

**FIRST AMENDMENT TO AGREEMENT BETWEEN PALCARE AND
THE COUNTY OF SAN MATEO FOR OPERATION OF
CHILD CARE CENTER**

THIS FIRST AMENDMENT TO THE AGREEMENT entered into this ____ day of _____, 2010 by and 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.

W I T N E S S E T H:

WHEREAS, the County owns the two-story building located at 945 California Drive in Burlingame, California, which is used by Palcare to operate an extended hour childcare facility under an Agreement by and between Palcare and the County for Operation of Child Care Center commencing on July 1, 2002 and ending on June 30, 2022 ("Operating Agreement");

WHEREAS, since 1991, the County has had collaborative agreements with the City and County of San Francisco ("City"), through its Airport Commission, and Palcare for the provision of child care services for Airport employees and the community;

WHEREAS, in order to accommodate current and anticipated demand, Palcare will expand and improve its premises by remodeling parts of the first floor and expanding into a portion of the currently unoccupied second floor in the Building which will create 32 new classroom openings ("Capital Expansion Project"); and

WHEREAS, the County and Palcare wish to amend and extend the date of termination of the Operating Agreement, and

WHEREAS, concurrent with this Amendment, the County and the City have entered into a Contribution Agreement through which the City's Airport Commission will contribute \$450,000 to pay for a portion of the cost of the Capital Expansion Project ("Contribution

Agreement”); and

WHEREAS, the County and Palcare wish to enter into a County Contribution Agreement through which the County will contribute up to \$250,000 to pay for a portion of the cost of the Capital Expansion Project (“County Contribution Agreement”); and

WHEREAS, as a condition precedent of the Contribution Agreement, the County and Palcare must amend the Operating Agreement to be consistent with the terms of the Contribution Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Section 1 (Operation of Child Care Center) of the Agreement is hereby deleted in its entirety and replaced with the following:

1. Operation of Child Care Center. County will set aside for Palcare’s exclusive use the first and second floor of the building located at 945 California Avenue in Burlingame. Palcare will operate an extended hours childcare 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 childcare 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.

Palcare shall provide to the Airport Commission, without Charge, an additional 32 full-time equivalent Priority Enrollment Spaces in the Palcare Facility

each year (in addition to the 100 Priority Enrollment Spaces already provided under the Subsidy Agreement), commencing on the completion date of the Capital Expansion Project and continuing until June 30, 2018. In addition, Palcare shall make three (3) emergency childcare spaces (one in each age group) available in the Palcare Facility at all times to children of Airport employees without charge to the City, commencing on the completion date of the Capital Expansion Project and continuing until June 30, 2018, provided that (a) the families using such emergency childcare spaces may be charged Palcare's usual and customary fees for such services, and (b) such children and their families shall have met all of Palcare's enrollment requirements at the time such services are requested. Palcare shall assist the Airport Commission in conducting an outreach program following the Completion Date of the Capital Expansion Project to make Airport-based Employees aware of the increased availability of childcare services at the Palcare Facility.

2. Section 7 (Payments to County) of the Agreement is hereby deleted in its entirety and replaced with the following:

7. Payments to County. Subject to the escalations as hereinafter set forth, effective upon execution of this Agreement by the parties, Palcare shall pay County a monthly amount of \$11,084.90 for the use of entire facility, inclusive of the first and second floors and outdoor spaces, which rate shall be in effect through June 30, 2015. Such amount payable shall be adjusted effective July 1, 2015 and thereafter on July 1 of every fifth year (2020, 2025) of the term (the "Adjustment Date"), as follows:

The Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Mateo-Oakland-San Jose area, published by the United States Department of Labor, Bureau of

Labor Statistics (the "Index"), which is published most immediately preceding the Adjustment Date (the "Adjustment Index"), shall be compared with the Index published most immediately preceding July 1, 2010 in the case of the first Adjustment Date or, in the case of any subsequent Adjustment Date, the Index published most immediately preceding the prior Adjustment Date (the "Base Index").

If the Adjustment Index has increased over the Base Index, then the Base Rent payable on and after the Adjustment Date shall be set by multiplying the Base Rent by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Base Index. In no event shall the monthly Base Rent on or after the initial Adjustment Date be more than fifteen percent (15%) or, in the case of any subsequent Adjustment Date, be more than fifteen percent (15%) of the monthly amount in effect for the last full month immediately prior to the Adjustment Date.

If the Index is changed so that the base year differs from that used as of the date most immediately preceding the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.]

Payment shall be made within fifteen (15) days of the end of each calendar month. This amount 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.

3. Termination. Section 9 (Termination) of the Agreement is hereby deleted in its entirety and replaced with the following:

9. Termination. County may terminate this Agreement immediately if Palcare loses its childcare facility license subject to the provisions of Section 2, if Palcare's insurance coverage is canceled and cannot be renewed in a commercially reasonable time period, or if the amount or scope of Palcare's insurance coverage is materially reduced without prior consent of the County. **County may terminate this Agreement**

immediately if the City, by and through its Airport Commission, exercises its rights pursuant to Section 4 of the Contribution Agreement dated as of November 1, 2010 through June 30, 2018, but only in the event that Palcare defaults under the Operating Agreement, ceases to offer childcare services, or becomes insolvent.

4. Term. Section 6 (Term) of the Agreement is hereby deleted in its entirety and replaced with the following:

6. Term. This Agreement shall commence on July 1, 2002, and shall terminate June 30, 2030 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.

5. All other terms and conditions of the Operating Agreement between the County and Palcare shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

BY: _____
President, Board of Supervisors

Dated: _____

ATTEST:

Clerk of the Board of Supervisors

PALCARE

BY: _____

Dated: _____