

Agreement No. _____

**AGREEMENT BETWEEN
THE COUNTY OF SAN MATEO AND
BRIGHT HORIZONS FAMILY SOLUTIONS LLC**

This Agreement is entered into this 1st day of October 2022 by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and Bright Horizons Family Solutions LLC, hereinafter called "Contractor."

* * *

Whereas, pursuant to Section 31000 of the California Government Code, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and

Whereas, it is necessary and desirable that Contractor be retained for the purpose of providing child care services for County employees.

Now, therefore, it is agreed by the parties to this Agreement as follows:

1. Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A—Services

Exhibit B—Payments and Rates

Exhibit C—Revocable License To Enter And Use Real Property

2. Services to be Performed by Contractor

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for County in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A.

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. County reserves the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable. In no event shall County's total fiscal obligation under this Agreement exceed five hundred and fifty thousand dollars (\$550,000). In the event that the County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the County within thirty (30) days of Agreement termination or expiration. Contractor is not entitled to payment for work not performed as required by this Agreement.

4. Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from October 1, 2022, through September 30, 2027 ("Term").

5. Termination

(a) Termination by County. If (a) within thirty (30) days after written notice from County to Contractor specifying any material default or defaults, Contractor has not commenced diligently to

correct the default or defaults so specified or has not thereafter diligently pursued such correction to completion, or (b) if any assignment shall be made by Contractor for the benefit of creditors, or (c) if a petition for liquidation pursuant to Chapter 7 of Title 11 of the U.S. Code is filed by Contractor or if such a petition is filed against Contractor and such petition is not dismissed within ninety (90) days thereafter, then, and in any of such cases County may, in addition to and not in derogation of any remedies for any preceding breach of this Agreement, immediately or at any time thereafter and without demand terminate this Agreement by giving written notice to Contractor effective upon Contractor's receipt of such notice. Notwithstanding anything to the contrary herein, County's rights upon an event of default caused by proceedings under the Bankruptcy Act shall be limited to the remedies permitted County under such Act with respect to such event.

(b) **Termination by Contractor.** Without prejudice to any other rights or remedies which Contractor may have in such event under this Agreement, if within thirty (30) days after written notice from Contractor to County specifying any material breach or breaches, County has not commenced diligently to correct the breach or breaches so specified or has not thereafter diligently pursued such correction to completion Contractor may, in addition to and not in derogation of any remedies for any preceding breach of this Agreement, immediately or at any time thereafter and without demand terminate this Agreement by giving written notice to County effective upon County's receipt of such notice.

6. Contract Materials

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials prepared by Contractor exclusively for the County under this Agreement (collectively referred to as "Contract Materials") shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such Contract Materials if permitted by law.

7. Capital Expenditure

Contractor agrees to expend up to Two Hundred Fifty Thousand Dollars (\$250,000) ("Facility Upgrade Expenditures") to conduct its own repair, maintenance, or other alterations projects related to the Premises pursuant to Section 5.2 of Exhibit C ("License for Use of Real Property"). The Capital Expenditure shall be in addition to and shall not diminish or offset any other responsibilities of Contractor or County under this Agreement. Over the Term of the Agreement, Contractor may amortize the amount of these Facility Upgrade Expenditures at its cost of capital of eight percent (8%) annually for ten years from the date of the expenditure (the "Amortization Period") through its financial statements as an Operating Expense. If Contractor occupies Premises as defined in Exhibit C or any portion thereof until September 30, 2032, Contractor shall be deemed to have experienced the entire benefit of the Facility Upgrade Expenditures regardless of when performed and no amounts shall be owed by County to Contractor on account of the Facility Upgrade Expenditures. In the event the Agreement fails to be renewed through September 30, 2032 or otherwise terminates prior to September 30, 2032 for any reason other than as a result of default by Contractor, any unamortized amount of the Facility Upgrade Expenditures as calculated above as of the date termination shall be due to Contractor from County within thirty (30) days of the effective date of such termination.

8. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of County and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

9. Hold Harmless - General Hold Harmless

Contractor 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: (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind

whatsoever and to whomsoever belonging, (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply with any applicable requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County, its officers, agents, employees, or servants, resulting from the performance of any work required of Contractor or payments made pursuant to 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. Contractor's obligations under this paragraph shall be limited to the extent that such officers, agents, employees and servants of the County are acting in their capacity as officers, agents, employees and servants of the County, and not as parents or guardians using the Center. The duty of Contractor 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. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of County; provided, however, that no such consent shall be required in the event that (a) such assignment is made to a successor or affiliated corporation pursuant to a corporate reorganization or merger and that such assignment will not materially affect either the scope and quality of services to be delivered under this Agreement and (b) the assignee is fully subject to and bound by the Contractor's obligations under this Agreement. Any assignment or subcontract without County's prior written consent in violation of this paragraph shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice.

11. Insurance

a. General Requirements

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and reviewed by County's Risk Management and Contractor shall use diligence to obtain such insurance. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor 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 material modification of the policy.

b. Workers' Compensation and Employer's Liability Insurance

Contractor shall have in effect during the entire Term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California 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 Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

c. Liability Insurance

Contractor shall take out and maintain during the Term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all third party claims for damages for bodily injury, including accidental death, as well as any and all third party claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily

injury and property damage for each occurrence and shall not be less than the amounts specified below:

(a) Comprehensive General Liability...	\$1,000,000
(b) Motor Vehicle Liability Insurance...	\$1,000,000
(c) Professional Liability.....	\$1,000,000

County and its officers, agents, employees, and servants shall be included as additional insureds on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

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 cancelled or reduced to below the coverages required hereunder and Contractor does not timely procure replacement coverage, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

d. County Insurance.

Throughout the Term of this Agreement, as owner of the facility, County shall maintain property insurance on the Facility and all County personal property used in the Center including but not limited to furniture, equipment and fixtures in an amount not less than the full replacement cost. In addition, County shall maintain commercial general liability insurance coverage, with combined single limits for bodily injury and property damage of not less than \$1,000,000 per occurrence, such coverage to include contractual liability.

e. Waiver of Recovery.

Contractor and County, each hereby waive any and all rights of recovery, claim, action or cause of action, against the other, its agents, officers, or employees for any loss or damage that may occur to the Facility or the Center, or any improvements thereto, or to the building of which the Center is a part, or any improvements thereto, or any personal property of such party therein, by reason of fire, the elements, or any other cause, regardless of cause or origin, including negligence of the other party hereto, its agents, officers or employees, and covenants that no insurer shall have any right of subrogation against such other party provided however, such agreement does not invalidate said policies of insurance.

12. Compliance With Laws

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, regulations, and executive orders, including but not limited to any applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance, as well as any required economic or other sanctions imposed by the United States government or under state law in effect during the term of the Agreement.

Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to

confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

Further, Contractor certifies that it and all of its subcontractors will adhere to all applicable provisions of Chapter 4.107 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware. Accordingly, Contractor shall not use any non-recyclable plastic disposable food service ware when providing prepared food on property owned or leased by the County and instead shall use biodegradable, compostable, reusable, or recyclable plastic food service ware on property owned or leased by the County.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

13. Non-Discrimination and Other Requirements

a. General Non-discrimination

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

b. Equal Employment Opportunity

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County upon request.

c. Section 504 of the Rehabilitation Act of 1973

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

d. Compliance with County's Equal Benefits Ordinance

Contractor shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the Contractor's employee is of the same or opposite sex as the employee.

e. Discrimination Against Individuals with Disabilities

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

f. History of Discrimination

Contractor certifies that no finding of discrimination has been issued in the past 365 days against

Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

g. Reporting: Violation of Non-discrimination Provisions

Contractor shall report to the County Executive Officer the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or the Section titled "Compliance with Laws". Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

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 Executive Officer, including but not limited to the following:

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a County contract for a period of up to 3 years;
- iii. liquidated damages of \$2,500 per violation; and/or
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Executive Officer.

To effectuate the provisions of this Section, the County Executive Officer shall have the authority to offset all or any portion of the amount attributed to services in violation of this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and County.

h. Compliance with Living Wage Ordinance

As required by Chapter 2.88 of the San Mateo County Ordinance Code, Contractor certifies all contractor(s) and subcontractor(s) obligated under this contract shall fully comply with the provisions of the County of San Mateo Living Wage Ordinance, including, but not limited to, paying all Covered Employees the current Living Wage and providing notice to all Covered Employees and Subcontractors as required under the Ordinance.

14. Compliance with County Employee Jury Service Ordinance

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo

County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply if this Agreement's total value listed in the Section titled "Payments", is less than one-hundred thousand dollars (\$100,000), but Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

15. Retention of Records: Right to Monitor and Audit

- (a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after County makes final payment therefor, and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by County, a Federal grantor agency, and the State of California.
- (b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by County.
- (c) Contractor agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representative, and/or to any of their respective audit agencies access to and, subject to privacy laws, the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

16. Merger Clause: Amendments

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

17. Controlling Law: Venue

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

18. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when sent by email or to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery; charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of County, to:

Lisa Okada/Deputy Director of Human Resources
County of San Mateo, Human Resources Department
455 County Center, 5th Floor

Redwood City, CA 94063
Email: lokada@smcgov.org Phone: 650-363-7824

In the case of Contractor, to:

Bright Horizons Family Solutions **LLC**
200 Talcott Avenue
South Watertown, MA 02472
Attn: General Counsel

19. Electronic Signature

Both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

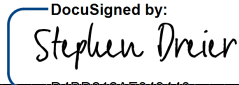
20. Payment of Permits/Licenses

Contractor bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at Contractor's own expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under this Agreement.

* * *

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

For Contractor:

 D4BD212AE043440...	September 16, 2022	Stephen Dreier
Contractor Signature	Date	Contractor Name (please print)

BH Legal: Approved by Pelagia Ivanova

COUNTY OF SAN MATEO

By:
President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:
Clerk of Said Board

EXHIBIT A—SERVICES

In consideration of the payments set forth in Exhibit B, Contractor shall provide the following services:

Child Care Services

Contractor will conduct all aspects in the delivery of a high quality, developmentally appropriate early childhood center to meet the needs of County employee children, newborn through age 5 years and 11 months, in compliance with all applicable local, state, and federal legal and licensing requirements at the child care facility ("the Center"). The Center is located at 403 Winslow Street, Redwood City, CA, a County-owned property.

The total number of full-time equivalent children ("FTEs") enrolled at the Center will not exceed 92 FTEs (not including back-up child care). If there are less than 92 FTEs of children of County employees enrolled at the Center, the Contractor may make the Center available to non-employee children ("Community Families").

The Center will be open Monday through Friday from 7:30 a.m. to 5:30 p.m. The Center will follow the yearly holiday calendar for County employees.

Employee Eligibility I Priority Enrollment

- o Contractor will provide child care services for children of benefits-eligible County and San Mateo County Superior Court employees working in a position that is at least 20 hours per week ("Employee Families"). Contractor will submit rosters to County of enrolled Employee Families to verify eligibility on January 1 and July 1 of each year.
- o Employee Families have priority enrollment to be (a) enrolled upon applying for child care services if a space is available in the appropriate child care class or (b) placed at the top of the Center's waiting list for the next available opening at the Center in the appropriate class.
- o Contractor will maintain 2 separate Wait Lists, one for Employee Families and one for Community Families. Contractor will provide these lists for review by County on a quarterly basis.

Staff Child Ratios

- o Contractor will maintain at all times the following maximum ratios and group sizes (not including back- up child care) to ensure quality child care standards/ unless more stringent ratios are required by child care licensing authorities.

	Age Group	No. of FTEs	Staff	Ratio
Rm.#1	0-1	12	3	1:4
Rm.#2	1-2	8	2	1:4
Rm.#3	1-2	8	2	1:4
Rm.#4	2 years olds	12	2	1:6
Rm.#5	2 years olds	12	2	1:6
Rm.#6	3–5-year-olds	20	2	1:10
Rm.#7	3–5-year-olds	20	2	1:10

- o Any change in staff-child ratios shall be approved by the County, such approval not to be unreasonably withheld, but in no event shall ratios be less than those established by state licensing regulation.

Contractor Employees

- o Contractor will recruit and hire top quality teachers who can best serve the needs of the children at the Center. Contractor is responsible for recruiting/ interviewing/ training and employing all Center personnel. All Contractor employees at the Center shall meet all necessary certification requirements established by the California State Department of Social Services.
- o The Contractor employee serving as Director of the Center is subject to County approval, which approval shall not be unreasonably withheld or delayed.
- o Contractor shall provide ongoing staff development and training. Contractor will make available a staff training plan to County once each year.

Program Quality Review

- o Contractor will work diligently to maintain National Association for the Education of Young Children (NAEYC) accreditation throughout the Term of the Agreement and shall maintain the program in accordance with its standards. County shall receive a copy of the findings of the NAEYC validator for their review.
- o County, at its own cost, may arrange for an outside Program Quality Review, conducted by an outside party to determine overall quality of the program on no less than on a biennial basis. The benchmark minimum standards for quality review include, but may not be limited to, the ECERS and ITERS reviews as well as the CLASS assessments. Similar program quality evaluative tools may be suggested by Contractor and provided to County for review and acceptance.

Employee Family Recruitment Plan

- o Contractor will develop and implement an Employee Family Recruitment Plan, in collaboration with the County, to increase Employee Family enrollment at the Center.
- o It is the goal of both the Contractor and County to increase Employee Family enrollment from the present 68% to 75% during Year 1 of this Agreement, and to 80% during Year 2 and through the end of the Agreement. Contractor and County will make best efforts to reach these enrollment goals.

County Employee Tuition Assistance Program

- o For the length of this Agreement, County shall administer a County Employee Tuition Assistance Program to offset child care expenses for eligible Employee Families, based upon income guidelines.
- o County and Contractor shall meet no less than annually to review income guidelines and may modify thresholds, based upon review of Federal, State or regional income benchmarks.
- o Contractor shall determine eligibility for the County's Employee Tuition Assistance Program for current and incoming Employee Families, and shall insure that all associated paperwork for eligible Employee Families is complete and on file at the Center. Contractor shall re-confirm continued eligibility no less than once every six months. Contractor is given authority to determine tuition assistance level and amount (each, a "Tuition Discount"), based upon current income threshold guidelines provided by the County.
- o Contractor will invoice the County on a quarterly basis for the amount of the Tuition Discounts authorized to County Families. Quarterly invoice will include Employee Name, Employee ID, Dependent Name(s), FTE(s), % Level of Assistance, and Amount. In no event will the County's obligation to make payments under this section exceed \$110,000 per year and \$550,000 during the Term of this contract.

Back Up Child Care

- o Contractor is permitted to provide back-up child care for Employee Families and Community Families not currently enrolled in the Center, on a space-available basis. All families interested in using back-up child care must complete a standard admissions application and process, including any SDSS required forms, at the Center, prior to using child care services. Income from back-up child care will be clearly stated on all reporting documents and budgets provided to County.

Quarterly Reports

- o Contractor shall provide quarterly financial reports (income/expense statements) including revenue from tuitions of both Employee Families and Community Families and net income, in substantially the form attached hereto as Attachment A
- o The operating budget shall be submitted to County no less than 90 days prior to the beginning of school year for review by County, or at another time as mutually agreed upon between the two parties.

Quarterly Meetings

County and Contractor shall meet quarterly to review the terms of this Agreement, including but not limited to:

- o Review of financial reports
- o Review of operational budget
- o Review Employee Family enrollment and recruitment plan
- o Review Employee/Community Family wait lists
- o Review list of Employee Families receiving tuition assistance, % of tuition assistance, and amounts
- o Identification and update of facility and maintenance issues

Facility Use and Maintenance

- o Contractor 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.
- o An overview of the County and Contractor responsibilities with respect to the Center and the building in which the Center is located is discussed in Exhibit C.
- o Contractor shall enforce a no-smoking policy inside and within the grounds of the Center. Contractor shall maintain a designated lactation room on site.

EXHIBIT B—PAYMENTS AND RATES

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, County shall pay Contractor based on the following fee schedule and terms:

Tuition and fee schedule for County Employee Families and Community Families for 2022-23 of the Term are included in Attachment-A of this Agreement. No additional fees shall be assessed to enrolled or wait listed Employee Families.

Contractor may increase Employee Family tuition rates annually by no more than the planned percentage increase in the average salary and benefits of the Centers employees plus up to 2% per year. In the event that Contractor reasonably believes unusual circumstances warrant a greater increase, no less than 120 days prior to the date of implementation, the parties will meet to agree upon such increase.

No less than 90 days prior to a change in rates or fees, Contractor shall forward to the County updated tuition and fee schedule(s), which shall be attached as an amended Attachment A hereto without the necessity of a formal amendment of this Agreement.

No less than 90 days prior to a change in rates or fees, Contractor shall provide County with a comparative review of tuition rates from 10 different local centers (of which 5 are employer- sponsored) of reasonable comparability to the Center. County and Contractor shall agree on the list prior to the review.

Employee families shall pay a \$25 registration fee (\$150 for Community Families). The Registration fee is waived for employee families who qualify for tuition assistance.

Sibling Discount for Employee Families

If an Employee Family enrolls more than one child at the Center at the same time, Contractor will provide a five percent (5%) discount *off* the Employee Family tuition rate for the oldest sibling, which shall be reimbursed to Contractor by County as a Tuition Discount in accordance with Exhibit A. At any point when an Employee Family sibling(s) leaves the Center and only one child remains enrolled in the program, the sibling Tuition Discount is terminated and the tuition for that child reverts back to the Employee Family tuition rate

Contractor will submit itemized invoices by the 20th business day for services rendered during the previous month. Invoices are to be sent to:

County of San Mateo – HR
Attn: Accounts Payable
455 County Center- 5th FL
Redwood City, CA 94063

Monthly Child Care Rates

Bright Horizons at Redwood City

403 Winslow Street
Redwood City, CA 94063
T: 650-363-4939

Visit our website www.brighthorizons.com

Effective 9/1/2022 COSM Rates

	Infant/Toddler			Twos			Preschool/ Kindergarten Prep		
	5 Days	3 Days	2 Days	5 Days	3 Days	2 Days	5 Days	3 Days	2 Days
Full Time	\$2,787	\$1,923	\$1,338	\$2,409	\$1,711	\$1,205	\$2,506	\$1,398	\$1,007

Fees:				
New Student Application Fee	-	One Time	(per child, nonrefundable)	\$25
Continuing Student Registration	-	Annual	(per child, nonrefundable)	\$100
Late Payment Fee	-	Daily		\$20
NSF Fee	-	Per Payment		\$25
Yearly Activity Fee	-	Annual		\$100

Please be sure to read the Bright Horizons Family Guide for all policies and procedures.

A 5% county employee sibling discount is assigned to the child with the lowest tuition.

Tuition is payable in advance of service and is adjusted annually with 30 days' notice. Rates are subject to change.

Tuition is paid on the 25th of the month through a secure online web portal (or monthly recurring draft).

Tuition is reflective of staff-child ratios in assigned classrooms.

If center closes for facility or weather related problems parents are responsible for full tuition.

We offer scholarships whenever possible. Applications for assistance may be obtained through the school or business office.

Monthly Child Care Rates Bright Horizons at Redwood City

403 Winslow Street
Redwood City, CA 94063
T: 650-363-4939

Visit our website www.brighthorizons.com

Effective 9/1/2022 – 8/31/2023 COSM Scholarship Rates

	Infant/Toddler			Twos			Preschool/ Kindergarten Prep		
Household Income	5 Days	3 Days	2 Days	5 Days	3 Days	2 Days	5 Days	3 Days	2 Days
Tier 5 - Less than \$60,000	\$836	\$577	\$401	\$723	\$513	\$361	\$617	\$419	\$302
Tier 4 - \$60,000 - \$80,000	\$1,115	\$769	\$535	\$964	\$684	\$482	\$822	\$559	\$403
Tier 3 - \$80,000 - \$100,000	\$1,393	\$961	\$669	\$1,204	\$855	\$602	\$1,028	\$699	\$503
Tier 2 - \$100,000 - \$120,000	\$1,672	\$1,154	\$803	\$1,445	\$1,027	\$723	\$1,234	\$839	\$604
Tier 1 - \$120,000 - \$140,000	\$1,951	\$1,346	\$937	\$1,686	\$1,198	\$843	\$1,439	\$979	\$705

Fees:				
New Student Application Fee	-	One Time	(per child, nonrefundable)	\$25
Continuing Student Registration	-	Annual	(per child, nonrefundable)	\$100
Late Payment Fee	-	Daily		\$20
NSF Fee	-	Per Payment		\$25
Yearly Activity Fee	-	Annual		\$100

NOTES:

Please be sure to read the Bright Horizons Family Guide for all policies and procedures. A 5% county employee sibling discount is assigned to the child with the lowest tuition.

Tuition is payable in advance of service and is adjusted annually with 30 days' notice. Rates are subject to change. Tuition is paid on the 25th of the month through a secure online web portal (or monthly recurring draft).

Tuition is reflective of staff-child ratios in assigned classrooms.

If center closes for facility or weather related problems parents are responsible for full tuition.

EXHIBIT C— REVOCABLE LICENSE TO ENTER AND USE REAL PROPERTY

This revocable license to enter and use real property ("License") is by and between the COUNTY OF SAN MATEO, a political subdivision of the State of California ("County" or "Licensor"), and BRIGHT HORIZONS FAMILY SOLUTIONS LLC ("Licensee" or "Contractor").

County and Contractor are parties to this Agreement for professional services to which this License is attached as Exhibit C, and which is titled Agreement Between the County of San Mateo and Bright Horizons Family Solutions (the "Agreement"). This License is incorporated as part of the Agreement and sets forth the rights and obligations of the parties in relation to the use of certain real property necessary for the performance of the Agreement. Licensee's use and occupancy of the Premises at 403 Winslow Street, Redwood City, CA ("the Center") to provide child care services as set forth in Exhibit A to this Agreement, shall be on the terms and conditions set forth herein.

Therefore, for good and valuable consideration as set forth in the Agreement, the receipt and sufficiency of which are hereby acknowledged, the County grants to Licensee and Licensee accepts from the County the revocable rights set forth in this License.

1. Premises: as is condition

County confers to Licensee a revocable, personal, unassignable, nonexclusive, and non-possessory privilege to enter upon and use the Premises at 403 Winslow Street, Redwood City, CA for the limited purposes and subject to the terms, conditions and restrictions set forth in this Agreement. This License gives Licensee a revocable license only, and does not constitute a grant by County to Contractor of any ownership, leasehold, easement, or other property interest or estate whatsoever in the Premises, or any portion thereof, including the land upon which the Center is located and all other improvements on and appurtenances to such land, collectively referred to as the "Premises."

Parking: The parking lot adjoining the Premises is not included in this license; however, Licensee shall be entitled to non-exclusive use of designated parking areas for its employees and for child care drop-off and pick-up, subject to County consent; with any changes to be agreed upon among the parties.

LICENSEE ACKNOWLEDGES AND AGREES THAT THE PREMISES IS BEING LICENSED AND ACCEPTED IN AN "AS IS" CONDITION, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, AND SUBJECT TO ALL APPLICABLE LAWS, RULES AND ORDINANCES GOVERNING USE, OCCUPANCY AND POSSESSION. LICENSEE REPRESENTS AND WARRANTS TO COUNTY THAT LICENSEE HAS INVESTIGATED AND INSPECTED, EITHER INDEPENDENTLY OR THROUGH AGENTS OF LICENSEE'S OWN CHOOSING, THE CONDITION OF THE PREMISES AND THE SUITABILITY OF THE PREMISES FOR LICENSEE'S INTENDED USE. LICENSEE HAS DETERMINED, BASED SOLELY ON ITS OWN INVESTIGATION, THAT THE PREMISES ARE SUITABLE FOR LICENSEE'S BUSINESS AND INTENDED USE.

2. Term:

The privilege granted to Licensee pursuant to this License is temporary only and for a term (the "Term") that shall commence on October 1, 2022, and shall end upon the expiration or termination of the Agreement. Without limiting any of its rights hereunder, County may revoke this License if the Agreement is terminated, without any obligation to pay any additional consideration to Licensee on account hereof.

3. Fee:

This License is granted in consideration of the professional services required to be provided by Licensee under the terms of the Agreement.

4. Use:

Licensee shall use and continuously occupy the Premises during the Term solely for the purposes set forth in the Agreement as necessary to meet its obligations under the Agreement and for no other purpose.

Without limiting the foregoing, Licensee shall not use, occupy, or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or permit any offensive, noisy or hazardous use or any waste on or about the Premises. Licensee shall take all precautions to eliminate any nuisances or hazards relating to its activities on or about the Premises. Licensee shall not place any new or replacement sales display or sign, or advertise in any manner in areas on the exterior of the Premises without the County's prior written consent, which County may withhold or grant in its sole discretion.

5. Repairs, Maintenance, and Alterations:

- 5.1 County's Responsibilities. County shall, at its cost and effort, be responsible to repair and maintain the structural portions of the Premises, including the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical, or communications systems (collectively, "Building Systems"); provided, however, Licensee shall reimburse County for any damage, excluding normal wear and tear, caused by any willful or negligent act or omission of Licensee, its Agents or Invitees.
 - 5.1.1 County will maintain the Premises in a manner that will reasonably minimize loss of use of the Premises by Licensee as a result of deferred or inadequate maintenance. The County specifically agrees, during the Term of this License, to provide the following repairs, maintenance and services: (a) replacement and repair of interior and exterior permanent surface, fixtures and structures; (b) carpentry, plumbing, and electrical services; (c) maintenance of boilers, radiators, sump pumps, domestic water tanks, hot water tanks, heating and cooling, locks, and all related Building Systems and equipment; (d) maintenance of parking lot; (e) maintenance of storm drains, culverts and sanitary sewers; (f) maintenance of fire and smoke detection systems; (g) maintenance of window frames and walls (excluding glass and doors), roof, gutters and downspouts; (h) painting of interior and exterior portions of the Premises as necessary, provided that phasing of such work shall be at the sole election of the County; (i) repair and replacement of appliances as necessary. County reserves the right at any time to make alterations, additions, repairs, deletions or improvements to the common areas or any other part of the Center or the Building Systems, provided that any such alterations or additions shall not permanently materially adversely affect the functional utilization of the Premises for the Permitted Use set forth in Exhibit A.
 - 5.1.2 For the purpose of making any such repairs or maintenance, County may stage structures and supplies in the Premises where reasonably required by the character of the work to be performed, provided that such work shall not unreasonably interfere with Licensee's business. Licensee waives any claim for damages for any injury or inconvenience to or interference with Licensee's business, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned thereby.
 - 5.1.1 Licensee shall report in writing at least biannually to the Director of Human Resources, with a copy to the Director of Public Works, any need for repair and maintenance services called for herein, including a priority list for items that are necessary to comply with licensing requirements in order to deliver the child care services described in Exhibit A. Failure to provide such notice will relieve the County of any liability for failure to make such repairs or provide such maintenance services. Decisions regarding the scheduling of maintenance, repair and replacement as set forth herein shall be at the sole discretion of the Director of Public Works using the same priority structure that would be applicable to the County's other facilities maintenance requirements.

Notices shall be provided to the Director of Human Resources as provided in the Agreement, and to the Director of Public Works at:

Ann Stillman, Director of Public Works
 County of San Mateo, Public Works Department
 555 County Center, 5th Floor
 Redwood City, CA 94063

Email: astillman@smcgov.org

- 5.2 Licensee's Responsibilities. Except as provided hereinabove, Licensee shall, at its sole cost and effort, maintain the Premises in good repair and working order and in a clean, secure, safe and sanitary condition. Licensee is responsible for landscaping within the Premises grounds in accordance with County standards. Licensee is also responsible for repair of any damage to a permanent surface or structure caused by negligence or abuse of Licensee or its Agents or Invitees. Licensee shall maintain, without limitation, all of County's personal property, signs, plate glass, windows, floors, built-in furniture, fixtures, equipment, and furnishings as part of the Premises, and shall repair or replace any damage caused by negligence or abuse of Licensee or its Agents or Invitees, and shall at all times maintain Licensee's personal property in the Premises in good condition and repair. Licensee is solely responsible for the repair, maintenance, or replacement of Licensee-owned equipment, furniture, supplies, and materials. Except as set forth herein, Licensee shall not make or suffer to be made any alterations, additions, or improvements to or of the Premises or any part thereof without the written consent of County.
- 5.2.1 Unless otherwise described below or in the Agreement, Licensee shall not make or permit any alterations, installations, additions or improvements, structural or otherwise, to the Premises, including to the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical, or communications systems (collectively, "Building Systems"), without County's prior written consent in each and every instance. All alterations shall be done in accordance with plans and specifications approved by County and subject to any conditions that County may reasonably impose. Prior to commencing any alterations to the Center or Premises, Licensee shall obtain any and all approvals and permits from all governmental and regulatory agencies having jurisdiction over the Premises.
- 5.2.2 Minor repair, maintenance, or other Premises alterations that are otherwise the responsibility of County may be performed by Licensee subject to County's approval. If Licensee wishes to undertake a repair, maintenance, or other alteration project, it shall provide a written notice to the County at least 10 business days in advance and describe the scope of the work to be done, an estimate of the project cost, and the materials to be used. This notice must be provided to the Director of Public Works, with a copy to the Director of Human Resources or designee. Within 5 business days of receiving the Licensee's proposal for work, the County will inform Licensee if the project may proceed or if the project is denied, including a denial because the County (1) is unable to make a determination on the basis of the written notice; or (2) has any reasonable concerns about the scope or materials. County's approval will not be unreasonably withheld. Licensee hereby waives all rights to make the aforementioned repairs at County's expense under Sections 1941 and 1942 of the California Civil Code or under any similar law, statute or ordinance now or hereafter in effect.
- 5.2.3 Any repairs, maintenance, or alternations undertaken by Licensee shall ensure that the work performed shall be (a) at least equal in quality, value and utility to the original work or installation, (b) performed in a manner and using equipment and materials that will not interfere with or impair the operations, use or occupation of the County property surrounding the Premises, and (c) performed in accordance with all applicable laws, rules and regulations. Prior to commencing any work, Licensee shall obtain any and all necessary approvals and permits from all governmental and regulatory agencies having jurisdiction over the Premises.
- 5.2.4 Title to Improvements. Except for Licensee's Personal Property, or as may be specifically provided for by County in writing, all appurtenances, fixtures, improvements, equipment, additions, and other property attached or affixed to or installed in the Premises during the Term, including, without limitation, any alterations shall remain County's property at the termination of this License.

6. Liens and Encumbrances:

Licensee shall not create, permit or suffer any liens or encumbrances affecting any portion of the Premises, the Property or County's interest therein or under this License. Licensee shall keep the Premises free from any liens arising out of any work performed, material furnished or obligations incurred by or for Licensee. In the event Licensee does not, within twenty (20) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, County shall have, in addition to all other remedies, the right, but not the obligation, to cause the lien to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by County and all expenses incurred by it in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to County by Licensee upon demand. County shall have the right to post on the Premises any notices that County may deem proper for the protection of County, the Premises, and the Center, from mechanics' and materialmen's liens. Licensee shall give to County at least fifteen (15) days' prior written notice of commencement of any repair or construction on the Premises.

7. Utilities and Services:

Licensee shall, at its sole cost, make arrangements for service and provide all utilities and services to the Premises including, without limitation, gas, electricity, water, sewer, telephone service, internet service, janitorial service, pest control, and trash collection.

In the event any law, ordinance, code or governmental or regulatory guideline imposes mandatory controls on County or the Premises or any part thereof, relating to the use or conservation of energy, water, gas, light or electricity or the reduction of automobile or other emissions, or the provision of any other utility or service provided with respect to this License, or in the event County is required to make alterations to any part of the Premises in order to comply with such controls or guidelines, such compliance and the making of such alterations shall in no event entitle Licensee to any damages, relieve Licensee of the obligation to perform under the Agreement, or constitute or be construed as a constructive or other eviction of Licensee.

8. Compliance with Laws and Risk Management Requirements

- 8.1 Compliance with Laws: Licensee shall promptly comply, at its sole expense, with all present or future laws, orders, regulations and requirements of all governmental authorities relating to the Premises or the use or occupancy thereof, whether in effect at the time of the execution of this License or adopted at any time thereafter and whether or not within the present contemplation of the parties. This includes all applicable federal, State, and local requirements relating to COVID-19 or other public health emergencies. Licensee further understands and agrees that it is Licensee's obligation, at its sole cost and effort, to cause the Premises and Licensee's uses thereof to be conducted in compliance with the Americans With Disabilities Act. Licensee is also aware that the County of San Mateo Ordinance Code, Chapter 4.96, prohibits smoking in all County facilities, whether owned or leased. Licensee understands that said Ordinance authorizes County to enforce the provisions contained therein and Licensee agrees to enforce the provisions of said ordinance on the Premises.
- 8.2 Regulatory Approvals: Licensee understands and agrees that Licensee's use, alteration, improvement, or repair of the Premises may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Licensee shall be solely responsible for obtaining any and all such regulatory approvals. Licensee shall not seek any regulatory approval without first obtaining the written consent of County. Licensee shall bear all costs associated with applying for and obtaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Licensee's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Licensee, and County shall have no liability, monetary or otherwise, for any such fines or penalties. Licensee shall Indemnify County and the other Indemnified Parties hereunder against all Losses arising in connection with Licensee's failure to obtain or comply with the terms and conditions of any regulatory approval.

Licensee further understands and agrees that County is entering into this License in its capacity as a property owner, and not as a regulatory agency. Nothing in this License shall limit in any way Licensee's obligation to obtain any required approvals from County departments, boards or commissions having jurisdiction over the Premises. By entering into this License, County is in no way modifying or limiting Licensee's obligation to cause the Premises to be used and occupied in accordance with all applicable laws, as provided further above.

- 8.3 Compliance with County's Risk Management Requirements. Licensee shall not do anything, or permit anything to be done, in or about the Premises which would be prohibited by or increase the rates under a standard form fire insurance policy or subject County to potential premises liability. Licensee shall faithfully observe, at its expense, any and all requirements of County's Risk Manager with respect to Licensee's use and occupancy of the Premises, so long as such requirements do not unreasonably interfere with Licensee's use of the Premises.

9. Subordination:

This License is and shall be subordinate to any reciprocal easement agreement, ground lease, facilities lease or other underlying leases or licenses and the lien of any mortgage or deed of trust, that may now exist or hereafter be executed affecting the Property, or any part thereof, or County's interest therein. Notwithstanding the foregoing, County or the holder shall have the right to subordinate any such interests to this License. If any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Licensee shall attorn to the successor-in-interest to County. The provisions of this Article shall be self-operative and no further instrument shall be required. Licensee agrees, however, to execute and deliver, upon demand by County and in the form requested by County, any additional documents evidencing the priority or subordination of this License.

10. Inability to Perform:

If County is unable to perform or is delayed in performing any of County's obligations under this License, by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, protests, riots, demonstrations, inability to obtain utilities or materials or by any other reason beyond County's reasonable control, no such inability or delay shall constitute an actual or constructive eviction, in whole or in part, or entitle Licensee to any abatement or diminution of fee or relieve Licensee from any of its obligations under this License, or impose any liability upon County or its Agents by reason of inconvenience, annoyance, interruption, injury or loss to or interference with Licensee's business or use and occupancy or quiet enjoyment of the Premises or any loss or damage occasioned thereby

11. Damage and Destruction:

- 11.1 If the Premises or the Center is damaged by fire or other casualty, County shall have no obligation to repair the Premises or Center. County shall use reasonable efforts to promptly notify Licensee whether or not such damage can be repaired. In no event shall County be required to repair or compensate Licensee for any damage to Licensee's Personal Property or any interior or exterior finishes or fixtures such as paneling, decorations, railings, floor coverings, or any Licensee Alterations installed or made on the Premises by or at the expense of Licensee.
- 11.2 Licensee Waiver. County and Licensee intend that the provisions of this Section govern fully in the event of any damage or destruction and accordingly, County and Licensee each hereby waives the provisions of Section 1932, subdivision 2, and Section 1933, subdivision 4, of the Civil Code of California or under any similar law, statute or ordinance now or hereafter in effect.

12. Assignment and Subletting:

Licensee shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Licensee), voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer (collectively, "Assignment") any part of its interest in or rights granted pursuant to this License, or permit any portion of the Premises to be occupied by anyone other than itself, or license any

portion of the Premises, without County's prior written consent in each instance, which consent shall be granted or denied at the sole discretion of the County.

13. Waiver of Claims; Indemnification:

County shall not be responsible for or liable to Licensee, and Licensee hereby assumes the risk of, and waives and releases County and its Agents from all Claims (as defined below) for, any injury, loss or damage to any person or property in or about the Premises by or from any cause whatsoever including, without limitation, (i) any act or omission of persons occupying adjoining premises or any part of the Center adjacent to or connected with the Premises; (ii) theft; (iii) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination; (iv) stopped, leaking or defective Building Systems; (v) building defects; and (vi) any other acts, omissions or causes. Nothing herein shall relieve County from liability caused solely and directly by the gross negligence or willful misconduct of County or its Agents, but County shall not be liable under any circumstances for any consequential, incidental or punitive damages.

Licensee shall indemnify, defend, and hold District harmless against any loss, expense, damage, attorneys' fees or liability arising out of failure of Licensee to comply with any applicable law, regulation, rule or ordinance.

14. Insurance:

- 14.1 Licensee, at its sole cost, shall procure and keep in effect at all times during the Term insurance in the form and amounts and under the terms and conditions specified in the Agreement. Licensee shall be responsible, at its expense, for separately insuring Licensee's Personal Property.
- 14.2 Licensee acknowledges that County self-insures against casualty, property damage and public liability risks and agrees that County may at its sole election, but shall not be required to, carry any third-party insurance with respect to the Center, the Premises or otherwise.
- 14.3 Waiver of Subrogation. Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, County and Licensee each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance covering the Center or the contents, or any portion thereof, for any loss or damage maintained by such other party with respect to the Center or the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. If any policy of insurance relating to the Premises carried by Licensee does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Licensee shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against County or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

15. Access by County:

County reserves for itself and any of its designated Agents, the right to enter the Premises as follows: (i) at any time outside of business hours (Monday-Friday, 7:30 a.m. – 5:30 p.m.), after providing reasonable notice to Licensee, in order to supply any necessary or agreed-upon repair, maintenance, or other service to be provided by County hereunder, to show the Premises to prospective Licensees or other interested parties, or for any other lawful purpose; (ii) on an occasional basis, at all reasonable times, to post notices of non-responsibility outside the Premises; (iii) on an occasional basis, at all reasonable times after giving Licensee reasonable advance written or oral notice and receiving the consent of Licensee, to conduct any environmental audit of Licensee's use of the Premises, to repair, alter or improve any part of the Center, Building Systems, or the Premises, and for any other lawful purpose; and (iv) on an emergency basis without notice whenever County believes that emergency access is required.

In an emergency, County shall have the right to use any means that it deems proper to obtain access to any part of the Premises for the purposes of addressing the emergency, and any such entry shall not be

construed or deemed to be a forcible or unlawful entry into or a detainer of, the Premises, or an eviction, actual or constructive, of Licensee from the Premises or any portion thereof.

Licensee shall not alter any lock or install any new or additional locking devices without the prior written consent of County. All locks installed in the Premises (excluding Licensee's vaults, safes or special security areas, if any, designated by Licensee in writing to County) shall be by keyed to the County master key system, and County shall at all times have a key with which to unlock all such doors.

16. Surrender of Premises

Upon the termination of this License, Licensee shall immediately and peaceably quit and surrender to County the Premises together with all Alterations in good order and condition, except for normal wear and tear, and after Licensee having made the last necessary repair required on its part under this License, and further except for any portion of the Premises condemned and any damage and destruction for which Licensee is not responsible hereunder. The Premises shall be surrendered free and clear of all liens and encumbrances other than liens and encumbrances existing as of the Commencement Date and any other encumbrances created by County. Before the termination of this License, Licensee shall remove all of Licensee's Personal Property as provided in this License, and repair any damage resulting from the removal. Licensee's obligations under this Section shall survive the termination of this License. Any items of Licensee's Personal Property remaining in the Premises after the termination of this License may, at County's option, be deemed abandoned and disposed of in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by law.

17. General Provisions

- 17.1 Notices. Any notice given under this License shall be effective only if in writing and given by delivering the notice as provide in the Agreement, or to such other address as either County or Licensee may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made if sent by overnight courier, or upon the date personal delivery is made.
- 17.2 No Implied Waiver. No failure by County to insist upon the strict performance of any obligation of Licensee under this License or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any Agent of County, shall constitute a waiver of such breach or of County's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this License. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. Any consent by County hereunder shall not relieve Licensee of any obligation to secure the consent of County in any other or future instance under the terms of this License.
- 17.3 Authority. If Licensee signs as a corporation or a partnership, each of the persons executing this License on behalf of Licensee does hereby covenant and warrant that Licensee is a duly authorized and existing entity, that Licensee has and is qualified to do business in California, that Licensee has full right and authority to enter into this License, and that each and all of the persons signing on behalf of Licensee are authorized to do so. Upon County's request, Licensee shall provide County with evidence reasonably satisfactory to County confirming the foregoing representations and warranties.
- 17.4 Interpretation of License. The captions preceding the articles and sections of this License and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this License. This License has been negotiated at arm's length and between persons sophisticated and knowledgeable in

the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this License. Provisions in this License relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or County holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this License, whether or not language of non-limitation, such as "without limitation" or similar words, are used.

- 17.5 Brokers. Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the License contemplated herein. The provisions of this Section shall survive any termination of this License.
 - 17.6 Severability. If any provision of this License or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this License shall be valid and be enforceable to the fullest extent permitted by law.
 - 17.7 Governing Law and Venue. This License shall be construed and enforced in accordance with the laws of the State of California without regard to choice of law or choice of conflict rules. The venue for any court action to interpret or enforce this License or to litigate any claim arising out of this License shall be had in the California State Superior Court of the County of San Mateo.
 - 17.8 Time of Essence. Time is of the essence with respect to all provisions of this License in which a definite time for performance is specified.
 - 17.9 Taxes, Assessments, Licenses, Permit Fees and Liens. (a) Licensee recognizes and understands that this License may create a possessory interest subject to property taxation and that Licensee may be subject to the payment of property taxes levied on such interest. (b) Licensee agrees to pay taxes of any kind, including possessory interest taxes, that may be lawfully assessed on the interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Licensee's usage of the Premises that may be imposed upon Licensee by law, all of which shall be paid when the same become due and payable and before delinquency. (c) Licensee agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly discharging the same, provided that Licensee, if so desiring, may have reasonable opportunity to contest the validity of the same.
 - 17.10 No Relocation Assistance; Waiver of Claims. Licensee acknowledges that it will not be a displaced person at the time this License is terminated or expires by its own terms, and Licensee fully RELEASES, WAIVES AND DISCHARGES forever any and all Claims against, and covenants not to sue, County, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any laws, including, without limitation, any and all claims for relocation benefits or assistance from County under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 et seq.).
 - 17.11 Reasonableness and Good Faith. Except as limited elsewhere in this License, whenever this License requires County or Licensee to give its consent or approval to any action on the part of the other, such consent or approval shall not be unreasonably withheld or delayed.
- 18. Entire Agreement.** The Agreement together with this instrument, including the exhibits hereto, which are made a part of this License, contain the entire agreement between the parties and all prior written or oral negotiations, understandings and agreements are merged herein. The parties further intend that this License shall constitute the complete and exclusive statement of its terms and that no extrinsic

evidence whatsoever (including prior drafts hereof and changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this License. Licensee hereby acknowledges that neither County nor County's Agents have made any representations or warranties with respect to the Premises, the Building, or this License except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Licensee by implication or otherwise unless expressly set forth herein.