

**AGREEMENT BETWEEN MARIN DAY SCHOOLS  
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 Marin Day Schools ("MDS"), a non-profit corporation organized under California law.

RECITALS

1. The County built a childcare center for County employees in 1993.
2. The County desires the services of a child care contractor to operate the childcare center.
3. MDS is in the business of providing childcare services and has provided since 1993 such services for the County in accordance with the terms and conditions of its previous Agreements with the County.
4. MDS is willing to continue providing services in accordance with the terms and conditions of this Agreement.

THEREFORE, COUNTY AND MDS AGREE as follows:

I. Child Care Services

A. MDS shall maintain a high quality, full-service child care center (the "Center") for children newborn through six-year-olds in compliance with all applicable local, state, and federal legal requirements. Budgets will be reviewed and approved annually by the County Manager for the following calendar year.

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B. The Center will be located at 403 Winslow Street, Redwood City, California.

C. The Center will provide childcare for permanent employees (full-time and part-time) of San Mateo County. A permanent employee is any employee whose position is defined in the County's Salary Ordinance, which the County shall deliver to MDS from time to time. MDS will submit rosters to San Mateo County of enrolled families to verify eligibility from time to time. The total number of full-time equivalent children enrolled at the Center will not exceed 92 children (not including drop-in children). If the Center has less than 92 full-time equivalent children, the County and MDS may make the Center available for other children, provided that the County and MDS may arrange a mutually agreeable alternative if they so desire.

D. The Center will be open Monday through Friday from 7:00 a.m. to 6:30 p.m. The Center will follow the yearly holiday calendar for the employees of San Mateo and may be closed for three days annually for in-service training to be mutually agreed upon 180 days prior to the training.

E. MDS will maintain at all times the following maximum ratios and group sizes (not including drop-in children):

	<u>Age Group</u>	<u>No. of Children</u>	<u>Staff</u>	<u>Ratio</u>
Rm. #1	0-1	10	3	1:3.5
Rm. #2	1-2	8	2	1:4
Rm. #3	1-2	8	2	1:4
Rm. #4	2 year olds	12	2	1:6
Rm. #5	2 year olds	16	2	1:8
Rm. #6	3-5 year olds	18	2	1:9

Any change in staff / child ratios shall be approved by the County.

F. The Center will provide drop-in care for employees' children not regularly enrolled in the Center. All children wishing to use drop in care must have a complete admissions file including SDSS forms on file at the Center. Once families have completed the required forms, they will be eligible to use the center for drop-in care on a space available basis

G. MDS will operate the Center in compliance with state licensing requirements at all times but MDS shall not be responsible for compliance of the structural and physical condition of the Center with state licensing requirements.

H. MDS will charge tuition to the parents of the children who are enrolled at the Center. Changes to tuitions are subject to the County Manager's approval, which will not be unreasonably withheld or delayed if such changes are justified. MDS will charge a \$100 registration fee for applicants.

I. MDS shall establish and administer a scholarship fund for San Mateo County employee's families that is mutually agreeable between San Mateo County and MDS. MDS shall apply \$65,000 of the \$115,000 County cash subsidy to scholarships. MDS may use the remaining \$50,000 of the County cash subsidy for operational costs. Any unused scholarship funds shall be held in reserve for future years in the CareShares Trust Fund (Fund #03522). Any scholarships that exceed the \$65,000 of County cash subsidy will be paid directly from the CareShares Trust Fund. MDS administrators will work collaboratively with County representatives on annual outreach to eligible scholarship recipients. MDS will provide annual reports of scholarship distribution to county representatives. The County will be invoiced monthly for scholarship discounts issued.

J. MDS shall be responsible for recruiting, interviewing, training and employing personnel to staff the Center. All MDS employees at the Center will meet all necessary certification requirements established by the California State Department of Social Services.

K. MDS shall provide the children with nutritious morning and afternoon snacks; provided, however, that parents shall have the option to provide the snacks for their children. Parents are to provide all other meals for their children.

L. Parents are to provide their children's diapers (cloth or disposable), ointment, wipes and related paraphernalia and MDS shall not be responsible therefore.

M. MDS shall work diligently to maintain National Association for the Education of Young Children (NAEYC) accreditation throughout the term of the contract and shall maintain the program in accordance with its standards.

N. MDS shall be responsible for and provide cleaning and janitorial services in accordance with the level previously provided by the County, including but not limited to daily cleaning of restrooms, fixtures, waste and diaper receptacles, and floors, and semi-annual (or by tenant request) carpet extraction and strip/wax/buff of main hallway hard floors, and annual window washing. MDS shall also be responsible for landscaping of surrounding grounds in accordance with the level previously maintained by the County. MDS shall provide payment of all utilities, including telephone usage. Unanticipated, major expenses for services may be paid from the County's Care\$hares Trust Fund upon approval by County Manager.

O. MDS shall use its reasonable efforts to establish a parent partnership group when specific needs arise that may require parent input. MDS shall communicate regularly with all families enrolled in the Center about general center activities and specifically about the development and progress of each child.

P. MDS shall make reasonable efforts to conduct periodic Brown Bag  
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Lunch seminars open to all County employees on a variety of broad-range child development and parenting topics.

Q. MDS's employees serving as Director and Assistant Director(s) for the Center are subject to County approval, which approval shall not be unreasonably withheld or delayed.

R. MDS will operate the Center in accordance with Mission Statement, Exhibit C, at all times.

S. MDS shall use the Center exclusively for child care and child-related activities and shall not use the Center for any other purpose without the prior consent of the County.

T. MDS shall not make or suffer to be made any alterations, additions or improvements to or of the Center or any part thereof without the written consent of County.

U. MDS will ensure that any and all materials provided by the County, including but not limited to all furniture and fixtures as well as the building itself, will be maintained in the same condition as they are provided by the County, normal wear and tear excepting.

V. MDS shall enforce a policy that forbids the use of all smoking materials with the Center in compliance with applicable law.

W. MDS, shall provide on-going staff development and training.

X. MDS shall meet with and provide financial reports to the County. The financial reports will include quarterly income / expense statements and a year-end financial report.

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## II. County Responsibilities

A. County at its sole cost and expense will provide the building located at 403 Winslow Street in Redwood City to be used as a state licensed infant / preschool child care center. The County will be responsible for the structural and physical condition of the center and will hold MDS harmless for all duties and responsibilities related to the structural and physical condition of the Center.

B. County at its sole cost and expense will provide age appropriate fixtures, furniture and outside play structures including replacement due to age, breakdown or deterioration based on its assessment. MDS will submit annual projections of capital needs and will work with County representatives to schedule purchases and projects to meet center needs and county budgeting cycles.

C. County will ensure the Center has complete outdoor yards, including appropriate surfacing, that are fenced and meet the licensing requirements of the California State Department of Social Services. MDS will submit annual projections of outdoor maintenance requirements and will work with County representatives to schedule purchases and projects to meet center needs and county budgeting cycles.

D. County will provide ongoing building maintenance including painting of the facilities, garbage removal, repair and replacement of furniture, floor coverings, fixtures and other equipment. MDS will submit annual projections of maintenance requirements and will work with County representatives to schedule purchases and projects to meet center needs and county budgeting cycles.

E. The County will underwrite the operating cost of the Center by \$50,000 annually as part of the \$115,000 County cash subsidy referenced in Section I.I. These funds will be used to reduce the operational costs of the Center. The County will be invoiced monthly.

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### III. Term

The term of this Agreement shall be for a period of five years commencing September 1, 2007 and ending on August 31, 2012 with the option by the County to renew the agreement for an additional five years under the same terms and conditions as the initial term.

### IV. Termination

A. Cause. The County or MDS may terminate this Agreement for cause 30 days after delivery of written notice to the other party specifying the breach. For the County's purposes, cause shall mean (i) breach of the Agreement, (ii) conviction of any member of the MDS staff for criminal conduct of any kind of offense related to or involving infant care or child care centers and/or services or conviction of any member of the MDS staff of any of the offenses listed in Education Code Section 44010. For MDS's purpose, cause shall mean breach of this Agreement. If there is a breach and it is fixed within 20 days then the contract shall remain intact.

B. MDS has the right to close down due to force majeure or catastrophic event with the consent of the County, which shall not be unreasonably withheld or delayed.

### V. 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.

### VI. Hold Harmless

MDS shall indemnify, defend and hold harmless County, its officers, agents, employees and servants from and against any and all claims, suits or actions, liability, loss, damages or injury of every name, kind and description arising out of the alleged negligence or intentional actions of MDS or its agents, representatives and employees as specified by this Agreement.

County shall indemnify, defend and hold harmless MDS, its officers, agents, employees and shareholders from and against any and all claims, suit or actions, liability, loss, damages or injury of every name, kind and description arising out of the alleged negligence or the intentional acts of County or its agents, representatives and employees as specified by this Agreement.

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

## VII. Insurance

A. General Requirements. MDS 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. MDS shall furnish County with Certificates of Insurance evidencing the required coverage and there shall be a specific contractual liability endorsement extending MDS's coverage to include the contractual liability assumed by MDS 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. MDS 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 THREE MILLION DOLLARS (\$3,000,000) combined single limit bodily injury and property damages for each occurrence. MDS shall also obtain at its own expense auto

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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 was 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 MDS. 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. MDS shall obtain and maintain, at its expense, find legal insurance on the Premises with a limit of at least THREE HUNDRED THOUSAND DOLLARS (\$300,000). The policy shall be issued in the names of County and MDS. The policy shall provide that any proceeds shall be payable to County.

D. Workers' Compensation and Employer Liability Insurance. MDS 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, MDS makes the following certification, required by Section 1861 of the California Labor Code:

I am aware of the provisions of section 3700 of the California Labor Code which requires 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

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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 MDS effective on the date the required insurance coverage will be canceled or the amount or scope of the coverage is materially reduced unless MDS provides written evidence to County that such coverage has not been diminished or canceled before such date.

### XIII. Nondiscrimination

A. No person shall be excluded from participation in, denied benefits of, or be subject to discrimination under this Agreement on the basis of their race, color, religion, national origin, age, sex, sexual orientation, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status as required by law. Contractor shall ensure full compliance with federal, state and local laws, directives and executive orders regarding non-discrimination for all employees and Subcontractors under this Agreement.

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to: i) termination of this Agreement; ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years; iii) liquidated damages of \$2,500 per violation; iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this paragraph, the County Manager or his representative, shall have the authority to: i) examine Contractor's employment records with respect to compliance with this paragraph; ii) set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the

Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 60 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint and a description of the circumstance. Contractor shall provide County with a copy of its response to the Complaint when filed.

B. MDS shall assure compliance with section 504 of the Rehabilitation Act of 1973 by submitting a signed letter of assurance. MDS 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.

#### IX. Records

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

#### X. Equal Benefits

With respect to the provision of employee benefits, MDS shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.

#### XI. Entry by County

County shall have the right to enter and inspect the Center at any time.

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County shall give MDS reasonable advance notice of such inspection when feasible. County shall have and retain a key for the purpose of making all such inspections. This right to enter the Center without notice does not extend to the right to inspect and review MDS's records.

XII. Assignments and Subcontracts

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

B. MDS shall not employ subcontractors or consultants to carry out any primary 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 MDS under this Agreement, and MDS shall be liable for the assignee's, acts and/or omissions.

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

XIII. Alteration of Agreement

This Agreement is the entire Agreement between the parties relating to the subject matter herein and all other agreements are superseded by this Agreement. No alteration or variation shall be valid unless made in writing and signed by the parties hereto.

XIV. Compliance with Applicable Laws

A. All services to be performed by MDS pursuant to this Agreement  
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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.

B. MDS shall conform with all National Labor Relations Board statutes, rules and regulations.

XV. Interpretation and Enforcement

A. County Approval. The County Manager is the designated authorizing authority for all sections of this Agreement requiring approval by the County.

B. Notices and Communications. Any notice, request, demand or other communication required or permitted hereunder shall be deemed to be properly given when delivered in person, or deposited in the United States mail, return receipt requested, 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 MDS.

2) In the case of MDS, to:

Marin Day Schools  
100 Shoreline Hwy,  
Bldg. B, Suite 275  
Mill Valley, CA 94941

With a copy to:

Marin Day Schools  
200 Talcott Avenue South  
Watertown, MA 02453  
Attn: Chief Administrative Officer

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

C. 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.

XVI. 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.

XVII. Authority to Enter into Agreement

Marin Day Schools formally attests and agrees that its corporate board has reviewed and approved this Agreement and authorized its representative director to bind the Corporation by such representative's signature.

COUNTY OF SAN MATEO

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

President, Board of Supervisors

ATTEST:

\_\_\_\_\_  
Clerk of the Board of Supervisors

MARIN DAY SCHOOLS

By: Melinda Karter Perry

Dated: 4/17/07

**County of San Mateo  
Contractor's Declaration Form**

**I. CONTRACTOR INFORMATION**

Contractor Name:	Marin Day Schools	Phone:	415-331-7766
Contact Person:	Melinda Kanter-Levy	Fax:	415-331-7066
Address:	100 shoreline Hwy # B275 Mill Valley, CA 94941		

**II. EQUAL BENEFITS** (check one or more boxes)

*Contractors with contracts in excess of \$5,000 must treat spouses and domestic partners equally as to employee benefits.*

- ☒ Contractor complies with the County's Equal Benefits Ordinance by:
- ☒ offering equal benefits to employees with spouses and employees with domestic partners.
  - ☐ offering a cash equivalent payment to eligible employees in lieu of equal benefits.
- ☐ Contractor does not comply with the County's Equal Benefits Ordinance.
- ☐ Contractor is exempt from this requirement because:
- ☐ Contractor has no employees, does not provide benefits to employees' spouses, or the contract is for \$5,000 or less.
  - ☐ Contractor is a party to a collective bargaining agreement that began on \_\_\_\_\_ (date) and expires on \_\_\_\_\_ (date), and intends to offer equal benefits when said agreement expires.

**III. NON-DISCRIMINATION** (check appropriate box)

- ☐ Finding(s) of discrimination have been issued against Contractor within the past year by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. Please see attached sheet of paper explaining the outcome(s) or remedy for the discrimination.
- ☒ No finding of discrimination has been issued in the past year against the Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other entity.

**IV. EMPLOYEE JURY SERVICE** (check one or more boxes)

*Contractors with original or amended contracts in excess of \$100,000 must have and adhere to a written policy that provides its employees living in San Mateo County up to five days regular pay for actual jury service in the County.*

- ☒ Contractor complies with the County's Employee Jury Service Ordinance.
- ☐ Contractor does not comply with the County's Employee Jury Service Ordinance.
- ☐ Contractor is exempt from this requirement because:
- ☐ the contract is for \$100,000 or less.
  - ☐ Contractor is a party to a collective bargaining agreement that began on \_\_\_\_\_ (date) and expires on \_\_\_\_\_ (date), and intends to comply when the collective bargaining agreement expires.

**I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.**

Melinda Kanter-Levy  
Signature

4/17/07  
Date

Melinda Kanter-Levy  
Name

Sect-Trea MDS Board of Directors  
Title