

**CONTRIBUTION AGREEMENT
FOR CAPITAL EXPANSION OF
CHILDCARE FACILITIES**

Between

COUNTY OF SAN MATEO

and

PALCARE

Dated as of November 1, 2010

TABLE OF CONTENTS

RECITALS	1
ARTICLE I. AIRPORT CONTRIBUTION	2
<i>Section 1.01 Airport Contribution for Capital Expansion</i>	2
<i>Section 1.02 Deposit and Use of Contribution</i>	2
<i>Section 1.03 Documentation of Expenditures</i>	3
<i>Section 1.04 Conditions Precedent</i>	3
<i>Section 1.05 Obligations Subject to Law</i>	3
<i>Section 1.06 Return of Contribution</i>	3
ARTICLE II. CONSTRUCTION	5
<i>Section 2.01 Contract with Palcare</i>	5
<i>Section 2.02 Performance Bond/Letter of Credit</i>	5
<i>Section 2.03 Construction</i>	5
<i>Section 2.04 Amendments to Operating Agreement</i>	5
<i>Section 2.05 Records and Reports</i>	5
ARTICLE III. CHILDCARE SERVICES	5
<i>Section 3.01 Additional Priority Enrollment Spaces</i>	6
<i>Section 3.02 Emergency Childcare Spaces</i>	6
<i>Section 3.03 Outreach Program</i>	6
<i>Section 3.04 Term of the Agreement</i>	6
ARTICLE IV. DEFAULTS AND REMEDIES	6
<i>Section 4.01 Failure of Palcare</i>	6
ARTICLE V. INDEMNIFICATION AND INSURANCE	8
<i>Section 5.01 Hold Harmless</i>	8
<i>Section 5.02 Insurance</i>	8
ARTICLE VI. CITY AND COUNTY CONTRACTING PROVISIONS	9
<i>Section 6.01 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation</i>	9
<i>Section 6.02 Limited Liability</i>	10
<i>Section 6.03 Submitting False Claims; Monetary Penalties</i>	10
<i>Section 6.04 Nondiscrimination; Penalties</i>	10
<i>Section 6.05 Equal Benefits</i>	10

<i>Section 6.06</i>	<i>Airport Intellectual Property</i>	10
<i>Section 6.07</i>	<i>Tropical Hardwood and Virgin Redwood Ban</i>	11
<i>Section 6.08</i>	<i>Resource Conservation</i>	11
<i>Section 6.09</i>	<i>Compliance with Americans with Disabilities Act</i>	11
<i>Section 6.10</i>	<i>Audit and Inspection of Records</i>	11
ARTICLE VII.	MISCELLANEOUS	11
<i>Section 7.01</i>	<i>Notices and Communications</i>	11
<i>Section 7.02</i>	<i>Compliance with Laws</i>	12
<i>Section 7.03</i>	<i>Assignment</i>	12
<i>Section 7.04</i>	<i>Non-Waiver of Rights</i>	12
<i>Section 7.05</i>	<i>Invalid Provisions and Severability</i>	12
<i>Section 7.06</i>	<i>Headings</i>	12
<i>Section 7.07</i>	<i>Counterparts</i>	12

**CONTRIBUTION AGREEMENT
FOR CAPITAL EXPANSION OF
CHILDCARE FACILITIES**

This Contribution Agreement for Capital Expansion of Childcare Facilities (the "Agreement") between the COUNTY OF SAN MATEO (the "County"), a political subdivision of the State of California, and PALCARE ("Palcare"), a California nonprofit provider of childcare services, is dated as of November 1, 2010.

RECITALS

1. The City and County of San Francisco (the "City") owns the San Francisco International Airport (the "Airport") which is located within the County and is managed and operated by the City's Airport Commission (the "Commission").
2. The County owns the two-story building located at 945 California Drive in Burlingame, California (the "Building"), which is used by Palcare to operate an extended hour childcare facility (the "Palcare Center"), under an Agreement (as amended) between Palcare and the County of San Mateo for Operation of Child Care Center commencing on July 1, 2002 and ending on June 30, 2030 (the "Operating Agreement").
3. In order to facilitate employment at the Airport, the City has subsidized flexible and extended hour childcare services at the Palcare Center for the children ("Airport Children") of persons employed by the Commission or an employer based at the Airport (an "Airport-based Employee") under the Agreement Between the County of San Mateo and the Airport Commission of the City and County of San Francisco Relating to Childcare Facilities and Services (July 1, 2008 – June 30, 2013), dated as of July 1, 2008 (the "Subsidy Agreement"). The Subsidy Agreement entitles the Airport, among other things, to 100 spaces at the front of Palcare's admission waiting list ("Priority Enrollment Spaces"). Children of County employees receive secondary priority enrollment behind Airport Children, but ahead of the general community.
4. Palcare maintains a list of children, including Airport Children, waiting for admission. The size of Palcare's facilities in the Building limits the number of Airport Children that can be served.
5. As evidenced by Palcare's Certificate attached hereto as Exhibit A, there is a need to increase capacity at the Palcare Center in order to serve more Airport Children.
6. An Airport Child's average waiting time for admission to the Palcare Center is currently three to four months compared with more than two years for non-Airport Children on the waiting list. Historically, the wait for Airport Children has been as long as six to nine months.
7. During the first quarter of 2009, Airport Children constituted approximately 35-40% of the children at the Palcare Center, depending on the month, and the City expects the

demand for childcare services for Airport Children to increase in the future as the economy improves. In the past, Airport Children have constituted over 50% of the children at the Palcare Center.

8. More of such Airport Children could be offered childcare services if Palcare's facilities at the Building were expanded.
9. In order to accommodate such current and anticipated demand, the County is willing to allow Palcare to expand and improve its premises by remodeling parts of the first floor and expanding into the currently unoccupied second floor in the Building (the "Capital Expansion").
10. The Capital Expansion will create 32 new classroom openings and Palcare is willing to provide the Airport with an additional 32 Priority Enrollment Spaces, plus three temporary care slots for short-notice emergency care, for the term of this Agreement.
11. In addition to the increased availability of childcare services, the Capital Expansion will also benefit Airport-based Employees and the Airport by improving the quality of childcare services.
12. The Commission adopted Resolution No. 09-0151 on June 16, 2009, approving a contribution of up to \$450,000 (the "Airport Contribution") to finance a portion of the cost of the Capital Expansion on the terms and conditions set forth herein.
13. The Airport Contribution represents 32% of the \$1.4 million budgeted cost of the Capital Expansion and corresponds approximately to the percentage of children served by Palcare who are Airport Children (35-40%).
14. The County Board of Supervisors adopted Resolution No. _____ on _____, 2010, approving a contribution of up to \$250,000 (the "County Contribution") to finance a portion of the cost of the Capital Expansion on the terms and conditions set forth herein.
15. The County Contribution represents 18% of the \$1.4 million budgeted cost of the Capital Expansion.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

ARTICLE I. COUNTY CONTRIBUTION

Section 1.01 County Contribution for Capital Expansion. Subject to the provisions of this Agreement, the County will pay to Palcare the lump-sum County Contribution of \$250,000.

Section 1.02 Use of County Contribution. The County Contribution shall be used by Palcare solely to pay eighteen percent (18%) of the costs of the Capital Expansion that are properly documented as provided in Section 1.03, including the cost of architectural and design work, construction, furnishings and equipment.

Section 1.03 Documentation of Expenditures. Palcare shall provide the County with a written invoice which shall include documentation of the actual project costs and the portion thereof to be paid from the County Contribution under this Agreement.

Section 1.04 Conditions Precedent. The obligations of the County hereunder shall be subject to the satisfaction of following conditions precedent prior to the payment of the County Contribution:

- (a) The Commission shall have approved the Airport Contribution and the execution and delivery of the Contribution Agreement between the City and the County (the "City Agreement").
- (b) Airport staff shall have received the signed Certificate of Palcare attached hereto as Exhibit A.
- (c) The County's Board of Supervisors shall have approved the County Contribution and the execution and delivery of this Agreement, the City Agreement and the amendment to the Operating Agreement.
- (d) Palcare shall have approved the execution and delivery of this Agreement and the amendment to the Operating Agreement.
- (e) The City and the County shall have executed the City Agreement.
- (f) The County and Palcare shall have executed the amendment to the Operating Agreement as provided in Section 3.03.
- (g) Airport staff shall have received the letter of credit or evidence of the surety bonds delivered in accordance with Section 3.01.

Section 1.05 Return of County Contribution. Palcare acknowledges that it shall return to the County any unexpended portion of the County Contribution if (a) following the date on which the Capital Expansion is completed and placed in service (the "Completion Date"), the County's pro-rata share of the costs of the Capital Expansion does not exceed the County Contribution, (b) the Capital Expansion is not completed, or (c) any payment obligation of the County under this Agreement is found to be prohibited by law or regulation.

ARTICLE II. AIRPORT CONTRIBUTION

Section 2.01 Airport Contribution for Capital Expansion. Subject to the provisions of the City Agreement, the City will pay to the County the Airport Contribution of up to \$450,000 in installments (each an "Installment") as follows:

<u>Period</u>	<u>Amount</u>	<u>Payable on or about</u>
1st Quarter 2011	\$225,000	January 15, 2011

2nd Quarter 2011

\$225,000

April 15, 2011

Section 2.02 Deposit and Use of Airport Contribution. The County shall establish a trust account (the "Trust Account") and shall deposit each Installment into the Trust Account upon receipt. The Airport Contribution shall be used by the County solely to pay thirty-two percent (32%) of the costs of the Capital Expansion that are properly documented as provided in Section 2.03, including the cost of architectural and design work, construction, furnishings and equipment.

Section 2.03 Documentation of Expenditures. Palcare shall provide the City and the County with a written invoice for disbursement of amounts in the Trust Account not less than thirty (30) days prior to the day such funds are needed. Each such invoice shall include documentation of the actual project costs and the portion thereof to be paid from the Airport Contribution under this Agreement. The County shall promptly disburse the requested funds from the Trust Account upon approval of the related invoice by Airport staff.

Section 2.04 Conditions Precedent. The obligations of the County hereunder shall be subject to the satisfaction of following conditions precedent prior to the payment of the first Installment:

- (a) The Commission shall have approved the Airport Contribution and the execution and delivery of the City Agreement.
- (b) Airport staff shall have received the signed Certificate of Palcare attached hereto as Exhibit A.
- (c) The County's Board of Supervisors shall have approved the County Contribution and the execution and delivery of this Agreement, the City Agreement and the amendment to the Operating Agreement.
- (d) Palcare shall have approved the execution and delivery of this Agreement and the amendment to the Operating Agreement.
- (e) The City and the County shall have executed the City Agreement.
- (f) The County and Palcare shall have executed this Agreement and the amendment to the Operating Agreement
- (g) Airport staff shall have received the letter of credit or evidence of the surety bonds delivered in accordance with Section 3.01.

Section 2.05 Obligations Subject to Law. Notwithstanding anything in this Agreement to the contrary, if the Federal Aviation Administration ("FAA") or any other agency, court or authority having jurisdiction over the Commission or the Airport determines that any payment obligation of the City under the City Agreement is prohibited by law or regulation, the City's obligation to make such payment shall be immediately terminated. In the event of any such termination, the City shall not be deemed to have breached the City Agreement nor shall the City be liable for any damages to the County or Palcare caused by such termination.

Section 2.06 Return of Airport Contribution. Palcare acknowledges that the County shall return to the City any unexpended portion of the Airport Contribution in the trust account if (a) following the date on which the Capital Expansion is completed and placed in service (the "Completion Date"), the City's pro-rata share of the costs of the Capital Expansion does not exceed the Airport Contribution, (b) the Capital Expansion is not completed, or (c) any payment obligation of the City under the City Agreement is found to be prohibited by law or regulation as provided in Section 2.05.

ARTICLE III. CONSTRUCTION

Section 3.01 Performance Bond/Letter of Credit. Palcare shall provide evidence of security for completion of the Capital Expansion in the form of either (a) or (b) below:

- (a) (i) a labor and materials bond in the form required by Cal. Civil Code Section 3248 and in an amount equal to one hundred percent (100%) of the amount of the Palcare construction contract, to guarantee payment of wages for services engaged and of bills contracted for materials, supplies, and equipment used in performance of the construction contract; and (ii) a performance bond equal to one hundred percent (100%) of the amount of the Palcare construction contract scope of work, to guarantee faithful performance and completion of the Capital Expansion, both of which shall be in substantially the form attached hereto as Exhibit B. Corporate sureties on these bonds must be legally authorized to engage in business of furnishing surety bonds in State of California. Sureties must be satisfactory to the City; or
- (b) A letter of credit in the amount of the Airport Contribution, naming the City as beneficiary, and in form satisfactory to City's City Attorney. The expiration or termination date of such letter of credit shall extend to the end of construction of the Capital Expansion. Palcare shall cause the bank issuing such letter of credit to give the City notice in writing by registered mail at least forty-five (45) days prior to the expiration date or termination of such letter of credit of its intention not to renew such letter of credit or to terminate such letter of credit prior to the end of construction of the Capital Expansion.

Section 3.02 Construction. Palcare shall allow the City and the County to monitor the construction of the Capital Expansion.

Section 3.03 Records and Reports. Palcare shall maintain accurate books and records showing all project costs and construction expenses incurred and the expenditure of all contributions received. The City, 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 Capital Expansion. Palcare shall provide the City with a copy of (a) monthly construction progress reports regarding the status of the Capital Expansion, and (b) within six (6) months of the Completion Date, a final accounting of the construction costs of the Capital Expansion, the City's allocated share thereof, and the expenditure of contributions received.

ARTICLE IV. CHILDCARE SERVICES

Section 4.01 Additional Priority Enrollment Spaces. Palcare shall provide the Airport, 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 and continuing throughout the term of this Agreement. The City does not object to the children of County employees receiving secondary priority enrollment behind Airport Children, but ahead of the general community.

Section 4.02 Emergency Childcare Spaces. Palcare shall make three (3) emergency childcare spaces (one in each age group) available in the Palcare Facility at all times to Airport Children without charge to the City commencing on the Completion Date and continuing throughout the term of this Agreement, provided that (a) the families of the Airport Children using such emergency childcare spaces may be charged Palcare's usual and customary fees for such services, and (b) such Airport Children and their families shall have met all of Palcare's enrollment requirements at the time such services are requested.

Section 4.03 Outreach Program. Palcare shall assist the Airport in conducting an outreach program following the Completion Date, to make Airport-based Employees aware of the increased availability of childcare services at the Palcare Facility.

Section 4.04 Term of the Agreement. This Agreement shall become effective upon execution by the parties and shall terminate on June 30, 2018 (the "Expiration Date").

ARTICLE V. DEFAULTS AND REMEDIES

Section 5.01 Failure of Palcare.

- (a) In the event the Capital Expansion is completed and placed in service, but Palcare defaults under the Operating Agreement, ceases to offer childcare services, or becomes Insolvent (as defined below) at any time prior to the Expiration Date, the City, on written notice to the County provided in accordance with the City Agreement, shall have the option to require the County to terminate the Operating Agreement, provided that, concurrent with such notice to the County, the City irrevocably elects one of the following options:
 - (i) Occupy the childcare facilities in the Building and provide childcare services itself for what would have been the remainder of the term of the Operating Agreement, but for such early termination;
 - (ii) Authorize the County, prior to the effective date of such early termination, to enter into a childcare services agreement for the childcare facilities in the Building with another provider of childcare services selected by the City and reasonably agreeable to the County (the "Substitute Provider"), for what would have been the remainder of the term of the Operating Agreement, but for such early termination; or
 - (iii) Enter into an agreement to occupy the childcare facilities in the Building as set forth herein below, and sublicense the facilities to a Substitute Provider or other sublicensee selected by the City and reasonably agreeable to the County (including one that does not provide childcare services if a Substitute Provider cannot be found

within a reasonable amount time), or subcontract with such Substitute Provider for childcare services in the Building's childcare facilities, for what would have been the remainder of the term of the Operating Agreement but for such early termination or for such shorter term as the City and the County shall agree. The City shall collect the rentals or other charges paid by the Substitute Provider or sublicensee and shall be entitled to retain any amounts in excess of the rent and other charges due under the Operating Agreement as reimbursement of (1) the City's costs and expenses in assuming entering into the operative agreements, plus (2) the unamortized portion of the Airport Contribution calculated by multiplying the Airport Contribution by a fraction, the numerator of which shall be the number of days from the date of default by Palcare to the Expiration Date, and the denominator of which shall be the number of days between the Completion Date and the Expiration Date. Upon full reimbursement of such amounts, the City shall have the option of terminating the agreement governing the City's use of the premises and surrendering the premises to the County.

- (b) Upon the City's exercise of its option to occupy the premises as provided in subsection (a) above, the County shall enter into an agreement with the City for use and occupancy of the premises on substantially the same terms as the Operating Agreement, except as provided below. In the event the City selects subsection (a)(ii) or (iii) above, such agreement shall provide that no rentals shall be due from the City thereunder until the City receives rentals from a Substitute Provider or sublicensee, provided that the rent-free period shall not exceed three (3) months. Such agreement shall allow the subcontracting by the City described above. The County acknowledges that the City maintains a program of self-insurance. The County agrees that the City shall not be required to carry any insurance with respect to the substitute operating agreement, however the City shall cause any of its contractors, subcontractors or agents (other than City departments or divisions) performing work or entering the Building on behalf of the City during the term of the substitute operating agreement, including, as applicable, the Substitute Provider, to procure and maintain insurance as described in the Operating Agreement.
- (c) As used herein, Palcare shall be deemed "Insolvent" if (i) Palcare shall have instituted proceedings to be adjudicated a bankrupt or insolvent, shall have consented to the institution of bankruptcy or insolvency proceedings against it, shall have filed a petition or answer or consent seeking reorganization or relief under the federal Bankruptcy Code or any other similar applicable federal or state law, or shall have consented to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee or sequestrator or other similar official of itself or of any substantial part of its property, or shall fail to timely controvert an involuntary petition filed against it under the federal Bankruptcy Code, or shall consent to the entry of an order for relief under the federal Bankruptcy Code or shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due; or (ii) a decree or order by a court having jurisdiction in the premises adjudging Palcare as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of such person under the federal Bankruptcy Code or any other similar applicable federal or state law or for relief under the federal Bankruptcy Code after an involuntary petition has been filed against Palcare, or

appointing a receiver, liquidator, assignee, trustee or sequestrator or other similar official of such person or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, shall have been entered and shall have continued unstayed and in effect for a period of 90 consecutive days. Nothing herein shall be interpreted to obligate the County to terminate the Operating Agreement or deliver possession of the Building to the City if the Operating Agreement is determined under the Bankruptcy Code to be an asset of a bankrupt entity.

ARTICLE VI. INDEMNIFICATION AND INSURANCE

Section 6.01 Hold Harmless. Palcare and its contractors for the Capital Expansion project, as applicable, shall defend, indemnify, and hold harmless the City and the County, 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 the City and/or the County as a result of or arising out of the acts, omissions, use, or operations of Palcare at the Building or the construction and financing of the Capital Expansion.

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 City.

Palcare's contractors for the Capital Expansion project shall ensure that any construction-related insurance policies are endorsed to name the City and the County, their officers, agents and employees as additional insureds.

Section 6.02 Insurance.

- (a) Without in any way limiting Palcare's obligation pursuant to Section 6.01, Palcare shall maintain in force, during the full term of this Agreement, the greater of the insurance required by the Operating Agreement or 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 \$4,000,000 each occurrence Umbrella Form.
- (b) Comprehensive General Liability and Comprehensive Liability and Excess Liability Insurance policies shall be endorsed to provide the following:

1. Name the City, its Officers, Agents and Employees as Additional Insured.
 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 the City of cancellations, non-renewal or reduction in coverage, mailed to the City at the address set forth in Section 8.01.
- (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 policy.
- (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 the City evidencing all coverage above shall be furnished to the City before commencing any operations under this contract, with complete copies of policies promptly upon the City request.
- (g) Approval of the insurance by the City shall not relieve or decrease any liability of Palcare hereunder.

ARTICLE VII. CITY AND COUNTY CONTRACTING PROVISIONS

Section 7.01 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. The City Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges with respect to the Airport Contribution will accrue under this Agreement only after prior written authorization of the City Agreement certified by the City's Controller, and the amount of the City's obligation under the City Agreement shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. The amount of the County's obligation hereunder with respect to the Airport Contribution shall not at any time exceed the amount deposited by the City into the Trust Account. This Agreement will terminate without penalty, liability or expense of any kind to the County at the end of any fiscal year if funds are not appropriated by the City for the next succeeding fiscal year, unless an extension is given by the City. If funds are appropriated by the City for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. The City has no obligation to make appropriations for the City Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. THIS

SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT

Section 7.02 Limited Liability. Palcare acknowledges that the obligations and liabilities of the Commission in the City Agreement are limited obligations of the Commission payable solely from Airport revenues. Neither the Commissioners, the officers or employees of the Commission, nor any person executing the City Agreement shall be liable personally for the obligations of the Commission thereunder or be subject to any personal liability or accountability by reason of the execution thereof. Neither of the faith and credit nor the taxing power of the State or any political subdivision thereof, including the City, is pledged to the obligations of the Commission under the City Agreement. The City's payment obligations under the City Agreement shall be limited to the payment of the Airport Contribution provided for in Section 1.01 of the City Agreement. The County's payment obligations under this Agreement with respect to the Airport Contribution shall be limited to the payment of the Airport Contribution amounts deposited by the City into the Trust Account. Notwithstanding any other provision of this Agreement, in no event shall the City or the County be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with the City Agreement or this Agreement or the services performed in connection with the City Agreement or this Agreement.

Section 7.03 Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

Section 7.04 Equal Benefits. With respect to the provision of employee benefits, all parties 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.

Section 7.05 Airport Intellectual Property. Pursuant to Resolution No. 01-0118, adopted by the Commission on April 18, 2001, the Commission affirmed that it will not tolerate the unauthorized use of its intellectual property, including the SFO logo, CADD designs, and

copyrighted publications. All proposers, bidders, contractors, tenants, permittees, and others doing business with or at the Airport (including subcontractors and subtenants) may not use the Airport intellectual property, or any intellectual property confusingly similar to the Airport intellectual property, without the Airport Director's prior consent.

Section 7.06 Tropical Hardwood and Virgin Redwood Ban. Pursuant to §804(b) of the San Francisco Environment Code, the City urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

Section 7.07 Resource Conservation. Chapter 5 of the San Francisco Environment Code is incorporated herein by reference. Failure by Palcare to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

Section 7.08 Compliance with Americans with Disabilities Act. Pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Palcare shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Palcare agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Palcare, its employees, agents or assigns will constitute a material breach of this Agreement.

Section 7.09 Audit and Inspection of Records. The County will maintain and make available to the City, during regular business hours, accurate books and accounting records relating to the Trust Account and this Agreement. The County will permit the City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. The County shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. Palcare shall comply with the same requirements relating to data and records maintenance with respect to the Capital Expansion, and City audit and inspection rights. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon the City by this Section.

ARTICLE VIII. MISCELLANEOUS

Section 8.01 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:

(a) In the case of the County, to:

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

Attention: County Manager

(b) In the case of Palcare, to:

Palcare
945 California Drive
Burlingame, CA 94010
Attention: Palcare Executive Director

Or to such other addresses and/or persons as either party may from time to time designate in writing to the other.

Section 8.02 Compliance with Laws. Palcare shall at all times comply with all laws applicable to the operation of a childcare facility and the construction and financing of the Capital Expansion.

Section 8.03 Assignment. Neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Palcare unless first approved by the County by written instrument executed and approved in the same manner as this Agreement.

Section 8.04 Non-Waiver of Rights. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

Section 8.05 Invalid Provisions and Severability. In the event any covenant, condition or provision herein contained is held to be invalid or unenforceable by a court of competent jurisdiction, the invalidity or unenforceability of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity or unenforceability of any such covenant, condition or provision does not materially prejudice either Palcare or the County in their respective rights and obligations contained in the valid covenants, conditions and provisions of this Agreement.

Section 8.06 Headings. The headings of the several Sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement, and shall not be construed to affect in any manner the term and provisions hereof or the interpretation or construction thereof.

Section 8.07 Counterparts. This Agreement may be executed in several counterparts, which together shall constitute one and the same instrument.

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

Date: _____

COUNTY OF SAN MATEO

ATTEST:

Clerk of said Board

By: _____
County of San Mateo
State of California

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

PALCARE

Date: _____

By: _____
Palcare Executive Director

EXHIBIT A

CERTIFICATE OF PALCARE

The undersigned, Lisa Kiesselback, as Executive Director of PALCARE, a California not-for-profit corporation ("Palcare"), on behalf of Palcare does hereby certify to the County of San Mateo (the "County") and the City and County of San Francisco (the "City") acting by and through its Airport Commission (the "Commission") that:

1. This Certificate is being delivered to provide the County and the City with factual information required to comply with certain requirements of federal law and regulations, including the Federal Aviation Administration's Final Policy Concerning the Use of Airport Revenue, in connection with the execution of a Contribution Agreement for Capital Expansion of Childcare Facilities between the City and the County.
2. As of September, 2009, Palcare (a) can legally accommodate 200 Full-Time Equivalent Children (as defined in the Agreement Between the County of San Mateo and the Airport Commission of the City and County of San Francisco Relating to Childcare Facilities and Services (July 1, 2008 – June 30, 2013), dated as of July 1, 2008), and (b) actually provides childcare services for 155 Full-time Equivalent Children, of which 54 (representing 35 %) are children with at least one parent who works at the San Francisco International Airport (an "Airport Child").
3. Palcare maintains a list of children waiting for admission to Palcare. As of September, 2009, there are 185 children on such waiting list, of which 31 (representing 17 %) are Airport Children.
4. The average time on the waiting list for Airport Children is three to four months and the average time on the waiting list for non-Airport Children is up to 24 months. The longest time for an Airport Child currently on the waiting list is 12 months. Historically, the wait for Airport Children has been as long as six to nine months.
5. Historically there have been up to 65 Airport Children on Palcare's waiting list.
6. The County owns the building located at 945 California Drive in Burlingame, California, which the County permits Palcare to use and occupy under that certain Agreement Between Palcare and the County of San Mateo for Operation of a Child Care Center that expires on June 30, 2022.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of November 3, 2009.

PALCARE, a California not-for-profit corporation

By: _____
[Name], [Title]

EXHIBIT B
FORM OF BOND