

**MOUNTAIN VIEW CHILD-CARE CENTER OPERATING AGREEMENT
BETWEEN THE CITY OF MOUNTAIN VIEW AND COMMUNITY GATEPATH**

THIS AGREEMENT (the “Agreement”) is dated for identification purposes this 1st day of January, 2014, by and between the CITY OF MOUNTAIN VIEW, a California Charter City and municipal corporation, whose address is P.O. Box 7540, Mountain View, California, 94039 (hereinafter “CITY”), and COMMUNITY GATEPATH, a California nonprofit corporation, whose address is 350 Twin Dolphin Drive, Suite 123, Redwood City, California, 94065 (hereinafter “OPERATOR”) (hereinafter collectively referred to as the “Parties”).

RECITALS

WHEREAS, the goal of the child-care center is to provide a high-quality child-care service for families that includes, but is not limited to:

- A developmentally appropriate curriculum for children;
- An environment and activities that emphasize nurturing and emotional growth for children;
- Support activities for parents and appropriate participation of parents in the program design;
- Meeting the needs of low-income Mountain View residents;
- Providing the highest level of health and safety for children served; and
- A program that incorporates the unique and diverse strengths of all children and their families; and

WHEREAS, CITY has a child-care facility on CITY property located at 260 Escuela Avenue, Mountain View (hereinafter the “Center”); and

WHEREAS, CITY requested proposals for the operation of a child-care center; and

WHEREAS, OPERATOR is in the business of providing services related to the operation of child-care centers and submitted a proposal; and

WHEREAS, OPERATOR’s proposal met the requirements outlined by CITY and CITY selected OPERATOR’s proposal; and

WHEREAS, CITY wishes to retain OPERATOR to provide the daily operations and management of the child-care center pursuant to the terms and conditions of this Agreement; and

WHEREAS, the Center's Community Care licensed name is City of Mountain View Learning Links;

NOW, THEREFORE, the parties agree as follows:

1. **Term of the Agreement.** OPERATOR will commence operations of the Center on February 15, 2014 and continue operations through June 30, 2019, unless terminated earlier in accordance with Section 23. OPERATOR will have the option of renewing this Agreement for two (2) additional consecutive five (5) year terms provided OPERATOR is in compliance with the terms of this Agreement. In order to exercise any option granted by this section, OPERATOR shall notify CITY in writing of its election to exercise such option not later than six (6) months prior to the last day of the then-current term.

2. **Transition and Commencement of Child-Care Services.** CITY shall make its best efforts to transition the premises of the Center for move-in by OPERATOR by February 15, 2014 (hereinafter the "Transition Date"). OPERATOR will commence the provision of child-care services no later than February 24, 2014.

a. **Delay Caused by CITY.** In the event OPERATOR does not receive a license to operate the Center in time to commence the provision of child care on February 24, 2014 as a result of CITY's failure to fulfill its obligations under this Agreement, then OPERATOR shall be excused from providing child-care services and making payments due CITY under Section 11 of this Agreement for the number of days that CITY's actions delayed OPERATOR's ability to obtain a license to operate.

b. **Delay Caused by OPERATOR.** In the event OPERATOR does not receive a license to operate the Center in time to commence the provision of child-care services on February 24, 2014 due to its own actions or inaction, then OPERATOR shall commence payments to CITY as set forth in Section 11 of this Agreement.

3. **Reliance Upon Professional Skill.** It is mutually agreed by the parties that CITY is relying upon the professional skill of OPERATOR, and OPERATOR represents to CITY that its work shall conform to generally recognized professional standards in the industry. Acceptance of OPERATOR's work by CITY does not operate as a release of OPERATOR's said representation.

4. **OPERATOR's Responsibilities and Operation of Center.** Except as specified elsewhere in this Agreement, OPERATOR shall perform daily operations and

management of the Center as required to operate the Center and fulfill the responsibilities set forth as follows:

a. OPERATOR shall provide all operations for the Center, including:

(1) Program Development, Content, and Management. OPERATOR shall be responsible for administering and providing the program of the Center to achieve the goals as set forth in the Recitals. Each of the developmental groups of the Center must have a separate program geared specifically to that group, including, but not limited to, a schedule of activities by age group, curriculum model, and any special program features that will be included in the program, discipline policies, absence policies, plans for field trips and the type of transportation to be provided, and the provisions of meals and snacks.

(2) Curriculum Guidelines. Ensure all OPERATOR employees are trained and fully understand the implemented curriculum. The curriculum shall facilitate children's learning using developmentally appropriate practices that support growth through play, exploration, daily routines and environment, and reaches across all domains of development, including physical, cognitive, language, and social and emotional development through positive interactions with peers and teachers.

(3) Behavior Management Plan. OPERATOR shall use positive behavior guidance techniques to enhance the child's learning and shall not withhold personal rights of children in the Center as outlined by the California Code of Regulations, Title 22 (hereinafter "Title 22").

(4) Parent Involvement Plan:

(a) OPERATOR shall maintain a parent handbook that reflects all Center policies and an overview of services, in addition to policies for parent involvement and participation.

(b) OPERATOR shall create a parent committee (hereinafter "Parent Committee") to discuss and organize programming, resources, parent work days and fundraising.

(5) Accreditation:

(a) OPERATOR shall apply for accreditation with the National Association for the Education of Young Children (hereinafter "NAEYC") no later than eighteen (18) months after the transition of the Center and will strive to achieve accreditation within twenty-four (24) months after application for accreditation.

OPERATOR shall maintain such accreditation for the term of this Agreement and any option terms, subject to Section 4a(5)(b), below.

(b) Should OPERATOR fail to achieve accreditation by forty-eight (48) months after commencement of operations, OPERATOR shall provide CITY with evidence that it has satisfied the obligations of this section, including evidence the Center has met all applicable NAEYC application requirements.

(c) The Center shall be operated in accordance with NAEYC accreditation standards during the term of this Agreement. If NAEYC accreditation standards are subsequently revised, OPERATOR shall use reasonable efforts to maintain compliance with NAEYC accreditation standards.

(6) Licensing:

(a) OPERATOR shall be responsible for obtaining and/or renewing, at its expense, all necessary local and State licenses required for operating the Center.

(b) OPERATOR shall show and display within the Center proof of all licenses and permits, and all applicable documents issued by local and State authorities.

(7) Low Income. OPERATOR shall meet the low-income enrollment goal of thirty percent (30%) within eighteen (18) months of commencement of operations. The definition of "low income" shall be as defined by the Community Child Care Council of Santa Clara County.

(8) Personnel Policies. OPERATOR shall meet all Federal and State employment mandates.

(9) Program Materials. OPERATOR shall maintain program promotional materials, handouts, brochures, etc.

(10) Marketing Plan. OPERATOR shall activate a marketing plan that achieves a fully enrolled center with a waiting list and low-income enrollment goal of thirty percent (30%).

(11) Parent Contract. OPERATOR shall develop an enrollment agreement and other registration forms, and shall contract directly with the parents of the Center attendees.

(12) Enrollment Policy. OPERATOR's enrollment policy shall outline the registration process, including, but not limited to, deposits, tuition, fees, schedules, and waiting lists. OPERATOR shall follow the enrollment priorities set forth by the City Council, as follows: (1) Siblings of currently enrolled children; (2) low-income Mountain View residents (up to the goal of 30% enrollment); (3) City of Mountain View residents; (4) City of Mountain View employees; and (5) others.

(13) Fees and Tuition:

(a) General. OPERATOR will maintain the fees and tuition amounts set by the former operator through August 31, 2014 as shown in Exhibit A, attached hereto and incorporated herein. As of September 1, 2014, OPERATOR shall set fees and tuition amounts comparable to the market rate in Santa Clara County. Fees may be increased annually thereafter by the Consumer Price Index (CPI) for San Francisco-Oakland-San Jose Urban Wage Earners and Clerical Workers for the twelve (12) months ending June 30 of each year. The June 2013 index of 243.052 will be the base index. If the increase is more than CPI, OPERATOR shall notify CITY and provide the reasons and supporting documentation for the additional increase.

(b) Fees and tuition increases will be announced to enrolled families at least thirty (30) days prior to implementation.

(c) Subsidized Care. OPERATOR will accept Federal and State child-care subsidies and manage the requirements for reimbursement through those subsidy programs, and accept private, grant, and foundation payment assistance.

(14) Adult-to-Child Ratios. OPERATOR shall maintain the following minimum adult-to-child ratios for all hours of operation.

Teacher:Child	
Infants	1:4
Toddlers	1:4
Twos	1:7
Threes	1:10
Pre-K	1:10

Notwithstanding the foregoing, adult-to-child ratios must meet local and State licensing requirements.

(15) Infant Care. OPERATOR, at all times, shall offer infant care.

(16) Backup Care. OPERATOR shall provide backup care for dependents of CITY employees, utilizing slots that become open because of regular

client illness, vacation, or other similar circumstance. OPERATOR need not keep slots open strictly for this service. This program will provide a child-care option for CITY employees when their primary care arrangement is unavailable (e.g., when the regular provider is ill or arrangements have fallen through). City employees must fill out all required licensing paperwork prior to use of this program. OPERATOR will charge backup child-care users Eighteen Dollars (\$18) per hour with a minimum of six (6) hours charged, to be increased annually, capped at the CPI. OPERATOR is not required to provide backup care for ill children.

(17) Hours of Operation. The Center shall be open year-round, Monday through Friday, from 7:00 a.m. to 6:00 p.m., excluding public holidays, Thanksgiving and the day after Thanksgiving, the week of Christmas, New Year's Day, Memorial Day, July 4 and Labor Day. There will be two (2) annual staff development days, during which the Center will be closed for child care. The dates of development days shall be provided annually to enrolled families and shall be included on OPERATOR's calendar at least ninety (90) days in advance.

(18) Security Procedures:

(a) OPERATOR shall perform complete fingerprinting and background checks on all Center staff prior to assignment to the Center consistent with OPERATOR's employment policies and Title 22 regulations.

(b) OPERATOR shall maintain an emergency evacuation plan. Such plan shall be incorporated into the evacuation procedures mandated by licensing requirements, including exiting and evacuation plans for each room. OPERATOR shall coordinate monthly evacuation drills.

(19) On-Site Management. OPERATOR shall provide for all day-to-day, on-site management of the Center, including:

(a) Program Staffing. OPERATOR shall employ Center staff to manage all day-to-day functions of the Center, including program coordinators, teachers, and other staff necessary to operate the Center and comply with NAEYC and Title 22 regulations.

(b) Other Staffing. OPERATOR will determine if other staff is necessary in order to maintain the program and meet the objectives of the operations.

(20) Personnel Management. OPERATOR shall be responsible for all personnel management, including, but not limited to, the following:

(a) Training and supervising staff.

(b) Hiring and firing of staff, as necessary. Staff will be employees of OPERATOR, not CITY.

(c) Career development and training of staff (at least twenty (20) hours of in-service training annually).

(d) Maintaining security and safety procedures, including sign-in and sign-out procedures.

(21) Health Procedures. OPERATOR shall maintain student accident procedures and CPR and first-aid training for Center staff.

(22) Utilities and Taxes. OPERATOR shall pay for the electricity, Internet connectivity, telephone, water, wastewater, and solid waste costs of the Center. OPERATOR shall pay any taxes that consist of the possessory interest tax and any applicable sales tax incurred as part of its operations.

(23) Administration. OPERATOR shall perform all necessary administrative duties on an ongoing basis, including, but not limited to, the following:

(a) Conduct registration and admissions, handling all center inquiries in a timely manner and ensuring interested parties have every opportunity to enroll their children.

(b) Maintenance of enrollment and registration forms.

(c) Proactively manage the waiting list, including following priority enrollment order and timely notification of enrollment opportunities.

(d) Manage employee payroll and benefits administration.

(e) Provide nutritious snacks (at least two (2) snacks per child per day), excluding infants.

(f) Select and contract with outside contractors; i.e., dance class, music, language, and computer activities. The cost of special or enrichment programs and activities may be passed through to parents.

(g) Collaborate with other community resources such as schools, social service organizations, and community health agencies.

(24) Financial Management. OPERATOR shall manage and take responsibility for the financial management of the Center.

(25) Quarterly Meetings. OPERATOR and CITY representatives shall meet at least once quarterly to assess the Center's operations and progress.

b. Business License. OPERATOR shall obtain and maintain a business license from CITY for the term of this Agreement.

5. CITY's Responsibilities. Except as specified elsewhere in this Agreement, CITY shall furnish materials and services as follows:

a. Center Characteristics. The Center has approximately seven thousand (7,000) square feet of indoor space, windows and natural light, a playground space for children divided by age groups, including an infant and toddler yard and preschool yard, and parking for child pick-up and drop-off.

b. Facility. The Mountain View Child-Care Center is located at 260 Escuela Avenue, Mountain View, California.

(1). Building Improvements. A building consisting of all structural components (including foundation, exterior walls, interior load-bearing walls, and roof) as well as unexposed water and sewer lines; electrical panels and unexposed electrical wiring; heating, ventilation, and air conditioning (HVAC) systems; fire sprinkler systems; and a security system (collectively, the "Building Improvements"); and

(2). Interior Improvements. All fixtures, equipment, and machinery of every kind affixed or attached to the Building Improvements, including all plumbing and sewage facilities (including sinks, toilets, faucets, and drains); interior walls and wall coverings; floors and floor coverings; ceilings and soffits; windows, doors, plate glass, and skylights; electrical facilities and equipment (including lighting fixtures, lamps, bulbs, tubes, fans, vents, exhaust equipment, and systems; and built-in appliances, cabinets, and shelving (collectively, the "Interior Improvements").

c. Furniture, Fixtures, and Equipment. CITY shall be responsible for the Furniture, Fixtures, and Equipment (hereinafter "FFE") items outlined in Exhibit B attached hereto and incorporated herein. OPERATOR shall be responsible for the replacement of items outlined in the FFE as "soft costs" which include manipulatives, toys, games, and computers. CITY shall be responsible for the replacement of built-in furniture and appliances.

6. **Repairs and Maintenance.**

a. **CITY's Responsibilities.** Except for the items of repair which are OPERATOR's responsibility under Section 6(b), CITY shall at all times during the term of this Agreement, at its own cost and expense: (a) repair and maintain the structural portions of the Building Improvements (including foundation, exterior walls, interior load-bearing walls and roof); (b) paint or stain the exterior walls of the Building Improvements; (c) pay for the replacement of broken glass occurring outside the course of Center operations; (d) repair and maintain the sewer line from the cleanout to the main; (e) repair and maintain the fire sprinkler system; (f) repair and maintain the electrical system up to the main disconnect or breaker; and (g) repair and maintain the water line up to the point of entry into the building, including the water meter. CITY shall exercise its best efforts to repair or restore water, electricity, natural gas, and the fire sprinkler system in the Center as quickly as possible but, in any event, within the time frames established by either the State licensing agency or the Fire Marshal. For routine repairs and maintenance, other than power, water, or the fire sprinkler system, CITY shall have no obligation to make repairs until a reasonable time (which shall be not less than thirty (30) days) after receipt by CITY of written notice of the need for such repairs. CITY shall be under no obligation to make any repairs, alterations, renewals, replacements, or improvements to and upon the Center or the mechanical equipment serving the Center at any time except as expressly provided in this Agreement. OPERATOR waives all statutory rights to make repairs by or at the expense of CITY, except in the case where failure to make such repairs shall be a health or safety risk. CITY shall have no liability for damages caused by any act or omission of OPERATOR, its agents, contractor, servants, employees or invitees, which damage shall be repaired by OPERATOR at its own expense, to CITY's satisfaction.

b. **OPERATOR's Responsibilities.** OPERATOR shall at all times during the Agreement term, at its own cost and expense: (a) make all nonstructural repairs to, and maintain in tenantable condition, the nonstructural portion of the Center, including regular repair, maintenance, and servicing of the sewer lines from the exterior cleanout toward the building, the HVAC system per the manufacturer's specifications, the electrical system from the distribution parcel onward, the interior plumbing and the security system (including the monitoring service for the same), in addition to fire alarm testing and maintenance, and regular inspection and compliance checks of fire extinguishers; (b) pay for the replacement of broken glass occurring during the course of Center operations; (c) maintain and repair in good condition OPERATOR's signs, locks, and closing devices; and (d) perform periodic inspection and cleaning of the building's roof and gutters. OPERATOR shall contract with a service company for the recommended periodic maintenance of the HVAC equipment, and provide a copy of the service contract to CITY within ten (10) days from the commencement date of this Agreement. Copies of any subsequent contracts and maintenance records will be provided to CITY by OPERATOR. All repairs and replacements required of

OPERATOR shall be promptly made with new materials of like kind and quality, and shall be done in a good and workmanlike manner in conformance with all legal requirements.

c. Condition Upon Expiration of Agreement. Upon the expiration or earlier termination of this Agreement, OPERATOR shall surrender the Center broom-clean and in good condition and repair, ordinary wear and tear customary to properties used as child-care facilities, damage by fire, earthquake, act of God or the elements alone excepted, and shall promptly remove or cause to be removed at OPERATOR's expense from the Center any signs, notices, and displays placed by OPERATOR. In any event, OPERATOR shall cause the following to be done prior to the expiration or sooner termination of this Agreement: (a) all interior walls shall be painted or cleaned so they appear freshly painted; (b) all floors shall be cleaned; (c) all windows shall be washed; (d) the HVAC system shall be serviced and left in good condition and repair; and (e) the plumbing, sewer, and electrical systems and gutters and lighting shall be placed in good order and repair (including replacement of any burned out, discolored or broken light bulbs, ballasts, or lenses) as required by Section 6(b), above. OPERATOR agrees to repair any damage to Center caused by or in connection with the removal of any articles of personal property, signs, furniture, movable partitions, or additions which CITY allows or requires OPERATOR to remove, including, without limitation, repairing the floor and patching and/or painting the walls where required by CITY to CITY's reasonable satisfaction, all at OPERATOR's sole cost and expense. OPERATOR shall indemnify CITY against any loss or liability resulting from delay by OPERATOR in so surrendering the Center, including, without limitation, any claims made by any succeeding tenant founded on such delay. Such indemnity obligation shall survive expiration of this Agreement.

d. Custodial Services. OPERATOR shall provide custodial services as necessary for its operations.

e. Playground. OPERATOR shall maintain the playground areas and landscaping shown on Exhibit C, attached hereto and incorporated herein. Each Monday morning, CITY shall clean the playground area (excluding the infant play area.) If Monday is a holiday, cleaning shall be done on the following business day. CITY shall be responsible for maintaining the playground structures and for the regular maintenance of large trees, including major pruning and pest control.

7. Alterations and Additions.

OPERATOR may, at its own expense and after giving CITY written notice of its intention to do so, make alterations, additions, and changes in and to the interior of the Center (except those of a structural nature) as it may find necessary or convenient for its purposes, provided the value of the Center is not thereby diminished, and

provided, however, that no alterations, additions, or changes requiring a building permit may be made without first obtaining CITY's written approval. In addition, no alterations, additions, or changes shall be made to the exterior walls or roof of the Center unless and until the written consent and approval of CITY shall have first been obtained which consent shall not be unreasonably withheld, conditioned, or delayed. As a condition to giving any such consent, CITY may require, among other conditions, that: (a) OPERATOR agree to remove any such alterations, additions or changes at the expiration of the term of the Agreement and to restore the Center to its prior condition; and/or (b) OPERATOR provide CITY at OPERATOR's sole cost and expense a lien and completion bond in an amount equal to one-and-one-half (1-1/2) times the estimated cost of such improvements, to insure CITY against any liability for mechanics' and materialmen's liens and to ensure completion of the work. In no event shall OPERATOR make or cause to be made any penetration through the roof of the Center without the prior written approval of CITY. OPERATOR shall be directly responsible for any and all damages resulting from any violation of the provisions of this article.

All alterations, additions, or changes (except painting and flooring replacement) to be made to the Center which require the approval of CITY shall be made under the supervision of a competent architect or competent licensed structural engineer and made in accordance with plans and specifications approved in writing by CITY before the commencement of work. CITY's approval of OPERATOR's plans and specifications shall create no responsibility or liability on the part of CITY for completeness, design sufficiency, or compliance with law. All work with respect to any alterations, additions, and changes must be done in a good and workmanlike manner and diligently proceed to completion so that the Center shall at all times be a complete unit except during the period of work. Upon completion of such work, OPERATOR shall file a Notice of Completion as permitted by law in the Office of the County Recorder in Santa Clara County. Any such changes, alterations, and improvements shall be performed and done strictly in accordance with all laws, including the Americans with Disabilities Act (hereinafter "ADA"). OPERATOR shall, upon CITY's request, provide CITY with a copy of the plans and specifications for any alteration, addition, or change made to the Center not requiring the approval of CITY.

Upon termination of this Agreement, such alterations, additions, or changes shall be considered improvements and shall not be removed by OPERATOR but shall become a part of the Center, unless required by CITY to be removed pursuant hereto.

OPERATOR shall make all alterations, additions, or changes of any sort to the Center that are required by any law, including any alteration, addition or change because of: (a) OPERATOR's particular use or change of use of the Center; (b) OPERATOR's application for any permit or governmental approval; or (c) OPERATOR's construction of any alteration, addition, or change to the Center or OPERATOR's installation of any trade fixture. Notwithstanding the foregoing, CITY

represents and warrants that at the commencement date of this Agreement , the Center shall comply with all requirements of Federal, State, and local laws, rules, and ordinances for use as a licensed child-care center.

8. **Access to Center.**

CITY and its agents shall have unlimited access to the Center during all hours, upon reasonable notice (unless in an emergency), to inspect and examine the Center to ascertain if it is in good repair, and to make reasonable repairs which CITY may elect to make hereunder provided CITY uses its best efforts to not interfere with the operation of the Center. CITY shall sign in upon arrival at the Center. Subject to the foregoing, CITY shall have the right to enter the Center and make any necessary repairs to the Center and perform any work therein: (a) which may be necessary to comply with the terms of this Agreement and with any laws, ordinances, rules, or regulations of any public authority; or (b) which CITY may deem necessary to maintain the Center if OPERATOR does not make or cause such repairs to be made or performed or commence to cause such work to be performed and diligently completed (as described in Section 6(b), above) promptly after receipt of written demand from CITY. In the event CITY requires access to the Center in order to perform construction work incidental to any portion of Rengstorff Park adjacent to, above, or below the Center, CITY shall make reasonable efforts, except in emergencies, to perform such work only during hours in which the Center is closed. In any event, CITY shall provide at least two (2) business days' notice to OPERATOR of its intent to perform such work and shall minimize any interference with the operations of the Center. Nothing herein contained shall imply any duty on the part of CITY to do any such work which OPERATOR may be required to do under any provision of this Agreement, nor shall it constitute a waiver of an event of OPERATOR's default in failing to do the same. No exercise by CITY of any rights herein reserved shall entitle OPERATOR to any damage for any injury or inconvenience occasioned thereby, nor to any abatement of any moneys due under this Agreement. Notwithstanding the preceding sentence, nothing contained herein shall limit CITY's indemnification obligations contained in Section 22(b).

9. **Joint Use of Center.**

a. Center. CITY reserves the right to use the Center, with the exception of the administrative offices, for CITY-sponsored child-care functions, with the prior approval of OPERATOR in each instance. CITY shall be responsible for security and maintenance during those hours of use and shall not cause undue wear-and-tear of the equipment. CITY shall restore the Center to its condition prior to CITY's use. CITY shall only use the Center for events compatible with the Center.

b. Playground. The playground, as shown in Exhibit C (but not including the infant/toddler playground area), shall be jointly used by CITY and OPERATOR.

OPERATOR shall have the exclusive use of the playground during hours of child-care operation, which will be approximately 7:00 a.m. to 6:00 p.m., Monday through Friday. The playground will be open to the public as a park during all other hours that coincide with the hours of use for Rengstorff Park. CITY shall maintain timed, self-locking gates to secure the entrance to the playground.

c. Community Resource Center. The Community Resource Center shall be used at CITY's sole discretion and is not part of the Child-Care Center operations.

d. Indemnification. CITY agrees to indemnify, defend and hold harmless OPERATOR and its directors, officers, employees, representatives, and agents from all claims to the extent resulting from the use by CITY and the public of the Center, playground and Community Resource Center pursuant to this Section 9 (hereinafter "CITY's Use"). In the event any action or proceeding shall be brought against OPERATOR by reason of any such claim, CITY shall defend the same at CITY's expense by counsel selected by OPERATOR and approved by the City Attorney. OPERATOR shall promptly notify CITY of any claims or damage to the Center, playground, and Community Resource Center caused by the public. CITY shall be responsible for repairing all damage to and for cleaning the Center, playground, fixtures, furnishings, equipment, and OPERATOR's personal property as necessary due to CITY's Use, under this Section 9.

10. Financial Definitions.

- Loss – The amount by which Operating Expenses exceed Revenues.
- Revenues – All income generated by OPERATOR from the Center, including, but not limited to, tuition and fees, less applicable discounts.
- Operating Expenses – All actual costs relating to operating the Center, including, but not limited to, Operator Payment (defined in Section 11 below), salaries, materials, supplies, and taxes (except income taxes), but not including Management Fees (defined in Section 12 below).
- Operating Forecast – A projection of Revenues and Operating Expenses, including projected tuition and detailed assumptions behind all Center expenses.
- CPI – The Consumer Price Index for the San Francisco-Oakland-San Jose urban wage earners and clerical workers for the twelve (12) months ending June 30 of each year.

11. OPERATOR Payment to CITY. OPERATOR shall pay CITY Two Hundred One Thousand Eighty-Four Dollars (\$201,084) annually to operate the Center.

OPERATOR shall make twelve (12) equal monthly payments in the amount of Sixteen Thousand Seven Hundred Fifty-Seven Dollars (\$16,757), and each payment shall be due on the first (1st) of each month and shall be received no later than the tenth (10th) of the month. The first month's payment shall be due March 1, 2014. At the time of each five (5) year option, OPERATOR's payments shall be annually adjusted by the CPI.

12. **OPERATOR Management Fee.** OPERATOR shall be entitled to a Management Fee for operation of the Center only after the Two Hundred One Thousand Eighty-Four Dollar (\$201,084) annual OPERATOR payment has been paid to CITY. In no circumstance shall the annual payment due CITY be withheld, even if in any given fiscal year the Revenues are insufficient to achieve an amount sufficient for the Management Fee. OPERATOR will absorb any net loss and assume all financial risk. At no time will CITY be responsible for any net loss.

13. **Financial Reports, Audits, and Records.**

a. **Maintenance of Records.** OPERATOR shall maintain, in accordance with generally accepted accounting principles, complete books, accounts, records, and data with respect to Revenues and costs incurred or allocated for services under this Agreement. Such documentation shall be supported by properly executed payrolls, invoices, contracts, and vouchers evidencing in detail the nature and propriety of any charges, and sufficient to allow a proper audit of the services.

b. **Right to Audit.** For the duration of the Agreement, and for a period of three (3) years thereafter, CITY and its representatives shall have the right to examine and audit, at CITY's expense, during OPERATOR's normal business hours these books, accounts, records, data, and other relevant information to the extent required to verify the Revenues and costs incurred or allocated hereunder. Notwithstanding the foregoing, OPERATOR shall not be required to maintain such information for a particular cost item for more than three (3) years after the year such cost is incurred or allocated.

c. **Financial Statements.** OPERATOR shall provide CITY with statements of Profit and Loss or Revenues and Operating Expenditures compared to the Operating Forecast, for the Center, in a format mutually agreed to on an annual basis and reported by fiscal year from July 1 to June 30. Each year, OPERATOR will provide CITY stand-alone financial statements for the Center prepared on a generally accepted accounting principles basis for the Center's fiscal year end within ninety (90) days after the end of the fiscal year.

d. **Operating Forecast.** OPERATOR shall provide CITY with a three (3) year Operating Forecast for the Center no later than July 1 each year for the upcoming fiscal year.

e. Monthly Enrollment Reports. OPERATOR shall provide CITY with a monthly enrollment report reflecting the number of children registered for the program by age group, number of open slots, number of slots filled by children receiving a low-income subsidy, a summary of the status of the NAEYC accreditation process, and staffing changes and licensing visits. CITY may engage a consultant to review the performance of OPERATOR, according to NAEYC standards or other similar standards, every other year. CITY shall have sole discretion in the selection of the consultant, and OPERATOR shall submit to all interviews, site visits and record requests of CITY and its agents in a timely and professional manner. OPERATOR shall comply with all requirements of State and County child-care licensing agencies and will provide copies of licensing documents to CITY in a timely fashion.

f. Parent Survey. OPERATOR shall administer an annual parent satisfaction survey and provide the results of this survey to CITY.

14. OPERATOR Representation of Qualifications.

a. OPERATOR represents that it is sufficiently experienced, and properly qualified, registered, licensed, equipped, organized, and financed to perform its services pursuant to this Agreement.

b. OPERATOR shall perform its services under this Agreement with a degree of professional skill, judgment, and care that is reasonable for companies performing services of a similar nature.

15. Independent Contractor.

a. It is agreed that OPERATOR is an independent contractor, and all persons working for or under the direction of OPERATOR are OPERATOR's agents, servants, and employees, and said persons shall not be deemed agents, servants, or employees of CITY.

b. OPERATOR shall provide the necessary qualified personnel required to perform the services pursuant to this Agreement. OPERATOR shall pay any and all salaries, wages, payroll and other taxes to or on account of OPERATOR's employees which arise out of, or result from, services performed pursuant to this Agreement.

16. OPERATOR Subcontractual Relations. OPERATOR shall not subcontract or delegate any of the services to be provided by OPERATOR pursuant to this Agreement without CITY's written preapproval of OPERATOR's proposed subcontractor, which approval shall not be unreasonably withheld or delayed. Each subcontract agreement shall preserve and protect the rights of CITY under this Agreement with respect to the

services to be performed by the subcontractor so that subcontracting will not prejudice those rights. CITY's approval shall not be required for vendors or subcontractors routinely used in OPERATOR's operations, including, but not limited to, food catering, temporary employment agencies, and providers of enrichment programs (e.g., foreign languages, dance, gymnastics, etc.), provided any such vendors or subcontractors comply with the provisions set forth below.

a. Subcontractor must maintain active Commercial General Liability insurance and Automobile Liability insurance in the amount of One Million Dollars (\$1,000,000) per occurrence. If a general aggregate limit is used, either the general aggregate limit shall apply separately or the general aggregate limit shall be twice the required occurrence limit. Subcontractor's insurance coverage shall be written on an occurrence basis.

b. If the Subcontractor is a company with employees, Subcontractor must maintain active Workers' Compensation insurance and Employer's Liability insurance in the amount of One Million Dollars (\$1,000,000) per accident.

c. All employees of Subcontractor who will be working with youth or will be on the premises of the Center during operating hours when youth are present, must be fingerprinted and TB (tuberculosis) tested. Background clearance results and a TB clearance from a medical facility must be provided to OPERATOR.

17. **Laws and Regulations.** OPERATOR, its employees and subcontractors performing the services hereunder shall comply with all Federal, State, and local laws, ordinances, statutes, and regulations.

18. **Conflicts of Interest.** OPERATOR represents it has no outstanding agreement or obligation, and will not enter into any agreement or obligation that is in conflict with any provision of this Agreement or that would preclude OPERATOR from fully complying with all of its obligations under this Agreement. OPERATOR will not bring to CITY or use in the performance of OPERATOR's duties under this Agreement, any materials or documents of any third party considered confidential or proprietary (hereinafter "Intellectual Property") unless OPERATOR has obtained written authorization from such party, and the informed consent of CITY, for the possession and use of those third-party materials or documents. CITY's consent shall not be required with regard to Intellectual Property owned by OPERATOR's affiliated companies.

19. **Use of Name, Logo, or Other Symbols.** Neither party shall use the name, logo, or other symbols of the other party for any purposes, including marketing or promotional purposes, without the prior written consent of the other party, which consent shall not be unreasonably withheld.

20. **Representations and Warranties.**

a. By CITY. CITY represents and warrants to OPERATOR on and as of the date of execution and delivery of this Agreement, and on the Transition Date, as follows:

(1) Title. CITY owns the fee title interest in the Center and warrants that, to the best knowledge of CITY, the Center is not subject to or encumbered by any covenants, conditions or restrictions, conflicts, or uses that could interfere with OPERATOR's operations of the Center as intended by this Agreement.

(2) Authorization. CITY has full capacity, right, power, and authority to execute, deliver, and perform this Agreement and all documents to be executed by CITY pursuant hereto, and all required actions and approvals therefor have been duly taken and obtained. The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of CITY are and shall be duly authorized to sign the same on CITY's behalf and to bind CITY thereto.

(3) Litigation. There are no claims, causes of action, or other litigation or proceedings pending or, to the best of CITY's knowledge, threatened with respect to the ownership, operation, or environmental condition of the Center or any part thereof.

(4) Environmental Condition. To the best of CITY's knowledge:

(a) The Center does not presently contain and is free from all hazardous substances or wastes, toxic and nontoxic pollutants, and contaminants, including, but not limited to, petroleum products and asbestos (hereinafter "Hazardous Substances");

(b) The Center has not been used for storage, manufacture, or sale of Hazardous Substances or for any activity involving Hazardous Substances;

(c) No Hazardous Substances are located in the vicinity of the subject property;

(d) CITY has not received and is not aware of any notification from any Federal, State, County, or municipal agency or authority relating to Hazardous Substances, in or near the subject property;

(e) No underground or aboveground storage tanks have ever been or are located under or on the subject property; and

(f) To the best of CITY's knowledge, no spills of Hazardous Substances have occurred on the subject property.

b. By OPERATOR. OPERATOR represents and warrants to CITY on and as of the date of execution and delivery of this Agreement that OPERATOR has full capacity, right, power, and authority to execute, deliver, and perform this Agreement and all documents to be executed by OPERATOR pursuant hereto, and all required action and approvals therefor have been duly taken and obtained. The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of OPERATOR are and shall be duly authorized to sign the same on OPERATOR's behalf and to bind OPERATOR thereto. This Agreement and all documents to be executed pursuant hereto by OPERATOR are and shall be binding upon and enforceable against OPERATOR in accordance with their respective terms.

21. **Insurance.**

a. Commercial General Liability/Automobile Liability Insurance. OPERATOR shall obtain and maintain Commercial General Liability (including corporal punishment coverage) insurance and Automobile Liability insurance in the minimum amounts as stated below. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit. OPERATOR's insurance coverage shall be written on an occurrence basis.

• General Aggregate Limit	\$3,000,000
• Products and Completed Operations	\$2,000,000
• Personal and Advertising Injury	\$1,000,000
• Each Occurrence Limit	\$1,000,000
• Medical Payments	\$5,000
• Fire Damage Legal Liability	\$50,000
• Nonowned and Hired Auto Liability	\$1,000,000
• Corporal Punishment	Included
• Abuse or Sexual Misconduct Liability	Included
Aggregate Limit	\$2,000,000
Each Act	\$1,000,000
• Umbrella Aggregate Limit	\$5,000,000
• Each Occurrence Limit	\$5,000,000
• Retention	\$10,000

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b. Student Accident Insurance. OPERATOR shall obtain and maintain Student Accident insurance in the minimum amounts as stated below per accident.

- Excess Material/Dental Benefit Limit \$20,000
(applies to students and volunteers)
- Accidental Death \$10,000
- Loss of Limb or Sight (maximum) \$10,000
- Deductible \$25

c. Workers' Compensation and Employer's Liability Insurance. OPERATOR shall obtain and maintain statutory Workers' Compensation insurance and Employer's Liability insurance in a minimum amount of One Million Dollars (\$1,000,000) per accident.

d. Professional Liability Insurance. OPERATOR shall obtain and maintain Professional Liability insurance (including sexual abuse and molestation coverage) in a minimum amount of One Million Dollars (\$1,000,000) per claim. Professional liability insurance must be maintained, and evidence of insurance shall be provided to CITY for at least three (3) years after completion of the contract of work.

e. Acceptability of Insurers. Insurance is to be placed with insurers with a current *Best Rating* of A:VII unless otherwise acceptable to CITY.

f. Verification of Coverage. OPERATOR acknowledges that CITY is self-insured. Original Certificates of Insurance with endorsements shall be delivered to and approved by the other party before the Transition Date.

g. Other Insurance Provisions:

(1) The City of Mountain View, its officers, officials, employees, and volunteers are to be covered as additional insured by Endorsement CG 20 10 11 85 or other endorsement acceptable to CITY for Commercial General and Automobile Liability coverage.

(2) For any claims related to this Agreement, each party's insurance coverage shall be primary and any insurance or self-insurance maintained by the other party, its officers, officials, employees, and volunteers shall not contribute to it.

(3) Each insurance policy required shall be endorsed that a ten (10) day notice be given to additional insured in the event of cancellation for nonpayment of premium, and a thirty (30) day notice be given to additional insured in the event of

nonrenewal, cancellation due to a material change in exposure, or material modification to the stipulated insurance coverage.

(4) In the event OPERATOR employs subcontractors as part of the daily operations of the Center covered by this Agreement, it shall be the responsibility of OPERATOR to ensure that all subcontractors comply with the same insurance requirements that are stated in this Agreement.

(5) Approval of the insurance by either party or acceptance of the Certificate of Insurance by such party shall not relieve or decrease the extent to which the other party may be held responsible for payment of damages resulting from that party's services or operation pursuant to this Agreement, nor shall it be deemed a waiver of any rights to insurance coverage hereunder.

22. Indemnification.

a. OPERATOR Indemnification. OPERATOR agrees to indemnify, defend, and hold harmless CITY and its officers, employees, volunteers, representatives, and agents from all claims, judgments, damages, liabilities, actions, demands, costs, expenses, or losses, including reasonable attorneys' fees (collectively, "Claims") to the extent resulting from: (1) OPERATOR's breach of any of the covenants, representations, and warranties hereunder; (2) OPERATOR's negligence or intentional misconduct in the performance of its obligations in this Agreement; or (3) injury to persons or property arising out of or in connection with OPERATOR and its agents', employees', and invitees' activities to be performed under this Agreement; provided, however, OPERATOR shall not indemnify CITY for Claims arising from the negligence or intentional misconduct of CITY and its agents, or for Claims related to injury to persons or property arising out of or in connection with CITY's use of the Center, playground, or the Community Resource Center, under Section 9, above.

b. CITY Indemnification. CITY agrees to indemnify, defend, and hold harmless OPERATOR and its directors, officers, employees, representatives, and agents from all Claims to the extent resulting from: (1) CITY's breach of any of the covenants, representations, and warranties hereunder; or (2) CITY's negligence or intentional misconduct in the performance of its obligations in this Agreement; or (3) injury to persons or property arising out of or in connection with CITY's use of the Center, playground, and Community Resource Center; provided, however, CITY shall not indemnify OPERATOR for Claims arising from the negligence or intentional misconduct of OPERATOR and its agents.

23. **Termination.** This Agreement may be terminated or suspended prior to the expiration of its initial term, or any renewal term, under the following conditions. Any

termination under this section does not relieve either party from its obligation to pay sums due or from any claim for damages:

a. For Convenience:

(1) OPERATOR and CITY shall have the right to terminate for convenience on one hundred eighty (180) calendar days written notice. Should OPERATOR terminate for convenience, OPERATOR shall pay the remaining payments to CITY, pursuant to Section 11 above, through the end of the fiscal year, or twenty percent (20%) of the annual payment, pursuant to Section 11, whichever is greater.

(2) Should OPERATOR choose to terminate without cause during the period prior to the transition date, OPERATOR shall pay to CITY penalties equivalent to CITY's cost for the following: (1) cost of staff and consultants to implement a new Request for Proposal (RFP) process; and (2) amount of operating payments forfeited for the period of nonoperation caused by early termination, not to exceed One Hundred Thousand Dollars (\$100,000).

b. For Default. Subject to Section 23(e), below, OPERATOR and CITY have the right to terminate for an event of default, as defined in Sections 23(c) and 23(d) below, on thirty (30) calendar days written notice.

c. Events of OPERATOR Default:

(1) Monetary. Failure of OPERATOR to pay the monthly payments to CITY to operate the Center, under Section 11 of this Agreement, or any other monetary sum owing to CITY under the terms of this Agreement.

(2) Nonmonetary:

- Failure of OPERATOR to procure and maintain insurance as required by this Agreement.

- Failure of OPERATOR to provide financial statements, Operating Forecasts, quarterly reports, or parent survey as required by Section 13 (Financial Reports, Audits, and Records) of this Agreement.

- Failure of OPERATOR to obtain, maintain, or renew any required State or local operating licenses for the Center.

- Failure of OPERATOR to achieve accreditation from NAEYC within forty-eight (48) months of the commencement of operations of the Center, subject to Section 4a(5)(b).

- Failure of OPERATOR to provide care of infants.
- Failure of OPERATOR to maintain the Center, or playground, in good condition and repair as required by Sections 6(b) and 6(e).

d. Events of CITY Default:

(1) Failure of CITY to turn possession of the Center over to OPERATOR by the transition date.

(2) Failure of CITY to maintain the Center, or playground, in good condition and repair as required by Sections 6(a) and 6(e).

e. Notice and Opportunity to Cure. The Parties shall provide the other party written notice of any default described herein and the opportunity to cure such default. Upon receipt of a written notice of default, either party shall have ten (10) calendar days from the notice of default to cure a monetary default and thirty (30) calendar days from the notice of default to cure a nonmonetary default.

f. Fraud. If OPERATOR is found to have made fraudulent use of funds, or if an administrative or judicial body has revoked any license which may be required for OPERATOR to carry on its business and perform its obligations and functions under this Agreement, or if either party is discovered to have made any misrepresentation or omission or failure to disclose any material fact which bears on its ability to perform under this Agreement, the Agreement shall be deemed immediately terminated upon the occurrence of such event.

g. Bankruptcy. If, to the extent not prohibited by law, OPERATOR shall, under such laws as shall be applicable to it, commence any case or proceeding, or file any petition in bankruptcy, or for reorganization, liquidation, or dissolution, or be adjudicated insolvent, or bankrupt, or shall apply to any tribunal for a receiver, intervener, conservator, or trustee for itself or for any substantial part of its property; or if there shall be commenced against it any such action and the same shall remain undismissed; or if by any act it shall indicate its consent to, approval of, or acquiescence in any such proceeding, or the appointment of any receiver, intervener, conservator, or trustee for it or any substantial part of its property or shall suffer any of the same to continue undischarged; or if it shall become subject to any intervention whatsoever that shall deprive it of the management of the aggregate of its property or any substantial part thereof, or if it shall wind up or liquidate its affairs or there shall be issued a warrant of attachment, execution, or similar process against any substantial part of its property, and such warrant, execution, or process shall remain undismissed, unbonded,

or undischarged for a period of thirty-one (31) days, this Agreement shall be deemed immediately terminated upon the occurrence of such event.

24. **Client Lists.** OPERATOR may list CITY as a client of OPERATOR in OPERATOR's parent's filings with governmental entities having jurisdiction over OPERATOR's business. OPERATOR may also list CITY as a client of OPERATOR in any marketing materials prepared by or for OPERATOR.

25. **General Provisions.**

a. **Nondiscrimination.** OPERATOR shall afford equal employment opportunities for all persons without discrimination because of race, color, religion, sex, sexual orientation, political affiliation, national origin, ancestry, age, marital status, physical or mental disability, military and veteran status, gender identity and expression, or genetic information.

b. **Attachments or Exhibits.** Except as expressly referenced herein, no portion of any terms or conditions included in any attachments or exhibits shall be a part of this Agreement, and they shall have no force or effect. If any attachments or exhibits to this Agreement are inconsistent with this Agreement, this Agreement shall control.

c. **Entire Agreement.** This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein.

d. **Public Records.** The Parties recognize and acknowledge that CITY is subject to the California Public Records Act, California Government Code Section 6250 and following. Public records are subject to disclosure. OPERATOR is a 501(c)3 organization also subject to public disclosure under the Internal Revenue Code Title 26, Section 6104.

e. **Further Assurances.** Each party shall perform any and all further acts and execute and deliver any documents which are reasonably necessary to carry out the intent of this Agreement.

f. **Applicable Laws and Attorneys' Fees.** This Agreement shall be construed and enforced pursuant to the laws of the State of California. Should any legal action be brought by a party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court. Reasonable attorneys'

fees of the City Attorney's Office, if private counsel is not used, shall be based on comparable fees of private attorneys practicing in Santa Clara County.

g. Amendment. This Agreement may be amended in writing, signed by both parties.

h. Force Majeure. Notwithstanding the deadlines set forth in this Agreement or agreed to by the Parties from time to time, neither party shall be responsible for any delays or deadlines missed and neither shall be in default under this Agreement to the extent such delay is caused by factors or forces outside of that party's reasonable control; provided, however, that the defaulting party shall promptly inform the other party of the reason or reasons for such delay. If the delay continues beyond six (6) months, the nondefaulting party may, at its option, terminate the Agreement upon written notice to the defaulting party.

i. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid, or unenforceable, the same will either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

j. Construction. The headings of this Agreement are for convenience only and are not to be considered in construing this Agreement. The language of this Agreement shall be construed according to its fair meaning and not strictly for or against any party.

k. Survival. The rights and obligations of the parties which by their nature survive termination, suspension, or completion of the services covered by the Agreement, including, but not limited to, those set forth in the paragraphs entitled Financial Reports, Audits and Records, and Indemnification, shall remain in full force and effect after termination, suspension, or completion.

l. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

m. Notice of Possessory Interest. In accordance with California Revenue and Taxation Code Section 107.6(a), by entering into this Agreement, a possessory interest subject to property taxes may be created. OPERATOR or other party in whom the possessory interest is vested may be subject to the payment of property taxes levied on such interest.

n. Relationship of Parties. CITY and OPERATOR are not and shall not be considered joint venturers or partners and neither shall have the power to bind or obligate the other except as set forth in this Agreement.

o. Time of the Essence. Time is of the essence of this Agreement and each provision; provided, however, if the final (but not any interim) date of any period set forth herein falls on a Saturday, Sunday, or legal holiday under the laws of the United States of America, the final date of such period shall be extended to the next business day.

p. Consent. Whenever either party's consent or approval is required under this Agreement, the party shall not unreasonably withhold, delay, or condition such consent or approval.

q. No Waiver of Police Powers or Rights. In no event shall this Operating Agreement be construed to limit in any way: (a) CITY's rights, powers, or authority under the police power and other powers of CITY to regulate or take any action in the interest of the health, safety, and welfare of its citizens; or (b) OPERATOR's rights and privileges as a corporate resident and/or citizen of the City of Mountain View, State of California and/or United States of America as provided under applicable laws, except as expressly waived or limited by this Agreement.

r. Waiver. Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

26. Notices. Any notice required to be given to OPERATOR shall be deemed to be duly and properly given if mailed to OPERATOR, postage prepaid, addressed to:

Community Gatepath
350 Twin Dolphin Drive, Suite 123
Redwood City, CA 94065

or personally delivered to OPERATOR at such address or at such other addresses as OPERATOR may designate in writing to CITY.

Any notice required to be given to CITY shall be deemed to be duly and properly given if mailed to CITY, postage prepaid, addressed to:

Assistant City Manager
City of Mountain View
500 Castro Street
P.O. Box 7540
Mountain View, CA 94039-7540
E-mail: *citymanager@mountainview.gov*

or personally delivered to CITY at such address or at such other addresses as CITY may designate in writing to OPERATOR.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement, dated January 1, 2014, for the operation of the Mountain View Child-Care Center.

APPROVED AS TO CONTENT:

“CITY”:
CITY OF MOUNTAIN VIEW,
a California Charter City and municipal
corporation

Assistant City Manager

FINANCIAL APPROVAL:

By: _____
City Manager

Finance and Administrative
Services Director

“OPERATOR”:
COMMUNITY GATEPATH,
a California nonprofit corporation

APPROVED AS TO FORM:

By: _____

City Attorney

Taxpayer I.D. Number

- Exhibits: A. Current Operator Fees and Tuition Rates
B. Mountain View Child-Care Center Furniture, Fixtures, and Equipment (FF&E)
C. Mountain View Child-Care Facility – Playground and Landscape Areas

SN/5/FIN/541-12-13-13AG-E

**AMENDMENT TO AGREEMENT BETWEEN THE CITY OF MOUNTAIN VIEW
AND COMMUNITY GATEPATH FOR
CHILD-CARE SERVICES**

THIS AMENDMENT NO. 1 to the Agreement is dated for identification this 1st day of June 2015, and is made by and between the CITY OF MOUNTAIN VIEW, a California Charter City and municipal corporation, whose address is P.O. Box 7540, Mountain View, California, 94039-7540 (hereinafter "CITY"), and COMMUNITY GATEPATH, a California nonprofit corporation, whose address is 350 Twin Dolphin Drive, Suite 123, Redwood City, California, 94065 (hereinafter "OPERATOR").

RECITALS

A. On January 1, 2014 CITY and OPERATOR entered into an Agreement for child-care services for the Mountain View Child-Care Center.

B. CITY and OPERATOR desire to amend said Agreement dated January 1, 2014 and all amendments thereto, to reflect said modifications.

NOW, THEREFORE, in consideration of the recitals and mutual promises of the parties contained herein, CITY and OPERATOR agree to the below-referenced amendments to said Agreement dated January 1, 2014 and all amendments thereto, as follows:

Item 4.a(13), Fees and Tuition: Section (a), General, shall be amended to read as follows:

“(a) General. OPERATOR will maintain the fees and tuition amounts set by the former operator through August 31, 2014 as shown in Exhibit A, attached hereto and incorporated herein. As of September 1, 2014, OPERATOR shall set fees and tuition amounts comparable to the market rate in Santa Clara County. Fees may be increased annually thereafter by the Consumer Price Index (CPI) for San Francisco-Oakland-San Jose Urban Wage Earners and Clerical Workers for the twelve (12) months ending February 28 of each year. If the increase is more than CPI, OPERATOR shall notify CITY and provide the reasons and supporting documentation for the additional increase.”

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Additionally, Item 4.a(17), Hours of Operation, shall be amended to read as follows:

“(17) Hours of Operation. The Center shall be open year-round, Monday through Friday, from 7:00 a.m. to 6:00 p.m., excluding the following public holidays: Birthday of Martin Luther King, Jr.; Presidents’ Day; Memorial Day; July 4th designated holiday; Labor Day; Thanksgiving and the day after Thanksgiving; and Christmas Day through New Year’s Day. There will be two (2) annual staff development days, during which the Center will be closed for child care. The dates of development days shall be provided annually to enrolled families and shall be included on OPERATOR’s calendar at least ninety (90) days in advance.”

All other terms and conditions in that certain Agreement dated January 1, 2014 above referenced, shall remain in full force and effect.

IN WITNESS WHEREOF, this Amendment No. 1, dated June 1, 2015, to the Agreement between the City of Mountain View and Community GatePath for child-care services related to the Mountain View Child-Care Center is executed by CITY and OPERATOR.

APPROVED AS TO CONTENT:

Assistant City Manager

“CITY”:
CITY OF MOUNTAIN VIEW,
a California Charter City and municipal
corporation

FINANCIAL APPROVAL:

Finance and Administrative
Services Director

By: _____
City Manager

APPROVED AS TO FORM:

City Attorney

“OPERATOR”:
COMMUNITY GATEPATH,
a California nonprofit corporation

By: _____
94-115602
Taxpayer I.D. Number

**AMENDMENT TO THE CHILD-CARE CENTER OPERATING AGREEMENT
BETWEEN THE CITY OF MOUNTAIN VIEW
AND COMMUNITY GATEPATH**

This AMENDMENT NO. 2 to the Agreement is dated for identification this 25th day of May 2017, by and between the CITY OF MOUNTAIN VIEW, a California charter city and municipal corporation, whose address is 500 Castro Street, P.O. Box 7540, Mountain View, California, 94039-7540 (hereinafter "CITY"), and COMMUNITY GATEPATH, a California nonprofit corporation, whose address is 350 Twin Dolphin Drive, Suite 123, Redwood City, California, 94065 (hereinafter "OPERATOR").

RECITALS

A. WHEREAS, CITY and OPERATOR entered into an Agreement dated January 1, 2014, for child-care services at the Mountain View Child-Care Center; and

B. WHEREAS, CITY and OPERATOR entered into Amendment No. 1 dated June 1, 2015, amending Section 4.a(13)(a), General, and Section 4.a(17), Hours of Operation; and

C. WHEREAS, CITY and OPERATOR desire to amend said Agreement dated January 1, 2014, and all amendments thereto, to reflect said modifications.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals and mutual promises of the parties contained herein, CITY and OPERATOR agree to the below-referenced amendments to said Agreement dated January 1, 2014, and all amendments thereto, as follows:

Section 4.a(7), Low Income, shall be amended to read as follows:

“(7) Low Income. OPERATOR shall strive to increase low-income enrollment by maintaining existing subsidy enrollment of not less than six (6) students and progressively increasing low-income subsidy enrollment as defined in Section 4.a(13)(d) to fifteen (15) students or more.”

Section 4.a(10), Marketing Plan, shall be amended to read as follows:

“(10) Marketing Plan. OPERATOR shall activate a marketing plan that explains low-income enrollment options and strives to yield fifteen (15) or more low-income enrollments.”

Section 4.a(13), Fees and Tuition, shall be amended to add subsection (d), Sliding Tuition Scale, and read as follows:

“(d) Sliding Tuition Scale. OPERATOR will use the Community Child-Care Council (4Cs) of Santa Clara County’s low-income assistance qualification requirements as the first bracket of five (5) income ranges to institute a sliding tuition scale. The 4Cs low-income assistance qualification requirements are based on the most recently approved Schedule of Income Ceilings for Child Care Development Programs (SICCCDP) prepared and approved by the California Department of Education—last updated July 1, 2011. Learning Links’ tuition scale resulting from the current 4Cs of Santa Clara County low-income assistance qualification requirements (to be updated as the State updates the SICCCDP and subsequently the 4Cs updates their low-income assistance qualification requirements) is:

Family Monthly Fees/Tuition	\$300/Mo (4Cs Level)	20% of tuition	40% of tuition	60% of tuition	80% of tuition
Family Size	Gross Monthly Income				
1-2	\$3,283	\$3,940	\$4,596	\$5,253	\$5,909
3	\$3,518	\$4,222	\$4,925	\$5,629	\$6,332
4	\$3,908	\$4,690	\$5,471	\$6,253	\$7,034
5	\$4,534	\$5,441	\$6,348	\$7,254	\$8,161
6	\$5,159	\$6,191	\$7,223	\$8,254	\$9,286
7	\$5,276	\$6,331	\$7,386	\$8,442	\$9,497
8	\$5,394	\$6,473	\$7,552	\$8,630	\$9,709

“

Section 4.a(17), Hours of Operation, shall be amended to read as follows:

“(17) Hours of Operation. The Center shall be open year-round, Monday through Friday, from 7:00 a.m. to 6:00 p.m., excluding the following public holidays: Martin Luther King, Jr. Day; Presidents’ Day; Memorial Day; recognized Independence Day; Labor Day; Thanksgiving and the day after Thanksgiving; and December 25 through January 1. There will be four (4) annual staff development days, during which the Center will be closed for child care. The dates of development days shall be provided annually to enrolled families and shall be included on OPERATOR’s calendar at least ninety (90) days in advance.”

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Section 12, OPERATOR Management Fee, shall be amended to read as follows:

"12. OPERATOR Management Fee.

a. General OPERATOR Management Fee. OPERATOR shall be entitled to a Management Fee for general operation of the Center only after the Two Hundred One Thousand Eighty-Four Dollar (\$201,084) annual OPERATOR payment has been paid to the City. In no circumstance shall the annual payment to the CITY be withheld, even if in any given fiscal year the Revenues are insufficient to achieve an amount sufficient for the Management Fee. OPERATOR will absorb any net loss and assume all financial risk. At no time will CITY be responsible for any net loss.

b. Low-Income Subsidy OPERATOR Management Fee. As of January 1, 2017, OPERATOR shall be entitled to a Low-Income Subsidy OPERATOR Management Fee of up to Fifty Thousand Dollars (\$50,000) for each six (6) month period of January 1 to June 30 and July 1 to December 31. The Low-Income Subsidy OPERATOR Management Fee shall be for Allowable Tuition Subsidies defined as tuition subsidies provided to low-income Mountain View families paying up to eighty percent (80%) of OPERATOR's monthly standard tuition rate. OPERATOR is eligible for fifty percent (50%) of the OPERATOR's standard monthly tuition rate per student per month for each tuition subsidy provided to Mountain View residents that is sixty percent (60%) or greater of OPERATOR's standard monthly tuition. OPERATOR is eligible for twenty percent (20%) of the OPERATOR's standard monthly tuition rate per student per month for each tuition subsidy provided to Mountain View residents that is less than sixty percent (60%) and greater than or equal to forty percent (40%) of OPERATOR's standard monthly tuition. OPERATOR is eligible for ten percent (10%) of the OPERATOR's standard monthly tuition rate per student per month for each tuition subsidy provided to Mountain View residents that is less than forty percent (40%) and greater than or equal to twenty percent (20%) of OPERATOR's standard monthly tuition. OPERATOR shall strive to provide low-income tuition subsidies to at least fifteen (15) students (OPERATOR's goal is five (5) Junior Preschool, five (5) Preschool, and five (5) Pre-Kindergarten students).

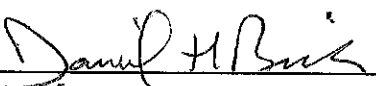
OPERATOR shall submit to CITY an invoice each June 15th (or business day thereafter) and December 15th (or business day thereafter) of an amount no greater than Fifty Thousand Dollars (\$50,000). Each invoice shall include evidence of each Allowable Tuition Subsidy and a copy of the OPERATOR's standard tuition schedule(s) for the period reported. CITY shall make payment within thirty (30) days of receiving and approving an invoice. The Low-Income Subsidy OPERATOR Management Fee shall not

exceed One Hundred Thousand Dollars (\$100,000) in any given twelve (12) month period."

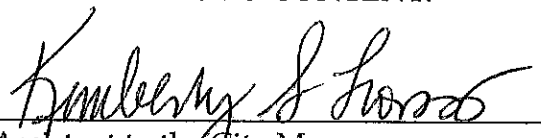
All other terms and conditions in that certain Agreement dated January 1, 2014, and Amendment No. 1 dated June 1, 2015, above referenced, shall remain in full force and effect.

IN WITNESS WHEREOF, this Amendment No. 2, dated May 25, 2017 for identification, to the Agreement between the City of Mountain View and Community Gatepath for child-care services related to the Mountain View Child-Care Center, is executed by CITY and OPERATOR.

"CITY":
CITY OF MOUNTAIN VIEW,
a California charter city and municipal
corporation

By: 
City Manager

APPROVED AS TO CONTENT:


Assistant to the City Manager

"OPERATOR":
COMMUNITY GATEPATH,
a California nonprofit corporation

By: 

Print Name: Tracey Fecher

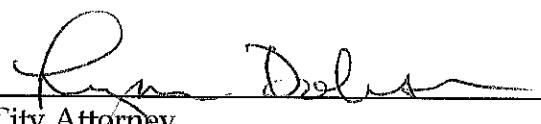
Title: VP of Programs

94-116502
Taxpayer I.D. Number

FINANCIAL APPROVAL:


Asst. Finance and Administrative
Services Director

APPROVED AS TO FORM:


Sr. Asst. City Attorney