

**City and County of San Francisco
Airport Commission
P.O. Box 8097
San Francisco, California 94128**

**Agreement between the City and County of San Francisco and
The County of San Mateo – Childcare Facilities and Services (Palcare)
Contract No. 50350**

This Agreement is made this 1st day of July, 2023, in the City and County of San Francisco, State of California, by and between: San Mateo County, 400 County Center, HRD-133, Redwood City, CA 94063 (the “Contractor”) and the City and County of San Francisco, a municipal corporation (the “City”), acting by and through its Airport Commission (the “Commission”).

Recitals

- A. The Commission wishes to provide subsidized childcare services for families with employees based at San Francisco International Airport (the “Airport”); and
- B. The Commission is authorized to enter into all contracts which relate to matters under its jurisdiction; and
- C. Under San Francisco Administrative Code (“Administrative Code”) sections 21.04(a)(2) and 21.5(b), the Airport Director has determined that the services provided under this Agreement are available only from a sole source; and
- D. On [insert date], by Resolution No. [insert resolution number], the Commission awarded this Agreement to the Contractor in an amount not to exceed \$7,000,000, for a term of five years; and
- E. The Contractor represents and warrants that it is qualified to perform the services required by City under this Agreement; and

Now, THEREFORE, the Parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

- 1.1 “Agreement” means this contract document, including all attached appendices, and all applicable City ordinances and “Mandatory City Requirements” specifically incorporated into this Agreement by reference as provided herein.
- 1.2 “City” or “the City” means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration hereinafter referred to as “Purchasing” or the Director’s designated agent.
- 1.3 “City Data” or “Data” includes, but is not limited to, all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Agreement. This includes data that is provided by a third-party for use under this Agreement.

1.4 “Confidential Information”

1.3.1 “Confidential Information” means confidential City information including, but not limited to, personally-identifiable information (“PII”), protected health information (“PHI”), or individual financial information (collectively, “Proprietary or Confidential Information”) that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 *et seq.*); the California Confidentiality of Medical Information Act (Civil Code § 56 *et seq.*); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of Part 164); and Administrative Code Chapter 12M (“Chapter 12M”).

1.3.2 “Confidential Information” also means any and all nonpublic information, whether written, electronic, or oral, concerning or relating to Airport technology, computer, or data systems, processes, or procedures, or Critical Infrastructure Information or Protected Critical Infrastructure Information as defined under the Homeland Security Act of 2002 and 6 CFR § 29.2, which information or access to such information is supplied by the Airport or on behalf of the Airport to Contractor or otherwise acquired by Contractor during the course of dealings with the Airport. Additionally, “Confidential Information” includes security or security-related information, whether or not such information constitutes sensitive security information (“SSI”) as provided under 49 CFR Part 1520. In the event Contractor acquires SSI, it shall treat such information in conformance with federal law and the provisions of this Contract.

1.3.3 “Confidential Information” is confidential regardless of whether such information is in its original form, a copy, or a derivative product. “Derivative” means written or electronic material created from or with, or based on Confidential Information (i.e., a report analyzing Confidential Information shall also be considered Confidential Information). Confidential Information shall also mean proprietary, trade secret or other protected information, identified as Confidential Information by the Airport.

1.5 “Contractor” or “Consultant” means San Mateo County, 400 County Center, HRD-133, Redwood City, CA 94063.

1.6 “Deliverables” means Contractor’s work product resulting from the Services provided by Contractor to City during the course of Contractor’s performance of the Agreement, including without limitation, the work product described in the “Scope of Services” attached as Appendix A.

1.7 “Digital Signature” means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature.

1.8 “Mandatory City Requirements” means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws that impose specific duties and obligations upon Contractor.

1.9 “Party” and “Parties” mean the City and Contractor either collectively or individually.

1.10 “Services” means the work performed by Contractor under this Agreement as specifically described in the “Scope of Services” attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on July 1, 2023 and expire on June 30, 2028, unless earlier terminated as otherwise provided herein.

Article 3 Financial Matters

3.1 **Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City’s Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City’s obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated 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. If funds are not appropriated or only partially appropriated, City will promptly notify Contractor that it will lack full funding following said appropriations decision. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the BOS. Contractor’s assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

3.2 **Guaranteed Maximum Costs.** The City’s payment obligation to Contractor cannot at any time exceed the amount certified by City’s Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, “Modification of this Agreement.”

3.3 Compensation.

3.3.1 **Calculation of Charges.** Contractor shall provide an invoice to the City on a quarterly basis for goods delivered and/or Services completed in the immediately preceding quarter, as set forth in Appendix B. Compensation shall be made for Services identified in the invoice that the City, in its sole and reasonable discretion, concludes has been satisfactorily performed. In no event shall the amount of this Agreement exceed Seven Million Dollars (\$7,000,000). In no event shall City be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any Services covered by this Agreement.

3.3.2 **Payment Limited to Satisfactory Services and Delivery of Goods.** Contractor is not entitled to any payments from City until the Commission approves the goods and/or Services delivered under this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory delivery of goods and/or Services even if the unsatisfactory character may not have been apparent or detected at the time such payment was made. Goods and/or Services

delivered under this Agreement that do not conform to the requirements of this Agreement may be rejected by the City and in such case must be replaced by Contractor without delay at no cost to the City.

3.3.3 Withhold Payments. If Contractor fails to provide Services in accordance with Contractor's obligations under this Agreement, the City may withhold any and all payments due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

3.3.4 Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City and include a unique invoice number and a specific invoice date. Payment shall be made by City as the Parties have mutually agreed upon in writing. All invoices must show the PeopleSoft Purchase Order ID Number, PeopleSoft Supplier Name and ID, Item numbers (if applicable), complete description of goods delivered or Services performed, sales/use tax (if applicable), contract payment terms and contract price. Invoices that do not include all required information or contain inaccurate information will not be processed for payment.

3.3.5 Local Business Enterprise (LBE) Payment and Utilization Tracking System
– Not applicable.

3.3.6 Getting Paid by the City for Goods and/or Services.

(a) All City suppliers receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through the City's Automated Clearing House (ACH) payments service/provider. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit www.sfgov.org/ach.

(b) The following information is required to sign up: (i) The enroller must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer identification number or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

3.4 Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services under this Agreement. Contractor will permit 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. Contractor shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5 Submitting False Claims - Not applicable.

3.6 Payment of Prevailing Wages. Contractor agrees to comply with all applicable City, state and federal laws respecting the payment of prevailing wages for Services provided under this Agreement.

Article 4 Services and Resources

4.1 **Services Contractor Agrees to Perform.** Contractor agrees to perform the Services stated in Appendix A, "Scope of Services." Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for Services beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, "Modification of this Agreement."

4.2 **Qualified Personnel.** Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor (or Contractor's authorized subcontractors). Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

4.3 **Subcontracting.**

4.3.1 Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All subcontracts must incorporate the terms of Article 10 "Additional Requirements Incorporated by Reference" and Article 13 "Data and Security" of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

4.3.2 City's execution of this Agreement constitutes its approval of the subcontractor listed below.

Palcare, Inc.

4.4 **Independent Contractor; Payment of Employment Taxes and Other Expenses.**

4.1.1 **Independent Contractor.** For the purposes of this Section 4.4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the Services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, Federal Insurance Contributions Act, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing Services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this Section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing consistent with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five business days of Contractor's receipt of such notice, and consistent with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact

Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.1.2 **Payment of Employment Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 4.4 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

4.5 **Assignment.** The Services to be performed by Contractor are personal in character. Neither this Agreement, nor any duties or obligations under this Agreement, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement in accordance with the Administrative Code.

4.6 **Warranty.** Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

4.7 **Liquidated Damages** - Not applicable.

4.8 **Bonding Requirements** - Not applicable.

Article 5 Insurance and Indemnity

5.1 **Insurance.** Contractor and City agree that each Party will maintain in force, throughout the term of this Agreement, a program of insurance and/or self-insurance of sufficient scope and amount to permit each Party to discharge promptly any obligations each incurs by operation of this Agreement. If at any time during the term of this Agreement either Party plans to cease to be self-insured for any such possible claims, the Party shall provide the other Party advance notice of the change in sufficient time for the Parties to negotiate appropriate insurance requirements before any lapse in coverage. If the Parties fail to reach agreement on the terms of insurance policies or policy endorsements required, either Party may terminate this Agreement by giving written notice of termination specifying the date upon which termination shall become effective. If City terminates the Agreement under this Section 5.1, the termination provisions of Section 8.1 shall apply.

5.2 **Indemnification.**

5.2.1 Contractor shall indemnify and hold City, its officers, employees and agents, harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages (collectively, "Claims") arising out of the performance of this Agreement, but only in proportion

to and to the extent such Claims are caused by or result from the negligent or intentional acts or omissions of Contractor, its officers, agents or employees.

5.2.2 City shall indemnify and hold Contractor, its officers, employees and agents, harmless from and against any and all Claims arising out of the performance of this Agreement, but only in proportion to and to the extent such Claims are caused by or result from the negligent or intentional acts or omissions of City, its officers, agents or employees.

5.2.3 In the event of concurrent negligence of City, its officers, employees and agents, and Contractor and its officers, employees and agents, the liability for any and all Claims shall be apportioned under the California theory of comparative negligence as presently established or as may hereafter be modified.

5.2.4 Contractor and City shall indemnify and hold each other harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City or Contractor, of each other's articles or services to be supplied in the performance of this Agreement.

Article 6 Liability of the Parties

6.1 **Liability of City.** EXCEPT AS PROVIDED IN ARTICLE 5 (INSURANCE AND INDEMNIFICATION), CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3, "COMPENSATION," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

Article 7 Payment of Taxes

7.1 **Contractor to Pay All Taxes.** Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 **Possessory Interest Taxes.** Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

7.2.1 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

7.2.2 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the

information required by California Revenue and Taxation Code Section 480.5, as amended from time to time, and any successor provision.

7.2.3 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (See, e.g., California Revenue and Taxation Code Section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

7.2.4 Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

7.3 **Withholding.** Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Under San Francisco Business and Tax Regulations Code Section 6.10-2, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

Article 8 Termination and Default

8.1 **Termination for Convenience.** City or Contractor shall have the option, to terminate this Agreement for convenience and without cause, upon at least ninety (90) days prior written notice to the other party. Upon such election of either party and delivery of the required written notice, Contractor shall commence and diligently perform all actions necessary on the part of Contractor to effect the termination on the date specified and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions in the course of termination shall be subject to the prior approval of City. Within 30 days after the specified termination date, Contractor shall submit to City an invoice for all services performed prior to the specified date, which shall be compensated on the terms set forth in Section 3.3. City shall not be liable for any costs incurred by Contractor after the termination date.

8.2 Termination for Default; Remedies.

8.2.1 Contractor shall be in default under this Agreement if Contractor fails or refuses to perform or observe any term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within ten days after written notice thereof from City to Contractor (“Event of Default”). If Contractor defaults a second time in the same manner as a prior default cured by Contractor, City may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five days for Contractor to cure the default.

8.2.2 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default and (ii) any damages imposed by any ordinance or statute that is

incorporated into this Agreement by reference, or into any other agreement with the City. This Section 8.2.2 shall survive termination of this Agreement.

8.2.3 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

8.2.4 Any notice of default must be sent by registered mail to the address set forth in Article 11.

8.3 **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 of this Agreement 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.

8.4 Rights and Duties upon Termination or Expiration.

8.4.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Services and Delivery of Goods	9.2	Works for Hire
3.4	Audit and Inspection of Records	11.7	Agreement Made in California; Venue
Article 5	Insurance and Indemnity	11.8	Construction
6.1	Liability of City	11.9	Entire Agreement
Article 7	Payment of Taxes	11.10	Compliance with Laws
8.2.2	Exercise of Default Remedies	11.11	Severability
9.1	Ownership of Results	Article 13	Data and Security

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

Article 9 Rights in Deliverables

9.1 **Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors for the purposes of this agreement, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

9.2 **Works for Hire.** If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes,

or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

Article 10 Additional Requirements Incorporated by Reference

10.1 Laws Incorporated by Reference. The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at http://www.amlegal.com/codes/client/san-francisco_ca.

10.2 Conflict of Interest. By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

10.3 Prohibition on Use of Public Funds for Political Activity. In performing the Services, Contractor shall comply with Administrative Code Chapter 12G ("Chapter 12G"), which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

10.4 Consideration of Salary History – Not applicable.

10.5 Nondiscrimination Requirements – Not applicable.

10.6 LBE Utilization and Nondiscrimination in Contracting Ordinance – Not applicable.

10.7 Minimum Compensation Ordinance. Not applicable.

10.8 Health Care Accountability Ordinance. Not applicable.

10.9 First Source Hiring Program – Not applicable.

10.10 Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

10.11 **Limitations on Contributions** - Not applicable.

10.12 **Slavery Era Disclosure** - Not applicable.

10.13 **Working with Minors** - Not applicable.

10.14 **Consideration of Criminal History in Hiring and Employment Decisions.**

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of the Administrative Code Chapter 12T (“Chapter 12T”), “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth in this Agreement. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

10.14.2 The requirements of Chapter 12T shall only apply to a Contractor’s or Subcontractor’s operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco which excludes Airport property. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

10.15 **Public Access to Nonprofit Records and Meetings** - Not applicable.

10.16 **Food Service Waste Reduction Requirements.** Not applicable.

10.17 **Distribution of Beverages and Water.**

10.17.1 **Sugar-Sweetened Beverage Prohibition.** Contractor agrees that it shall not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by Administrative Code Chapter 101, as part of its performance of this Agreement.

10.17.2 **Packaged Water Prohibition.** Contractor agrees that it shall not sell, provide, or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as part of its performance of this Agreement.

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

10.19 **Preservative Treated Wood Products.** Not applicable.

Article 11 General Provisions

11.1 **Notices to the Parties.** Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City: Anwar Elgonemy
SFO Business and Finance
San Francisco International Airport
P.O. Box 8097, San Francisco, CA 94128
anwar.elgonemy@flysfo.com

To Contractor: Lisa Okada
Deputy Director of Human Resources
San Mateo County
455 County Center, 5th floor
Redwood City, CA 94063-1663
lokada@smcgov.org

Any notice of default must be sent by registered mail. Either Party may change the address to which notice is to be sent by giving written notice of the change to the other Party. If email notification is used, the sender must specify a receipt notice.

11.1.1 The Parties consent to the use of Digital Signatures, affixed using the City's DocuSign platform, to execute this Agreement and all subsequent modifications.

11.2 **Compliance with Americans with Disabilities Act.** Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

11.3 **Incorporation of Recitals.** The matters recited above are hereby incorporated into and made part of this Agreement.

11.4 **Sunshine Ordinance.** Contractor and City mutually acknowledge that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code Section 6250 *et seq.*), and the San Francisco Sunshine Ordinance, (Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

11.5 **Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement.

11.6 **Dispute Resolution Procedure** – Not applicable.

11.7 **Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

11.8 **Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.

11.9 **Entire Agreement.** This contract sets forth the entire Agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

11.10 **Compliance with Laws.** Contractor shall keep itself fully informed of the City’s Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

11.11 **Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

11.12 **Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

11.13 **Order of Precedence.** Contractor agrees to perform the Services consistent with the terms and conditions of this Agreement. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City’s terms and Contractor’s printed terms attached, the City’s terms shall take precedence.

11.14 **Notification of Legal Requests.** Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests (“Legal Requests”) related to all City Data, or which in any way might reasonably require access to City Data, and in no event later than 24 hours after it receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data consistent with the City’s instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored. Provided that Contractor complies with the foregoing notice requirements, Contractor shall have the right to comply with its legal obligations to disclose information pursuant to the California Public Records Act, (California Government Code section 6250 et seq.), a valid subpoena or court order, or other applicable legal authority.

Article 12 Department Specific Terms

12.1 **Airport Commission Rules and Regulations.** Contractor agrees to comply with the Airport Commission’s Rules and Regulations for the San Francisco International Airport as amended from time to time. A copy of the current Rules and Regulations can be found at: <http://www.flysfo.com/about-sfo/the-organization/rules-and-regulations>.

12.2 **Airport Intellectual Property.** Under Resolution No. 01-0118, adopted by the Airport Commission on April 18, 2001, the Airport Commission affirmed that it will not tolerate the unauthorized use of its intellectual property, including the SFO logo, CADD designs, and copyrighted publications. No proposers, bidders, contractors, tenants, permittees, and others doing business with or at the Airport (including subcontractors and subtenants) may use the Airport intellectual property, or any intellectual property confusingly similar to the Airport intellectual property, without the Airport Director’s prior written consent.

12.3 **Labor Peace/Card Check Rule – Not applicable.**

12.4 **Federal Fair Labor Standards Act.** This Agreement incorporates by reference the provisions of 29 USC § 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. Contractor has full responsibility to monitor compliance to the referenced statute or regulation. Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

12.5 **Occupational Safety and Health Act of 1970.** This Agreement incorporates by reference the requirements of 29 CFR § 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Contractor retains full responsibility to monitor its compliance and their subcontractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 CFR § 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

12.6 **Federal Nondiscrimination Requirements.** During the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as “Contractor”) agrees as follows:

12.6.1 **Compliance with Regulations.** Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.

12.6.2 **Nondiscrimination.** Contractor, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

12.6.3 **Solicitations for Subcontracts.** Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by Contractor of Contractor’s obligations under this Agreement and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.

12.6.4 **Information and Reports.** Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Airport or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Airport or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

12.6.5 **Sanctions for Noncompliance.** In the event of a Contractor’s noncompliance with the Non-discrimination provisions of this Agreement, the Airport will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

(a) Withholding payments to the contractor under the contract until the contractor complies; and/or

(b) Cancelling, terminating, or suspending a contract, in whole or in part.

12.6.6 Incorporation of Provisions. Contractor will include the provisions of paragraphs 12.6.1 through 12.6.6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. Contractor will take action with respect to any subcontract or procurement as the Airport or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, Contractor may request the Airport to enter into any litigation to protect the interests of the Airport. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.

12.6.7 Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC §2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC §4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 USC. §794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC §6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC §471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, sub-recipients and contractors, whether such programs or activities are federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38 and the Department of Justice regulations at 28 CFR, parts 35 and 36;
- The Federal Aviation Administration’s Non-discrimination statute (49 USC §47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes

discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 CFR at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC §1681 *et seq.*).

Article 13 Data and Security

13.1 Nondisclosure of City Data, Private or Confidential Information.

13.1.1 **Protection of Private Information.** If this Agreement requires City to disclose “Private Information” to Contractor within the meaning of Administrative Code Chapter 12M (“Chapter 12M”), Contractor and subcontractor shall use such information only consistent with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

13.1.2 **Confidential Information.** In the performance of Services, Contractor may have access to, or collect on City’s behalf, City Data and /or Confidential Information, the disclosure of which to third parties may damage City. If City discloses City Data or Confidential Information to Contractor, or Contractor collects such information on City’s behalf, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own confidential information.

13.2 **Payment Card Industry Requirements** – Not applicable.

13.3 **Business Associate Agreement.** – Not applicable.

13.4 **Ownership of City Data.** The Parties agree that as between them, all rights, including all intellectual property rights, in and to the City Data and any derivative works of the City Data is the exclusive property of the City.

13.5 Management of City Data and Confidential Information

13.5.1 **Use of City Data and Confidential Information.** Contractor agrees to hold City Data received from, or collected on behalf of, the City, in strictest confidence. Contractor shall not use or disclose City Data except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City Data outside the United States is subject to prior written authorization by the City. Access to City Data must be strictly controlled and limited to Contractor’s staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data solely for performing its obligations under the Agreement and not for Contractor’s own purposes or later use. Nothing in this Agreement shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase “unauthorized use” means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

13.5.2 **Disposition of Confidential Information.** Upon request of City or termination or expiration of this Agreement, and under any document retention period required by this Agreement, Contractor shall promptly, but in no event later than thirty (30) calendar days, return all data given to or collected by Contractor on City’s behalf, which includes all original media. Once Contractor has received

written confirmation from City that City's Data has been successfully transferred to City, Contractor shall within ten (10) business days clear or purge all City Data from its servers, any hosted environment Contractor has used in performance of this Agreement, including its subcontractors environment(s), work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge. Secure disposal shall be accomplished by "clearing," "purging" or "physical destruction," consistent with National Institute of Standards and Technology Special Publication 800-88 or most current industry standard.

Article 14 MacBride And Signature

14.1 **MacBride Principles - Northern Ireland.** The provisions of Administrative Code Chapter 12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day first mentioned above.

CITY AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO	CONTRACTOR
By: _____ Ivar C. Satero, Airport Director	_____ Authorized Signature
Attest:	_____ Lisa Okada Deputy Director of Human Resources
By _____ Kantrice Ogletree, Secretary Airport Commission	_____ San Mateo County
Resolution No: _____	_____ City Supplier Number
Adopted on: _____	_____ 455 County Center, 5 th Floor
Approved as to Form:	_____
David Chiu City Attorney	_____ Redwood City, CA 94063-1663
By _____	_____ (650) 3637824-
Christopher Stuart Deputy City Attorney	_____ Federal Employer ID Number

Appendices

- A: Scope of Services
- B: Calculation of Fees

Appendix A Scope of Services

1. Description of Services

Contractor County of San Mateo (“County”) agrees to perform the following Services:

Continue to lease to Palcare, Inc. (“Palcare”) a County-owned facility so Palcare may provide licensed extended-hour childcare services to Airport-based employees at the County-owned facility, in accordance with this Agreement and the below provisions.

Act as a fiscal intermediary to receive funds from City for subsidy payments for Airport-based employee childcare at Palcare, pursuant to the terms below, and disburse said funds to Palcare. The obligations of County to provide funding to Palcare for Airport-based employees, as described in this Agreement, are limited solely to the funds in County’s possession that are received from City pursuant to this Agreement.

2. Definitions. The following terms, as used herein, have the following respective meanings:

"Airport-based Employee" means a person employed by the Commission or an employer based at the Airport. Airport-based Employees are placed into one of three family categories, as follows:

a) California state income (lower income families)

Requires a formal application and related documents to certify for CDE (as defined below) subsidies. Services are based on both income qualifications and need (i.e., employment). Most families that qualify have an income that falls below the state median income. For example: A family of four’s combined annual adjusted gross income currently cannot go over \$112,105 annually, or \$9,342 monthly. The calculations determine a family fee from \$0 to \$600. The amount varies according to income and family size and can be changed according to CDE guidelines.

b) Airport tuition assistance (lower to medium income families)

Airport tuition assistance is determined by 15% of the adjusted gross annual family income and proof of employment at the Airport via a current badge, or proof of address on the Airport campus if no badge is available. For example, if gross annual income is \$120,000, 15% of this income would be \$18,000. This is then divided by 12 months. The Airport-based employee would be required to pay \$1,500 of the monthly tuition per child enrolled at Palcare. The current tuition cost for each program from Monday to Friday for eight hours a day is as follows:

Infants (3 months to 24 months): \$2,841 per month

Toddlers (2 years to 3 years): \$2,541 per month

Preschool and Pre-K (3 years to 5 years): \$2,243 per month

c) Discounted tuition (higher income families)

Families whose adjusted gross income does not qualify for tuition assistance will receive a 5% subsidy toward Palcare's monthly tuition. City will match Palcare's 5% discount, giving higher income families an additional 5% discount, for a total subsidy of 10%.

"Airport Scholarship Program" means City's subsidy of childcare tuition for certain low-income families, as provided in Section 1.C. of Appendix B.

"Annual Registration Fee" means the Annual Registration and Materials Fee normally charged by Palcare to all families that use Palcare services, currently in the amount of \$300 per child, as the same may be adjusted from time to time.

"County Employee" means a regular employee of the County of San Mateo who works at least 20 hours per week.

"CDE" means the California Department of Education, Child Development Division.

"Extended Hours Support" means that Palcare will support the provision of extended hour childcare services with a 15% premium for childcare professionals during the extended hours, so that childcare services will be available from Monday-Friday, 6am –11 pm and Saturdays 8am–4 pm. Extended hours is defined as Monday-Friday, 6pm- 11pm and Saturdays, 8am-4pm.

"Family Contribution Amount" means, for any month, the monthly amount a family is required to pay, calculated as follows:

- a) for a California state income family (lower income family) (defined above), the lesser of:
 - i. the family contribution amount that such family must pay for childcare services for such month, which is determined by Palcare from the applicable "Part-Time Fee" or "Full-Time Fee" amounts on the Family Fee Schedule, it being understood that such monthly amounts are a "per family per month" charge, regardless of the number of such family's children actually enrolled at Palcare, and
 - ii. 15% of such family's monthly income multiplied by the number of such family's children enrolled at Palcare during such month.
- b) for an Airport Tuition Assistance family (defined above), 15% of such family's monthly income multiplied by the number of such family's children enrolled at Palcare during such month.
- c) for any other family (Discounted Tuition family, as defined above), 95% of Palcare's monthly tuition.

For purposes of this definition, the same monthly income figure for a family shall be used for the Family Fee Schedule (in subsection (a)(i) above) and the 15% calculations under subsections (a)(ii) and (b) above.

"Family Fee Schedule" means the DOE Child Care and Development Family Fee Schedule as updated from time to time, the current version of which is attached hereto as Appendix B. This schedule shall automatically update when DOE updates its Family Fee Schedule. During the term of this Agreement, County shall require Palcare to forward to City any updated fee schedule, which shall be automatically incorporated into this Agreement as part of Appendix B hereto without the necessity of a formal amendment of this Agreement.

"Flexible Scheduling" means the ability of Airport-based Employees to schedule and pay for childcare services during the hours and days they specifically need rather than on a standard full- or part- day basis, and to change their schedules every month as necessary.

"Full-time Equivalent" means a child receiving childcare services 10 hours per day, 21 days per month.

"Index" means the Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco- Oakland-San Jose region as reported and published by the U.S. Department of Labor, Bureau of Labor Statistics, for the twelve-month period ending the previous December 31.

"Lunch Program" means Palcare's provision of providing a morning and afternoon snack, and a hot lunch and dinner for all children ages two years and up.

"Palcare" is a 501(c)(3) non-profit who leases portions of a County building at 945 California Drive, Burlingame, CA in order to provide extended-hour childcare services to children from infancy through pre-kindergarten.

"Priority Enrollment" means the right of an Airport-based Employee's child, ahead of children of County Employees and the general community, to be (a) enrolled upon applying for service if a space is available in the appropriate childcare class, or (b) placed at the front of Palcare's waiting list for the next available opening at Palcare in the appropriate class. City acknowledges that Palcare may grant the children of County Employees secondary priority enrollment behind the children of Airport-based Employees, but ahead of the general community.

3. Childcare Program Support Services.

Flexible Scheduling. County shall ensure that Palcare provides Flexible Scheduling for Airport-based Employees to select and pay for childcare services by the hour rather than on a standard full- or part-day basis. County shall also ensure that Palcare provides Airport-based Employees with the option to change their childcare schedules on a monthly basis.

Priority Enrollment. Contractor shall reserve 100 Full-time Equivalent spaces for Priority Enrollment, as defined above.

- 4. Services Provided by Attorneys.** Any such Services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for Services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.
- 5. Reports.** Contractor shall submit written reports as requested by City. Format for the content of such reports shall be determined by the Airport Commission. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.
- 6. Department Liaison.** In performing the Services provided for in this Agreement, Contractor's liaison with the Airport will be the person identified in Agreement at Section 11.1, Notices to the Parties. Such individual shall be the Contractor's primary point of contact for all purposes under this Agreement.

Appendix B
Calculation of Fees

1. Funding

- A. Annual Funding Amount. City will pay to County up to the maximum quarterly payment amounts and maximum annual funding amounts set forth below to subsidize Airport-based Employee childcare costs at Palcare for verifiable subsidy costs incurred during the applicable fiscal quarter and year, as described in paragraphs B. through H. below.

<u>Fiscal Year</u>	<u>Maximum Quarterly Payment Amount</u>	<u>Maximum Annual Funding Amount</u>
2023-24	\$325,000	\$1,300,000
2024-25	\$325,000	\$1,300,000
2025-26	\$350,000	\$1,400,000
2026-27	\$375,000	\$1,500,000
2027-28	\$375,000	\$1,500,000

- B. Flexible Scheduling Fee. In order to provide Flexible Scheduling to Airport-based Employees, City will pay a fee equal to 20% of the regular monthly tuition charged to Airport-based Employees (prior to subtracting any DOE subsidy or Family Contribution Amount for lower-income families described in paragraph C. below). The flexible scheduling fee is intended to assist Palcare with the cost of the additional teachers that are needed during peak childcare hours and outside of normal business hours, and the childcare capacity that cannot otherwise be filled due to the irregularity of the Airport flexible schedules.
- C. Airport Scholarship Program Subsidy. In order to make childcare services more affordable for Airport-based Employees, for each month during the term of this Agreement, City will pay a portion of the regular childcare tuition for the children of each Airport-based Employee enrolled at Palcare. The City subsidy will equal (a) the regular Palcare tuition for all such family's children for such month, less (b) the amount of any CDE subsidy received by Palcare for such family's children for such month (if any), less (c) the applicable Family Contribution Amount (as defined in Section 2) for such month that such family is required to pay. City's subsidy amount for any given month is summarized by the following formula with respect to each Airport-based Employee:

$$\text{City subsidy} = \text{Total regular tuition} - \text{CDE subsidy (if any)} - \text{Family Contribution Amount}$$

If the Family Contribution Amount exceeds the total regular tuition amount, then the City subsidy is zero.

- D. Annual Registration Fees. In order to increase the affordability of childcare services, City will pay the Annual Registration Fees of each Airport-based Employee child, currently in the amount of \$300 per child. In the event Palcare changes the Annual Registration Fee, County shall require Palcare to give notice of the change to City.
- E. Discounted Tuition (higher income families). In order to support the affordability of childcare services for higher income families, City will match a 5% tuition assistance subsidy provided by Palcare, for a total subsidy of 10%.

- F. Lunch Program Support. In order to support the provision of meals to enrolled children, City will pay up to six dollars and ninety-five cents (\$6.95) per enrolled Airport-based Employee child ages two and up per day.
- G. Extended Hours Support. In order to support the provision of extended hour services, City will pay a 15% premium for childcare professionals during extended hours (Monday-Friday, 6pm-11pm and Saturdays, 8am-4pm), up to the annual maximums described below.

	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Maximum annual amount to support extended hours	12,908	26,257	28,111	30,096	32,221

- H. Priority Enrollment. The annual fee for Priority Enrollment will be calculated considering a \$1,000 amount per Full-Time Equivalent space multiplied by the average number of Airport-based Employee children enrolled at Palcare during the final quarter of the preceding year with a 15% increase, per the following formula:

Annual Priority Enrollment Fee = \$1,000 x average number of Airport-based Employee children enrolled at Palcare during the final quarter of the preceding year x 1.15.

The Priority Enrollment Fee shall not exceed \$100,000 per year. This fee will be payable in equal quarterly increments.

2. Payments to County

Each quarter, County shall provide quarterly invoices with payment amounts required under this Agreement corresponding to the three months in such quarter, based upon quarterly invoices.

The quarterly invoices shall clearly show the total amount due, as well as a detailed breakdown of how such amount was determined. Specifically, the invoices shall include the following schedules for each month in the quarter under consideration:

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<u>Schedule</u>		<u>Required Information</u>
1	Flexible Scheduling Fee for families that do not qualify for CDE or the Airport Scholarship Program Subsidy.	<ul style="list-style-type: none"> - The regular monthly tuition for Airport families; - A list of Airport families and the corresponding tuition fees; - Total fees for all the families; and - The resulting 20% payable by the City as outlined in Section 1.B.
2a	Airport Scholarship Subsidy for qualifying families that also receive CDE subsidies.	<ul style="list-style-type: none"> - The monthly total regular tuition, the CDE subsidy and the Family Contribution Amount for each qualifying family; - The total amounts; - Corresponding subsidy payable by the City (calculated in accordance with the formula in Section 1.C above); and - Relevant supporting documentation (separate CDE schedule showing the CDE subsidy amounts for each family).
2b	Airport Scholarship Subsidy for qualifying families that do not receive CDE subsidies.	<ul style="list-style-type: none"> - The monthly total regular tuition and the Family Contribution Amount for each qualifying family; - The total amounts; and - The corresponding subsidy payable by the City (calculated in accordance with the formula in Section 1.C above).
2c	Flexible Scheduling Fee for families that qualify for the Airport Scholarship Program Subsidy.	<ul style="list-style-type: none"> - The monthly total regular tuition for each family and the corresponding total; and - The resulting 20% payable by the City as outlined in Section 1.B above. - Alternatively, the information for this schedule may be shown in Schedules 2a and 2b, as long as these Flexible Scheduling Fees are clearly presented separate from the Airport scholarship subsidies.
3	Annual Registration Fees.	<ul style="list-style-type: none"> - The Annual Registration Fees charged each month to new/renewing Airport-based employee families; - The names of the children associated with such fees; and - The total for all the children of Airport-based employees.
4	<u>Lunch Program Support Fees</u>	<ul style="list-style-type: none"> - The total number of Airport-based employee children over the age of two enrolled at Palcare x Days enrolled per month; and

		- The total number of days of care for all Airport-based employee children over the age of two per month.
5	Extended Hours Support Fees (included on annual basis)	none
6	Priority Enrollment Fees.	<ul style="list-style-type: none"> - The total Full-time Equivalent spaces occupied by Airport-based employee children each month; - The total number of Airport-based employee children on the waiting list each month; - The average number of Airport-based children during the final quarter of the preceding year; and - The monthly amount payable by the City, calculated on a pro-rata basis as outlined in Section 3.F above.
7	Summary.	<ul style="list-style-type: none"> - The monthly total amounts in all the schedules indicated above; - The overall monthly totals; and - The grand total payable by the City for the quarter.

City reserves the right to request additional supporting documentation for the invoices and associated schedules, and to adjust the amounts due to County if documentation of costs does not substantiate the amounts billed. To support this documentation, County shall require that (a) Palcare maintain books and records showing all expenses incurred and fees received, and (b) the City shall have the right, at its own expense, upon reasonable notice and during regular business hours, to inspect and audit such books and records. Payment shall be made within 30 days of invoice approval by City and County.

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3. Child Care and Development Family Fee Schedule

The operative family monthly fee schedule shall be the current annual Family Fee Schedule, provided from time to time by the California Department of Education, Child Development Division under California Education Code sections 8263(f). For reference only, the current schedule is as follows.

Family Monthly Fee Schedule
California Department of Social Services – Effective: July 1, 2022

State enrollment cutoff = 85% of 2020 State Median Income (SMI) from CA DOF (2020 ACS)

Family Fee Schedule								
Monthly Part-time Fee	Monthly Full-time Fee	Family Size 1 or 2	Family Size 3	Family Size 4	Family Size 5	Family Size 6	Family Size 7	Family Size 8 or more
\$36	\$71	\$2,827	\$3,220	\$3,737	\$4,335	\$4,933	\$5,045	\$5,157
\$44	\$87	\$2,898	\$3,300	\$3,830	\$4,443	\$5,056	\$5,171	\$5,286
\$52	\$104	\$2,969	\$3,381	\$3,924	\$4,551	\$5,180	\$5,297	\$5,415
\$61	\$122	\$3,039	\$3,461	\$4,017	\$4,660	\$5,303	\$5,423	\$5,544
\$78	\$155	\$3,110	\$3,542	\$4,111	\$4,768	\$5,426	\$5,549	\$5,673
\$88	\$175	\$3,181	\$3,622	\$4,204	\$4,877	\$5,550	\$5,675	\$5,801
\$98	\$195	\$3,251	\$3,703	\$4,297	\$4,985	\$5,673	\$5,801	\$5,930
\$108	\$216	\$3,322	\$3,783	\$4,391	\$5,093	\$5,796	\$5,928	\$6,059
\$119	\$237	\$3,393	\$3,864	\$4,484	\$5,202	\$5,920	\$6,054	\$6,188
\$130	\$260	\$3,463	\$3,944	\$4,578	\$5,310	\$6,043	\$6,180	\$6,317
\$142	\$283	\$3,534	\$4,025	\$4,671	\$5,418	\$6,166	\$6,306	\$6,446
\$153	\$306	\$3,605	\$4,105	\$4,764	\$5,527	\$6,290	\$6,432	\$6,575
\$166	\$331	\$3,675	\$4,186	\$4,858	\$5,635	\$6,413	\$6,558	\$6,704
\$178	\$356	\$3,746	\$4,266	\$4,951	\$5,744	\$6,536	\$6,684	\$6,833
\$182	\$363	\$3,817	\$4,347	\$5,045	\$5,852	\$6,660	\$6,810	\$6,962
\$185	\$369	\$3,887	\$4,427	\$5,138	\$5,960	\$6,783	\$6,936	\$7,091
\$188	\$376	\$3,958	\$4,508	\$5,232	\$6,069	\$6,906	\$7,063	\$7,220
\$192	\$383	\$4,029	\$4,588	\$5,325	\$6,177	\$7,030	\$7,189	\$7,348
\$203	\$406	\$4,100	\$4,669	\$5,418	\$6,285	\$7,153	\$7,315	\$7,477
\$207	\$413	\$4,170	\$4,749	\$5,512	\$6,394	\$7,276	\$7,441	\$7,606
\$210	\$420	\$4,241	\$4,830	\$5,605	\$6,502	\$7,399	\$7,567	\$7,735
\$214	\$427	\$4,312	\$4,910	\$5,699	\$6,610	\$7,523	\$7,693	\$7,864
\$217	\$434	\$4,382	\$4,990	\$5,792	\$6,719	\$7,646	\$7,819	\$7,993
\$221	\$441	\$4,453	\$5,071	\$5,886	\$6,827	\$7,769	\$7,945	\$8,122
\$224	\$448	\$4,524	\$5,151	\$5,979	\$6,936	\$7,893	\$8,072	\$8,251
\$228	\$455	\$4,594	\$5,232	\$6,072	\$7,044	\$8,016	\$8,198	\$8,380
\$231	\$462	\$4,665	\$5,312	\$6,166	\$7,152	\$8,139	\$8,324	\$8,509
\$235	\$469	\$4,736	\$5,393	\$6,259	\$7,261	\$8,263	\$8,450	\$8,638
\$238	\$476	\$4,806	\$5,473	\$6,353	\$7,369	\$8,386	\$8,576	\$8,767
\$242	\$483	\$4,877	\$5,554	\$6,446	\$7,477	\$8,509	\$8,702	\$8,896
\$245	\$490	\$4,948	\$5,634	\$6,539	\$7,586	\$8,633	\$8,828	\$9,024
\$252	\$504	\$5,089	\$5,795	\$6,726	\$7,803	\$8,879	\$9,081	\$9,282
\$259	\$518	\$5,230	\$5,956	\$6,913	\$8,019	\$9,126	\$9,333	\$9,540
\$266	\$532	\$5,372	\$6,117	\$7,100	\$8,236	\$9,373	\$9,585	\$9,798
\$273	\$546	\$5,513	\$6,278	\$7,287	\$8,453	\$9,619	\$9,837	\$10,056
\$280	\$560	\$5,655	\$6,439	\$7,474	\$8,669	\$9,866	\$10,089	\$10,314
\$287	\$574	\$5,796	\$6,600	\$7,661	\$8,886	\$10,113	\$10,342	\$10,572
\$291	\$581	\$5,867	\$6,681	\$7,754	\$8,995	\$10,236	\$10,468	\$10,700
\$294	\$588	\$5,937	\$6,761	\$7,847	\$9,103	\$10,359	\$10,594	\$10,829
\$298	\$595	\$6,008	\$6,842	\$7,941	\$9,211	\$10,482	\$10,720	\$10,958

Based on 2020 American Community Survey (2020ACS)
 Information provided by California Department of Finance, February 2022
 California Department of Social Services
 Jul-22