 days of the end of each calendar month, documentation of actual cost billed under methods (1) and (2) above.

Commission will advise the County, which will in turn advise Palcare, as to the appropriate sum which may be deducted by Palcare. The Commission reserves the right to make adjustments to amounts that may be deducted from the Fund to San Mateo County if documentation of costs do not substantiate amounts billed.

B. Definitions of terms in this Section:

“Direct Operating Cost” is defined as the total cost of operations excluding depreciation, amortization of start-up costs and amortization of construction and renovation but including costs of equipment purchases which cost \$1000 or less or have a useful life of less than three years. Palcare will not exceed their annual operating budget which has been reviewed by the Commission.

“Slot” is defined as a schedule of time created and reserved and staffed to care for One Full Time Equivalent Child.

“Full Time Equivalent Child” is defined as a child receiving child care services at least 9 hours per day, 21 days per month.

“Slot Reserved for Airport Employee” is defined as a reservation based on the number of full time equivalent children of Airport employees to be served per month, and not assigned to children on non-Airport employees.

3. Charges

The minimum charges to be paid by users shall be as follows:

	<u>For Child Care of 21 Full Days Monthly (9 hours per day)</u>		
	<u>Hourly Rate</u>	<u>Daily Rate</u>	<u>Monthly Rate</u>
Infant	\$4.06	\$36.52	\$767
Toddler	\$3.50	\$31.48	\$661
Pre-school	\$3.15	\$28.38	\$596

	<u>For Child Care of 13 Full Days Monthly (9 hours per day)</u>		
	<u>Hourly Rate</u>	<u>Daily Rate</u>	<u>Month Rate</u>
Infant	\$4.84	\$43.54	\$566
Toddler	\$4.23	\$38.08	\$495
Pre-school	\$3.85	\$34.61	\$450

4. Limitation on County Payments to Palcare

The amount which Palcare may deduct from the Fund shall be specified by County based on Commission’s advice as to the appropriate sum; provided, however, that no monthly payment shall ever exceed \$30,000.

5. Budgetary and Financial Statement Reports and Inspection Reports

County and Commission, at their own expense and upon reasonable notice, shall have the right to inspect the books, records, and other data of Palcare relating to the direct operating costs of Palcare. Within six (6) months of the end of each fiscal year, Palcare shall provide County and Commission with a copy of Palcare's annual outside audit report which shall include direct operating costs of Palcare and allocation of such costs to the Airport.

6. Commencement and Termination of Payments by Airport

The obligation to pay for a portion of the direct operating costs of Palcare from the Fund as specified in Section 2, not to exceed \$30,000 per month as specified on Section 4, shall commence on July 1, 2002, and terminate on June 30, 2003. Any monies remaining in the Fund upon termination of the Agreement shall be returned to the Commission within sixty (60) days.

7. Term of Agreement

This Agreement shall become effective July 1, 2002 and shall terminate on June 30, 2003.

8. Relationship of Parties

It is expressly understood that this is an agreement between two (2) independent contractors and that no agency, employee, partnership, joint venture or other relationship is established by this Agreement.

9. Hold Harmless for County

Palcare shall indemnify and save harmless County, its officers, agents, employees and servants from all claims, suits or actions of every name, kind and description brought for, or on account of injuries to or death of any person, including Palcare, or damage to property of any kind whatsoever and to whomsoever belonging, including, but not limited to any such claims arising out of the concurrent active or passive negligence of County, its officers, agents, or

employees and servants, resulting from the operation of the 24-hour child care facility by Palcare under this Agreement, provided that this shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Palcare to indemnify and save harmless, as set forth herein, shall include the duty to defend as set forth in section 2778 of the California Civil Code.

10. Hold Harmless for City and Commission

Palcare shall defend, indemnify, and hold harmless the City and County of San Francisco and the Airports Commission, including their officers, employees, and agents, from any and all damages, claims, demands, obligations, suits, judgments, penalties, causes of action, losses or liabilities at any time received, incurred or accrued by City or Commission as a result of or arising out of the acts, omissions, or operations of Palcare at the Premises.

If Palcare receives a claim, demand, suit or judgment for which the City and County of San Francisco is entitled to the benefits of the preceding paragraph, Palcare shall promptly notify County or City and County.

11. County's Insurance Requirements

Palcare shall be required to secure and maintain insurance coverage sufficient to meet the requirements of County, as set forth herein.

A. General Requirements. Palcare shall not commence child care services under this Agreement until all insurance required under this section has been obtained and such insurance has been approved by County. Palcare shall furnish County with Certificates of Insurance evidencing the required coverage and there shall be a specific contractual liability endorsement extending Palcare's coverage to include the contractual liability assumed by Palcare pursuant to

this Agreement. These Certificates shall specify or be endorsed to provide that thirty (30) days notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

B. Liability Insurance. Palcare shall obtain at its own expense bodily injury, general and professional liability including child care, and property damage liability insurance in the sum of not less than FIVE MILLION DOLLARS (\$5,000,000) combined single limit bodily injury and property damages for each occurrence. Palcare shall also obtain at its own expense auto liability in the sum of not less than ONE MILLION DOLLARS (\$1,000,000) for each occurrence.

If this Agreement remains in effect more than three (3) years from the date this Agreement is first executed, County may, at its sole discretion, require an increase in the amount of liability insurance to the level then customary in similar County agreements by giving sixty (60) days notice to Palcare. Such a change in amounts shall be made by Palcare at the next renewal date of the liability policy. County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to County, its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if County, or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

C. Fire Legal Insurance. Palcare shall obtain and maintain, at its expense, fire legal insurance on the Premises with a limit of at least TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000). The policy shall be issued in the names of County and Palcare. The policy shall provide that any proceeds shall be payable to County.

D. Workers' Compensation and Employer Liability Insurance. Palcare shall have in effect during the entire life of this Agreement, Workers' Compensation and Employer Liability Insurance providing full statutory coverage. In signing this Agreement, Palcare makes the following certification, required by section 1861 of the California Labor Code:

I am aware; of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.

E. Changes to Coverage. In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled or the scope of the coverage is materially reduced, the County at its option, may, notwithstanding any other provision of this Agreement to the contrary, declare a material breach of this Agreement and suspend operation of the child day care center facility by Palcare effective on the date the required insurance coverage will be canceled or the amount or scope of the coverage is materially reduced unless Palcare provides written evidence to County that such coverage has not been diminished or canceled before such date.

12. City's Insurance Requirements

A. Palcare will maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

- (1) Worker's compensation, with Employers Liability limits not less than \$1,000,000 each accident.
- (2) Comprehensive General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and

Completed Operations.

(3) Comprehensive Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned and Non-owned and hired auto coverage, as applicable.

(4) Excess Liability insurance with limits not less than \$2,000,000 each occurrence Umbrella Form.

B. Comprehensive General Liability and Comprehensive Automobile Liability and Excess Liability Insurance policies shall be endorsed to provide the following:

(1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(2) That such policies are primary insurance to any other insurance available to the Additional Insured, with respect to any claims arising out of this contract, and that insurance applies separately to each insured against whom claim is made or suit is brought.

C. All policies shall be endorsed to provide:

Thirty (30) days in advance written notice to City of cancellation, non-renewal or reduction in coverage, mailed to the following addresses:

San Francisco International Airport
Financial Services
P. O. Box 8097
San Francisco, CA 94128

and

Controller
City and County of San Francisco
City Hall, Room 109

D. Should any of the required insurance be provided under a claims-made form, Palcare shall maintain such coverage continuously throughout the term of this contract and without lapse, for a period of three years beyond the contract expiration, to the effect that, should occurrences during the term give rise to claims made after expiration of the contract, such claims shall be covered by such claims-made policies.

E. Should any of the required insurance be provided under a form of coverage that included a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

F. Certificates of insurance, in form and with insurers satisfactory to City, evidencing all coverage above shall be furnished to City before commencing any operations under this contract, with complete copies of policies promptly upon City request.

G. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

H. This agreement shall terminate immediately, without notice to Contractor, upon any lapse of required insurance coverage.

13. Nondiscrimination

A. No person shall, on the grounds of race, color, creed, national origin, religious affiliation or non-affiliation, sex, sexual orientation, marital status, age (over forty (40)), disability, medical condition (including but not limited to AIDS, ARC, HIV positive diagnosis, or cancer), political affiliation or union membership be excluded from participation in, be denied the benefits of, or be subjected to discrimination under this Agreement.

B. Palcare shall insure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management relations, for all Palcare employees. Palcare's personnel policies shall be made available to County upon request.

C. Palcare shall assure compliance with section 504 of the Rehabilitation Act of 1973 by submitting a signed letter of assurance. Palcare shall be prepared to submit a self-evaluation and compliance plan to County upon request within one (1) year of the execution of this Agreement.

14. Records

Palcare shall maintain during the term of this Agreement, and shall preserve for a period of four (4) years after termination of this Agreement or until all audit findings for audits conducted by Palcare and/or County are resolved, whichever is later, books and records of all services rendered, operating costs and expenses incurred, as well as of all revenues received applicable to services rendered pursuant to this Agreement. Palcare agrees to provide to County, during normal business hours, and upon reasonable notice, access to and the right to examine, inspect and audit such records.

15: Possessory Interest Tax

Palcare recognizes and understands that it may be subject to a "possessory interest tax" that the County Assessor may impose on its interest, and any such tax would be the liability of and be paid solely by Palcare. Palcare agrees to pay promptly, when due, any possessory interest tax imposed on its interest in the Premises.

16. Personal Property Taxes

Palcare shall pay, or cause to be paid, before delinquency, any and all taxes levied or

assessed upon all Palcare's personal property located in the Premises and which become payable during the term hereof.

17. Destruction of Premises

If the Premises are totally or partially destroyed from any cause, rendering the Premises totally or partially unusable, County shall have the option of either terminating this agreement immediately or restoring the Premises to substantially the same condition as they were in immediately before destruction if such restoration can be made within sixty (60) days, provided that Palcare shall not be obligated to make the monthly payments required by Section 7 during the time that the Premises are unusable. Palcare shall not be entitled to any compensation or damages from County for loss of use of all or any part of the Premises or for Palcare's personal property or any inconvenience or annoyance occasioned by such damage or restoration.

18. Entry by County

County shall have the right to enter and inspect the Premises at any time. County shall give the Executive Director of Palcare or his or her on-site designee reasonable advance notice of such inspection when feasible. The County Manager will provide the Executive Director of Palcare with a list of persons designated to enter and inspect the premises in non-emergency situations. The County Manager shall have and retain a key for the purpose of making all such inspections.

19. Assignments and Subcontracts

A. This Agreement is not assignable in whole or in part without the written consent of County. Any assignment by Palcare without the written consent of County violates this Agreement and shall automatically terminate this Agreement.

B. Palcare shall not employ subcontractors or consultants to carry out any

responsibilities undertaken pursuant to this contract without the written consent of County.

C. Any assignee approved by County shall be subject to the same terms and conditions applicable to Palcare under this Agreement, and Palcare shall be liable for the assignee's, acts and/or omissions.

D. All agreements between Palcare and any assignee for services pursuant to this Agreement shall be in writing and shall be provided to County.

20. Alteration of Agreement

This Agreement is entire and contains all terms and conditions agreed upon by the parties. No alteration or variation shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement shall be binding on the parties hereto.

21. Compliance with Applicable Laws

All services to be performed by Palcare pursuant to this Agreement shall be performed in accordance with all applicable federal, state, county and municipal laws, ordinances, regulations, including but not limited to appropriate licensure and certification regulations.

22. Interpretation and Enforcement

A. Notices and Communications. Any notice, request, demand or other communication required or permitted hereunder shall be deemed to be properly given when deposited in the United States mail, postage prepaid, or when deposited with a public telegraph company for transmittal, charges prepaid, addressed:

1) In the case of County, to:

County Manager
County of San Mateo
400 County Government Center
Redwood City, CA 94063

or to such person or address as County may, from time to time furnish to Palcare.

2) In the case of Palcare, to:

Palcare
President of the Board
1838 El Camino Real, Suite 214
Burlingame, CA 94010

B. Controlling Law. The validity of this Agreement and of its terms of provisions, as well as the rights and duties of the parties hereunder, and interpretation and performance of this Agreement shall be governed by the laws of the State of California.

23. Mediation

Should any dispute arise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached, neither party shall be deemed the prevailing party for purposes of the settlement. Neither party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution.

24. Conflict of Interest

No officer, director, or employee of Palcare shall have any financial interest, direct or indirect, in Palcare or in any contract made by Palcare. Donations of work, material, or money for the operation of the child care facility shall not be considered a conflict of interest.

25. San Mateo County No Smoking Ordinance

Tenant is aware that the County has adopted an Ordinance (No. 03239) which prohibits smoking in all County facilities whether owned or leased. Tenant understands that said Ordinance authorizes County to treat the premises at 945 California Avenue as such a facility and to enforce the provisions contained in Ordinance No. 03239 on the premises, and Tenant agrees to enforce the provisions of Ordinance No. 03239 on the premises.

26. The Agreement between County and Palcare dated May 12, 1998, as amended on December 7, 1999, is hereby terminated, and shall be of no further force and effect.

COUNTY OF SAN MATEO

BY: _____
President, Board of Supervisors

Dated: _____

ATTEST:

Clerk of the Board of Supervisors

PALCARE

BY: *Rimonda Dillman*
Exec. Director

Dated: *July 17, 2002*

\\Common\shared\cco\CLIENT\MANAGER\5 palcare.wpd

AGREEMENT BETWEEN PALCARE AND
THE COUNTY OF SAN MATEO FOR OPERATION OF
CHILD CARE CENTER

THIS IS AN AGREEMENT between the COUNTY OF SAN MATEO ("County"), a political subdivision of the State of California, and PALCARE ("Palcare"), a non-profit corporation organized under California law.

RECITALS

1. On May 12, 1998, County entered into an agreement for the operation of a child care facility on County owned property at 945 California Avenue, Burlingame, which agreement was amended on December 7, 1999.
2. On April 14, 1998, County entered into an agreement with the City and County of San Francisco ("City") by and through its Airports Commission ("Commission") in which the Commission agreed to share in the cost of renovations to the building and guaranteed that it would pay for one half of the available child care slots to be provided at the 945 California Avenue site, which agreement was amended on December 7, 1999.
3. The parties to these two agreements now desire to modify their relationships as regards the payment for available child care slots and renovations.
4. Palcare and County desire to enter into a new agreement to reflect the modified relationships.

THEREFORE, COUNTY AND PALCARE AGREE as follows:

1. Operation of Child Care Center

County will set aside for Palcare the first and second floor of the building located at 945 California Avenue in Burlingame. Palcare will operate a 24-hour child care center on the first floor, second floor, and all outdoor areas necessary for operation of the center ("the

Premises"). Palcare will use its best efforts to obtain accreditation from the National Association for the Education of Young Children by meeting the National Academy of Early Childhood Program's accreditation criteria during the term of this Agreement. Palcare will operate the child care center in accordance with all applicable federal, state, county, and municipal laws, ordinances, and regulations. County and Palcare agree that this Agreement is an operating agreement and not a lease agreement, and no landlord-tenant relationship is being created by this Agreement.

2. License

Palcare shall obtain and maintain all necessary licenses for operation of a child day care facility, in accordance with state law, during the term of this Agreement. Palcare shall provide a copy of all required licenses to County. Palcare shall notify County of any modifications, forfeiture, denial, suspension, revocation (temporary or otherwise), failure to renew, or cancellation of any such license. If Palcare fails to comply with any provision of this Section, this Agreement shall terminate immediately. However, if the state temporarily suspends Palcare's license but allows Palcare to continue operation of the facility during the period of the temporary suspension, this Agreement shall not terminate immediately but County shall have the right to terminate the Agreement upon sixty (60) days notice as provided in Section 12.

3. Executive Director

Palcare shall, at all times during the term of this agreement, employ an executive director who will have responsibility for planning and operation of the child care facility.

4. Improvements

Palcare may construct improvements to the second floor of the Premises in accordance with plans and specifications to be developed by Palcare, and if it does so, shall

comply with the terms of this section. Palcare shall submit two copies of all plans and specifications to County for review and comment at the following stages: when schematic drawings are completed; completion of design development; and ninety-five percent (95%) completion of contract documents. County shall have final approval authority over all such plans and specifications. Such approval shall not be unreasonably withheld. County shall make reasonable efforts to respond to the submittal of plans and specifications within thirty (30) days of submittal. Palcare will provide at its own expense a construction manager to manage the construction of the improvements and coordinate construction activities with the County. County shall own all improvements upon termination of this Agreement. Palcare shall own all removable enhancements and furnishings provided by Palcare. Notwithstanding the above, the parties understand that any and all renovations must be conducted in compliance with all state and local laws, and agree to take any actions necessary to ensure compliance.

5. Maintenance Requirements

Except for major maintenance requirements, Palcare at its sole cost and expense and without cost to County shall maintain and preserve the Premises in good repair and working order and shall perform the functions of routine maintenance, repair and preservation of the Premises. County shall be responsible for major maintenance requirements which shall be limited to the following: roof repairs or replacements, heating, ventilation and air conditioning (HVAC) repair or replacement, repairs and resurfacing of fences and parking areas, and permanent playground surfaces, landscaping with the exception of the playground area, sprinkler systems, repairs to unexposed drainage systems, plumbing and electrical, building security system, structural repairs involving foundation and exterior walls and interior weight bearing walls. Palcare will be responsible for replacement of nonpermanent playground surfaces such as

grass, sand, or tan bark.

If Palcare notifies County of any major maintenance problem that endangers the health and safety of children on the Premises and that substantially interferes with the operation of the child care center, County will respond to Palcare and provide a plan for addressing the problem within forty-eight (48) hours. If the County does not respond and provide a plan within forty-eight (48) hours, Palcare shall be entitled to reduce its monthly payment under Section 7 by 1/30 (one-thirtieth) for each 24-hour period after the 48-hour required response time during which County does not respond. County is not required to repair the major maintenance problem within 48 hours, but only to respond and provide a plan.

6. Term

This Agreement shall commence on July 1, 2002, and shall terminate twenty (20) years from the commencement date, unless terminated earlier as provided in Section 9 of this Agreement. County and Palcare may negotiate an extension or renewal of this Agreement on or before the expiration of the term of this Agreement.

7. Payments to County

Palcare shall pay County a monthly amount calculated as follows: \$. 86 per square foot times the number of interior square feet available for use by Palcare on the Premises. Palcare will not be charged any rent for the second floor addition for six (6) months after Palcare actually begins use of the second floor for child care purposes. At the end of the six-month period, the County and Palcare will meet to assess the financial stability of Palcare with regard to the second floor and discuss the possibility of amendments to this Agreement. Palcare's obligation to make these monthly payments shall continue for the life of this Agreement. The monthly amount shall be increased annually, on July 1, 2003, and on July 1 of each year

thereafter, by the percentage increase in the Bay Area Consumer Price Index for the month of April, up to a maximum of five percent (5%). Payment shall be made within fifteen (15) days of the end of each calendar month. Notwithstanding the above, the parties will enter into good faith negotiations no later than 120 days prior to the fifth anniversary of this Agreement for the purpose of establishing a new monthly amount based on fair rental values for the property and the use of the second floor. The base rent shall be paid to County in advance, without prior demand and without any deduction, setoff or counterclaim whatsoever, in equal consecutive monthly payments on or before the first day of the term and on or before the first day of each month thereafter.

Palcare shall pay for all utilities and services provided to the Premises, including sewer, water, electrical power, gas, telephone, and light.

8. Budgetary and Financial Statement Reports and Inspection Reports

County, at its own expense and upon reasonable notice, shall have the right to inspect the books, records, and other data of Palcare relating to the renovation of the Building and the direct operating costs of Palcare. Within six (6) months of the end of each fiscal year, Palcare shall provide County with a copy of Palcare's annual outside audit report which shall include direct operating costs of Palcare. Palcare shall provide an audit report to County on the renovation project within six (6) months of completion of the project. Palcare shall also make immediately available to County for review the file of all reports made by Palcare's licensing agency and any other regulatory body.

9. Termination

Notwithstanding any other provision of this Agreement, County may withdraw permission to construct second floor addition in the event construction of a second floor in

accordance with Section 4 of this Agreement does not commence on or before five (5) years from the effective date of this Agreement, upon one hundred-eighty (180) days written notice to Palcare. County may terminate this Agreement immediately if Palcare loses its child care facility license subject to the provisions of Section 2 or if Palcare's insurance coverage is canceled or the amount or scope of coverage is materially reduced without prior consent of the County.

10. Relationship of Parties

It is expressly understood that this is an agreement between two (2) independent contractors and that no agency, employee, partnership, joint venture or other relationship is established by this Agreement.

11. Hold Harmless for County

Palcare shall indemnify and save harmless County, its officers, agents, employees and servants from all claims, suits or actions of every name, kind and description brought for, or on account of injuries to or death of any person, including Palcare, or damage to property of any kind whatsoever and to whomsoever belonging, including, but not limited to any such claims arising out of the concurrent active or passive negligence of County, its officers, agents, or employees and servants, resulting from the operation of the 24-hour child care facility by Palcare under this Agreement, provided that this shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Palcare to indemnify and save harmless, as set forth herein, shall include the duty to defend as set forth in section 2778 of the California Civil Code.

12. Insurance

Palcare shall be required to secure and maintain insurance coverage sufficient to

meet the requirements of County, as set forth herein.

A. General Requirements. Palcare shall not commence child care services under this Agreement until all insurance required under this section has been obtained and such insurance has been approved by County. Palcare shall furnish County with Certificates of Insurance evidencing the required coverage and there shall be a specific contractual liability endorsement extending Palcare's coverage to include the contractual liability assumed by Palcare pursuant to this Agreement. These Certificates shall specify or be endorsed to provide that thirty (30) days notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

B. Liability Insurance. Palcare shall obtain at its own expense bodily injury, general and professional liability including child care, and property damage liability insurance in the sum of not less than FIVE MILLION DOLLARS (\$5,000,000) combined single limit bodily injury and property damages for each occurrence. Palcare shall also obtain at its own expense auto liability in the sum of not less than ONE MILLION DOLLARS (\$1,000,000) for each occurrence.

If this Agreement remains in effect more than three (3) years from the date this Agreement is first executed, County may, at its sole discretion, require an increase in the amount of liability insurance to the level then customary in similar County agreements by giving sixty (60) days notice to Palcare. Such a change in amounts shall be made by Palcare at the next renewal date of the liability policy. County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to County, its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if County,

or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

C. Fire Legal Insurance. Palcare shall obtain and maintain, at its expense, fire legal insurance on the Premises with a limit of at least TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000). The policy shall be issued in the names of County and Palcare. The policy shall provide that any proceeds shall be payable to County.

D. Workers' Compensation and Employer Liability Insurance. Palcare shall have in effect during the entire life of this Agreement, Workers' Compensation and Employer Liability Insurance providing full statutory coverage. In signing this Agreement, Palcare makes the following certification, required by section 1861 of the California Labor Code:

I am aware; of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.

E. Changes to Coverage. In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled or the scope of the coverage is materially reduced, the County at its option, may, notwithstanding any other provision of this Agreement to the contrary, declare a material breach of this Agreement and suspend operation of the child day care center facility by Palcare effective on the date the required insurance coverage will be canceled or the amount or scope of the coverage is materially reduced unless Palcare provides written evidence to County that such coverage has not been diminished or canceled before such date.

13. Nondiscrimination

A. No person shall, on the grounds of race, color, creed, national origin,

religious affiliation or non-affiliation, sex, sexual orientation, marital status, age (over forty (40)), disability, medical condition (including but not limited to AIDS, ARC, HIV positive diagnosis, or cancer), political affiliation or union membership be excluded from participation in, be denied the benefits of, or be subjected to discrimination under this Agreement.

B. Palcare shall insure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management relations, for all Palcare employees. Palcare's personnel policies shall be made available to County upon request.

C. Palcare shall assure compliance with section 504 of the Rehabilitation Act of 1973 by submitting a signed letter of assurance. Palcare shall be prepared to submit a self-evaluation and compliance plan to County upon request within one (1) year of the execution of this Agreement.

14. Records

Palcare shall maintain during the term of this Agreement, and shall preserve for a period of four (4) years after termination of this Agreement or until all audit findings for audits conducted by Palcare and/or County are resolved, whichever is later, books and records of all services rendered, operating costs and expenses incurred, as well as of all revenues received applicable to services rendered pursuant to this Agreement. Palcare agrees to provide to County, during normal business hours, and upon reasonable notice, access to and the right to examine, inspect and audit such records.

15. Possessory Interest Tax

Palcare recognizes and understands that it may be subject to a "possessory interest tax" that the County Assessor may impose on its interest, and any such tax would be the liability

of and be paid solely by Palcare. Palcare agrees to pay promptly, when due, any possessory interest tax imposed on its interest in the Premises.

16. Personal Property Taxes

Palcare shall pay, or cause to be paid, before delinquency, any and all taxes levied or assessed upon all Palcare's personal property located in the Premises and which become payable during the term hereof.

17. Destruction of Premises

If the Premises are totally or partially destroyed from any cause, rendering the Premises totally or partially unusable, County shall have the option of either terminating this agreement immediately or restoring the Premises to substantially the same condition as they were in immediately before destruction if such restoration can be made within sixty (60) days, provided that Palcare shall not be obligated to make the monthly payments required by Section 7 during the time that the Premises are unusable. Palcare shall not be entitled to any compensation or damages from County for loss of use of all or any part of the Premises or for Palcare's personal property or any inconvenience or annoyance occasioned by such damage or restoration.

18. Entry by County

County shall have the right to enter and inspect the Premises at any time. County shall give the Executive Director of Palcare or his or her on-site designee reasonable advance notice of such inspection when feasible. The County Manager will provide the Executive Director of Palcare with a list of persons designated to enter and inspect the premises in non-emergency situations. The County Manager shall have and retain a key for the purpose of making all such inspections.

19. Assignments and Subcontracts

A. This Agreement is not assignable in whole or in part without the written consent of County. Any assignment by Palcare without the written consent of County violates this Agreement and shall automatically terminate this Agreement.

B. Palcare shall not employ subcontractors or consultants to carry out any responsibilities undertaken pursuant to this contract without the written consent of County.

C. Any assignee approved by County shall be subject to the same terms and conditions applicable to Palcare under this Agreement, and Palcare shall be liable for the assignee's, acts and/or omissions.

D. All agreements between Palcare and any assignee for services pursuant to this Agreement shall be in writing and shall be provided to County.

20. Alteration of Agreement

This Agreement is entire and contains all terms and conditions agreed upon by the parties. No alteration or variation shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement shall be binding on the parties hereto.

21. Compliance with Applicable Laws

All services to be performed by Palcare pursuant to this Agreement shall be performed in accordance with all applicable federal, state, county and municipal laws, ordinances, regulations, including but not limited to appropriate licensure and certification regulations.

22. Interpretation and Enforcement

A. Notices and Communications. Any notice, request, demand or other communication required or permitted hereunder shall be deemed to be properly given when

deposited in the United States mail, postage prepaid, or when deposited with a public telegraph company for transmittal, charges prepaid, addressed:

1) In the case of County, to:

County Manager
County of San Mateo
400 County Government Center
Redwood City, CA 94063

or to such person or address as County may, from time to time furnish to Palcare.

2) In the case of Palcare, to:

Palcare
President of the Board
1838 El Camino Real, Suite 214
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B. Controlling Law. The validity of this Agreement and of its terms of provisions, as well as the rights and duties of the parties hereunder, and interpretation and performance of this Agreement shall be governed by the laws of the State of California.

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money for the operation of the child care facility shall not be considered a conflict of interest.

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COUNTY OF SAN MATEO

BY: _____
President, Board of Supervisors

Dated: _____

ATTEST:

Clerk of the Board of Supervisors

PALCARE

BY: Rimada Delmar
Exec. Director

Dated: July 17, 2002