

## BETTERAVIA GOVERNMENT CHILD CARE CENTER SERVICE AGREEMENT

This Betteravia Government Child Care Center Operating Agreement (“Agreement”) is made and entered into as of the 2nd day of March, 2011 (the “Effective Date”) by and between Children’s Choice Learning Centers, Inc., a Texas Corporation (“CCLC”) and COUNTY of Santa Barbara (“COUNTY”). The Santa Barbara COUNTY Executive Office shall serve as the designated department (COUNTY), and First 5 Santa Barbara COUNTY (“FIRST 5”) shall serve to oversee this Agreement on behalf of COUNTY CEO.

### *RECITALS*

WHEREAS, In 1991 COUNTY built a child care center on COUNTY property located at 2125 Centerpointe Parkway, Santa Maria, CA 93454 (the “Center”) with the goal of providing high quality, affordable, early care and education services primarily to COUNTY employees; and

WHEREAS, In April 1990 the Santa Barbara COUNTY Board of Supervisors approved plans for a Santa Barbara COUNTY-sponsored high quality child care center for COUNTY employees, other government employees and community families at the Center; and an Agreement was approved on September 10, 1991, with Discoveries, a local for-profit child care provider, to provide such services at the Center, at no cost to the operator; and

WHEREAS, Santa Maria Valley YMCA (SMVYMCA), the current operator, has been providing services in the Center since 1996, and has been working with the COUNTY to transition the site to a new operator, as it has become difficult economically for the agency to operate the site; and

WHEREAS, COUNTY requested proposals for the provision of high quality child care services at the Center; and

WHEREAS, CCLC is a for profit company in the business of providing services related to the operations of child care centers and submitted a proposal; and

WHEREAS, CCLC’s proposal met the requirements outlined by COUNTY and COUNTY selected CCLC’s proposal; and

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

NOW, THEREFORE, the COUNTY and CCLC agree as follows:

1. **ADMINISTRATION AND ENFORCEMENT:** The provisions of this Agreement shall be administered and enforced for the COUNTY by the COUNTY Executive Office/First 5 Santa Barbara

COUNTY. FIRST 5 shall advise the Santa Barbara COUNTY Board of Supervisors on matters pertaining to the child care center and oversee CCLC's performance including, but not limited to, adherence to parent satisfaction, program development, quality and health and safety expectations.

2. **PURPOSE AND USE:** CCLC shall use the Center to provide child care services, in accordance with this Agreement, and per the SCOPE OF CONTRACTOR'S SERVICES in EXHIBIT A.

The COUNTY shall allow CCLC exclusive use of the facility for operation of the child care program from the hours of 6:00 a.m. to 7:00 p.m. (with operating hours from 7:00 am to 6:00 pm), Monday through Friday. The COUNTY shall also allow CCLC access to the facility at other reasonable hours, as may be mutually agreed between parties, for the purpose of program preparation or other related activities. CCLC shall notify COUNTY 24-hours in advance to access the Center during weekends.

CCLC shall not use the Center for any other purpose whatsoever without the prior, written consent of COUNTY.

CCLC shall not allow access to other parts of Social Services Building, aside from the adjacent adult restrooms, other than during normal COUNTY hours of operation.

3. **TERM/LICENSING:** This Agreement shall commence upon execution by COUNTY and shall expire on June 30, 2016, unless terminated sooner under this Agreement.

An Annual Review of the Agreement shall be held in the month of April each year, to be attended by FIRST 5 and CCLC representatives. The purpose of the Review is to examine and evaluate the mutual covenants and conditions set forth in the Agreement and confirm intent of all parties to continue the Agreement.

CCLC shall maintain a license in substantial compliance with applicable statues and regulation from the California State Department of Community Care Licensing (CCL) at all times. CCLC is to notify COUNTY immediately if Center is found out of compliance with regulations, is involved in any administrative action from CCL, or if there are substantial changes to CCLC'S standing with CCL. In the event that CCLC'S license should lapse, or be revoked, this Agreement shall automatically terminate, and CCLC must cease the provision of services, and vacate CENTER immediately.

4. **SITE SUITABILITY:** CCLC has determined that the Center is suitable for CCLC'S intended operations, and therefore, CCLC hereby accepts, by way of executing this Agreement, the Center in its existing condition.

**CCLC ACKNOWLEDGES THAT, EXCEPT AS STATED IN THIS AGREEMENT, COUNTY HAS MADE NO REPRESENTATIONS OR WARRANTIES ABOUT THE CONDITION OF THE CENTER, OR THE SUITABILITY OF SAME FOR THE INTENDED USE BY CCLC.**

5. **FEES:** Beginning July 2011, CCLC agrees to pay a fee of \$1100 per month to provide child care services in the Center. This fee shall be paid to the COUNTY on the 10<sup>th</sup> of each month for the period of July, 2011 through June, 2012. In April, 2012, fees or other payments for July, 2012 through June 2016 may be renegotiated to reflect actual enrollment, revenue and expenses from the prior year. Fees shall be sent to the COUNTY contact and address listed Section 25 of this Agreement.

6. **UTILITY COSTS:** The COUNTY shall pay for utilities; gas, water, electricity and garbage. CCLC shall pay for telephone, cable, data line, and, satellite dish services. CCLC shall pay for the installation of any additions to current utilities and for installation of any new utilities.

7. **MAINTENANCE AND REPAIRS:** COUNTY shall maintain the basic structure of the Center, including but not limited to its foundation, floors, walls, roof, plumbing, heating, electrical, water systems and the exterior play area fencing. COUNTY shall provide only such additional maintenance as is deemed necessary by COUNTY. If maintenance is required because of damages caused by or due to the fault of the CCLC or CCLC'S staff or children served by CCLC, CCLC shall be responsible for all costs incurred.

CCLC shall provide all interior/exterior janitorial services and routine maintenance and repair as required to keep the Center in a safe and sanitary condition as required by State law and licensing regulations. All carpet cleaning and/or carpet replacement within the Center is to be scheduled and paid for by CCLC.

The cost to clean, maintain or repair any area of the Center interior and/or exterior which has been deliberately abused and/or misused and which has resulted in the need for extraordinary maintenance and/or repair shall be the financial responsibility of CCLC.

8. **COUNTY ENTRY:** COUNTY may enter the Center at all reasonable times to examine the condition thereof, for the purpose of inspection, to provide building maintenance and repair, to post notices or advertising, to make such repairs as COUNTY may deem necessary, to inspect for compliance with the rules and regulations applicable to the care of children pursuant to this Agreement and for such other purposes attendant to this Agreement. COUNTY shall make every effort to prearrange such entry with the Center in order to avoid disturbing children's schedules.

9. **INDEMNIFICATION AND INSURANCE:** CCCLC agrees to defend, indemnify and save harmless the COUNTY OF SANTA BARBARA and to procure and maintain insurance in accordance with the provisions of Exhibit D attached hereto and incorporated herein by reference.

10. **POSSESSORY INTEREST TAXES:** CCLC acknowledges and agrees that this Agreement may create a possessory interest subject to property taxation and that CCLC may be subject to the payment of property taxes levied on such interest.

11. **COMPLIANCE WITH LAW:** COUNTY agrees to provide suitable space and physical attributes required for CCLC'S child care program which comply with state regulations governing child care facilities. Should state regulations change and require the upgrade of the CENTER, then

COUNTY and CCLC shall meet to determine which party shall be financially responsible for said upgrade. In the event the parties cannot reach an agreement this Agreement shall terminate.

CCLC shall, at its sole cost and expense, comply with all of the requirements of all municipal, state, and federal authorities now in force, or which may hereafter be in force, pertaining to said CENTER and child care, and shall faithfully observe in the use of the CENTER all municipal and COUNTY ordinances and state and federal statutes now in force or which may hereafter be in force. The judgment of any court of competent jurisdiction, or the admission of CCLC in any action or proceeding against CCLC, whether COUNTY be a party thereto or not, that CCLC has violated any such ordinance or statute in the use of the CENTER, shall be conclusive of that fact as between COUNTY and CCLC.

CCLC shall not use or permit the use of the CENTER for any illegal or immoral purposes.

12. **ASSIGNMENT AND SUBLETTING:** CCLC, shall have no right to assign, sublet, or otherwise transfer the rights granted herein, and any attempt to assign, sublet or transfer such rights shall be void and without legal effect.

13. **BANKRUPTCY OR INSOLVENCY:** CCLC agrees that in the event all or substantially all of the CCLC'S assets are placed in the hands of a receiver or trustee, or should CCLC be adjudicated as bankrupt, COUNTY may terminate this Agreement on thirty (30) days notice, and that the Agreement, shall not become an asset of the CCLC in any bankruptcy proceedings.

14. **ATTORNEY'S FEES:** If any legal action or proceeding be brought by either party to this Agreement or should COUNTY be compelled to commence or sustain an action at law for any purpose, the prevailing party in said action shall be entitled to recover, in addition to all other relief, reasonable attorney's fees and costs as may be fixed by any court.

15. **DEFAULT:** Should CCLC at any time be in default with respect to the performance this Agreement; and should such default continue for ten (10) days after written notice thereof from COUNTY to CCLC specifying the particulars of such default; or if CCLC'S right of possession is terminated by COUNTY because of CCLC'S breach of this Agreement, this Agreement terminates at the option of COUNTY.

16. **REMEDIES:** In the event of a default or breach, either party may exercise any right or remedy at law or in equity which such party may have by reason of such default or breach including but not limited to the following:

- A. The nondefaulting party may waive the default or breach in accordance with Section 17, WAIVER, herein below.
- B. The nondefaulting party may maintain this Agreement in full force and effect and recover whatever monetary loss(es) may have resulted from such default or breach.
- C. Where CCLC is the nondefaulting party, CCLC may terminate the Agreement and surrender use of the CENTER.
- D. Where COUNTY is the nondefaulting party, COUNTY may terminate the Agreement and CCLC shall vacate within 30 days of written notice from COUNTY.

17. **WAIVER:** It is understood and agreed that any waiver, express or implied, of any term of this Agreement shall not be a waiver of any subsequent breach of a like kind or of any other provisions of this Agreement.
18. **TERMINATION:** This Agreement, or any extension thereof, shall terminate and all rights of CCLC hereunder shall cease and CCLC shall quietly and peacefully deliver to COUNTY immediately, at the discretion of COUNTY, possession and interest in the CENTER:
- A. At the expiration of this Agreement, or failure to maintain a license issued by CCL, as provided in Section 3, TERM/LICENSING herein above;
  - B. Upon failure of CCLC to satisfy or perform any of the covenants, conditions or reservations set forth in this Agreement, or any amendment thereof and the expiration of a cure period of ten (10) days from notification per Section 15, DEFAULT;
  - C. As provided in Section 11, COMPLIANCE WITH LAW, Section 13, BANKRUPTCY OR INSOLVENCY, and Section 21, DAMAGE, DESTRUCTION OR CONDEMNATION or as provided in other sections herein.

COUNTY and CCLC shall have the right to terminate this Agreement at any time, with or without cause, by giving the other Party at least ninety (90) days and up to one hundred eighty (180) days prior written notice of intent to terminate. However, in the event of such termination, both Parties shall meet all obligations incurred under this Agreement prior to the date of such termination.

**IN NO EVENT SHALL CCLC MAINTAIN OCCUPANCY BEYOND THE TIME DURING WHICH IT IS PROVIDING CHILD CARE SERVICES UNDER THIS AGREEMENT.**

19. **ABANDONMENT:** CCLC shall not vacate or abandon the CENTER at any time during the term of this Agreement. In the event CCLC abandons, vacates, or surrenders the CENTER, any personal property belonging to CCLC which is left in, or at the CENTER thirty (30) days after vacation of the CENTER, shall be deemed abandoned, at the option of COUNTY and COUNTY may elect to retain, or dispose of such items in any manner suitable to COUNTY with no liability to CCLC.
20. **SURRENDER OF CENTER:** Prior to expiration or termination of this Agreement, CCLC shall vacate and surrender the CENTER to COUNTY in good condition, except for ordinary wear and tear, including fixtures as covered in Section 22. CCLC shall remove all its personal property prior to the expiration or termination of this Agreement.

COUNTY may elect to retain or dispose of in any manner, any CCLC'S personal property that CCLC does not remove from the CENTER on expiration or termination of this Agreement by giving at least thirty (30) days notice to CCLC. Title to any such trade fixtures or CCLC'S personal property that COUNTY elects to retain or dispose of following expiration of the thirty (30) day period shall vest in COUNTY. CCLC waives all claims against COUNTY for any damage to CCLC resulting from COUNTY'S retention or disposition of any such trade fixtures or CCLC'S personal property. CCLC shall be liable to COUNTY for COUNTY'S costs for storing, removing, and disposing of any such items.

If CCLC fails to surrender the CENTER to COUNTY, CCLC shall hold COUNTY harmless from all damages resulting from CCLC'S failure to surrender the CENTER.

21. **DAMAGE, DESTRUCTION OR CONDEMNATION:** Should the CENTER be damaged or destroyed, or condemned by any government agency to such an extent that it is unusable, this Agreement may be terminated by either party upon thirty (30) days written notice to the other.

22. **SIGNS:** All CCLC-originated signs designating CCLC'S name, type of business, hours of operation, etc. shall be approved by First 5 and the Santa Barbara COUNTY General Services Director, or designee, in writing and shall be placed at CCLC'S expense, and in accordance with COUNTY'S permitting process and direction. Temporary signs are not permitted and will be removed by COUNTY. Upon termination or expiration of this Agreement, CCLC shall remove all of CCLC'S signs from the CENTER excepting those signs supplied by COUNTY.

23. **FIXTURES:** The parties agree that all improvements to or fixtures within the CENTER made or added by either party, except trade fixtures added by CCLC that are removable without damaging COUNTY property, shall be and become the property of COUNTY upon their being affixed or added to the CENTER.

24. **ALTERATIONS AND LIENS:** CCLC shall not make any alterations or improvements to the CENTER without the prior approval from First 5, the written consent of the Santa Barbara COUNTY Director of General Services, and the receipt of all required permits. COUNTY reserves the right to post notice of non-responsibility on the CENTER.

CCLC agrees to keep CENTER free from any and all liens, claims, demands whatsoever, caused, incurred, or suffered to be done by CCLC; and to keep COUNTY and CENTER free from any and all liability whatsoever for, or on account of, anything required, authorized, or permitted to be done inside or outside of the CENTER. Unless otherwise provided by written agreement between the parties hereto, said alterations or improvements shall be undertaken at CCLC'S sole expense and shall be the property of COUNTY and shall remain upon and be surrendered with the CENTER upon termination of this Agreement.

25. **NOTICES:** All notices shall be in writing and shall be deemed to have been given on the date delivered, if personally delivered, or if mailed, then on the fifth business day following the date on which it is mailed, by certified or registered mail, postage prepaid, addressed to the address specified below, or to such other address designated by the party in writing.

To COUNTY: COUNTY of Santa Barbara CEO  
c/o First Five Santa Barbara COUNTY  
1306 Santa Barbara Street  
Santa Barbara, CA 93101  
Attn: Eileen Monahan, Manager, ECE Division  
(805) 560-1038

To CONTRACTOR (CCLC):

Daniel Lawler, CFO  
Children's Choice Learning Centers, Inc.  
3610 Shire Blvd  
Suite 208  
Richardson, TX 75082  
(972) 881-1900  
(214) 675-5369

26. **WASTE AND NUISANCE:** CCLC shall not commit, nor suffer to be committed, any waste upon the CENTER or the Betteravia Government Center complex, nor permit any nuisance to exist thereon.

27. **ENVIRONMENTAL IMPAIRMENT:** CCLC shall comply with all applicable laws, regulations, rules, and orders regardless of when they become or became effective, including without limitation those relating to construction, grading, signing, health, safety, noise, environmental protection, waste disposal, water and air quality, and shall furnish satisfactory evidence of compliance upon request of COUNTY.

Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the CENTER due to CCLC'S use and occupancy, CCLC shall clean all property affected to the satisfaction of COUNTY and any governmental body having jurisdiction therefore. CCLC shall indemnify, hold harmless, and defend COUNTY from and against all liability, claim, cost, and expense (including without limitation any fines, penalties, judgments, litigation costs, attorney's fees, and consulting engineering and construction costs) incurred by COUNTY as a result of CCLC'S breach of this section, or as a result of any such discharge, leakage, spillage, emission or pollution, regardless of whether such liability, cost or expense arises during or after the term of this Agreement, and regardless of negligence, active or passive, of COUNTY.

28. **EMERGENCY PREPAREDNESS:** CCLC shall comply with all applicable emergency preparedness plans for the CENTER. CCLC shall participate in planning, drills, and debriefing activities related to the emergency preparedness plans. COUNTY shall ensure that CENTER is connected to necessary emergency systems and that CENTER staff are included in emergency trainings, as appropriate.

29. **TOXICS:** CCLC shall not manufacture or generate hazardous wastes at the CENTER unless specifically authorized under other terms of this Agreement. CCLC shall be fully responsible for any hazardous wastes, substances or materials as defined under federal, state or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored or transported at the CENTER during the term of this Agreement and shall comply with and be bound by all applicable provisions of such federal, state or local law, regulation or ordinance dealing with such wastes, substances or materials. CCLC shall notify COUNTY and the appropriate governmental emergency response agency(ies) immediately in the event of any release or threatened release of any such wastes, substances or materials.

30. **NONDISCRIMINATION:** CCLC in the operations to be conducted pursuant to the provisions of this Agreement, will not discriminate or permit discrimination against any person or class of persons by reason of race, color, creed, religion, ancestry, sex, age, or national origin in any manner prohibited by the laws of the United States, State of California or any COUNTY ordinance.

Noncompliance with provisions of this article shall constitute a material breach hereof and in addition to any remedies provided by law, COUNTY shall have the right to terminate this Agreement and the interest hereby created without liability therefore.

31. **GENERAL COVENANTS:** This Agreement shall be construed in accordance with the laws of the State of California. The invalidity of any portion of this Agreement shall not prevent the remainder from being carried into effect. Whenever the context of any provision shall require it, the singular number shall be held to include the plural number and visa versa, and the use of any gender shall include any, other, or all genders. No oral modification of or amendment to this Agreement shall be effective, but this Agreement may be modified or amended by a subsequent written agreement signed by CCLC and by COUNTY.

32. **CAPTIONS/ AGREEMENT SUPERSEDES:** The title or headings to the sections of this Agreement are not a part of this Agreement, and shall have no effect upon the construction or interpretation of any part hereof.

33. **SEVERABILITY:** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

34. **CERTIFICATION OF SIGNATORY:** The signatories of this Agreement and each of them represent and warrant that they are authorized by CCLC to execute this Agreement and that no additional signatures are required to bind CCLC to its terms and conditions or to carry out the duties contemplated herein.

35. **ENTIRE AGREEMENT:** This Agreement contains the entire agreement of the parties hereto and no obligation other than those set forth herein will be recognized.

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IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by Board of Supervisors.

ATTEST:

COUNTY OF SANTA BARBARA

By \_\_\_\_\_  
CHANDRA L. WALLAR  
CLERK OF THE BOARD


By \_\_\_\_\_  
Chair, Board of Supervisors

Date: \_\_\_\_\_

By \_\_\_\_\_  
Deputy Clerk

FIRST 5 SANTA BARBARA COUNTY

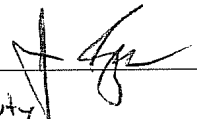
"CCLC"  
CHILDREN'S CHOICE LEARNING  
CENTERS, INC.

By  \_\_\_\_\_  
Patricia Wheatley, Executive Director  
*for Patricia Wheatley*

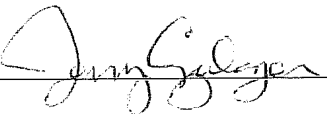
By \_\_\_\_\_  
Daniel Lawler, CFO

APPROVED AS TO FORM:  
ROBERT W. GEIS, CPA  
AUDITOR-CONTROLLER

By \_\_\_\_\_  
Donna McClintock, COO

By  \_\_\_\_\_  
Deputy

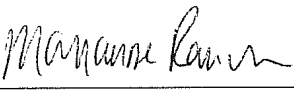
APPROVED AS TO FORM:  
DENNIS A. MARSHALL  
COUNTY COUNSEL

By  \_\_\_\_\_

APPROVED AS TO FORM:  
RONN CARLENTINE  
REAL PROPERTY

APPROVED AS TO FORM:  
RAY AROMATORIO  
RISK MANAGEMENT

By \_\_\_\_\_

By  \_\_\_\_\_

## EXHIBIT A

### Scope of Contractor's Services

1. Provision of Child Care Services. CCLC shall perform the daily operations and management of the Center as required to satisfactorily operate the Center and fulfill the responsibilities set forth in this Agreement. This includes staffing the Center, maintaining maximum enrollment, and performing all other activities associated with running a child care center.
2. COUNTY Responsibilities. COUNTY agrees to provide services to CCLC in accordance with the following:
  - a. Facility Use The COUNTY hereby allows CCLC to use a portion of the first floor of the Social Services Building, and a fenced area of land adjacent to the Center, all located at the Betteravia Government Center, 2125 Centerpointe Parkway, Santa Maria, California 93454.

The Center consists of 3,000 square feet, more or less, of first floor interior space and 6,300 square feet, more or less, of fenced exterior space, all shown as the diagonally slashed area on Exhibit B, attached hereto and by reference made a part hereof. The Center is designed and intended to serve as an inside and outside facility and play area for the children attending the Center.

CCLC shall have nonexclusive use of the common parking lot areas and other site areas, subject to the common rules and procedures for use of the Betteravia Complex adopted by COUNTY. COUNTY has designated and marked two spaces as a loading zone for the Center.
  - b. Operation Hours The COUNTY shall allow CCLC exclusive use of the facility for operation of the child care program from the hours of 6:00 a.m. to 7:00 p.m.(with operating hours from 7:00 am to 6:00 pm), Monday through Friday. The COUNTY shall also allow CCLC access to the facility at other reasonable hours, as may be mutually agreed between parties, for the purpose of program preparation or other related activities.
  - c. Quality of Services As the quality of the program is of utmost importance to the COUNTY, FIRST 5 will offer Accreditation Support through the Accreditation Facilitation Program, which provides assistance with planning, coaching, technical assistance and small grants to achieve accreditation. FIRST 5 shall make available to CCLC all other services offered to child care programs and providers in the COUNTY. FIRST 5 will regularly send information regarding workshops trainings etc to CCLC.
  - d. Marketing FIRST 5 shall work with CCLC to market the CENTER to COUNTY employees, including, but not limited to posting of information in COUNTY buildings and on websites, and presentations to elected officials and employee

groups, based on a marketing plan created by FIRST 5 and CCLC. FIRST 5's continued support of the marketing plan will be contingent upon CCLC successfully meeting or exceeding the quality criteria set forth in this Agreement.

3. CENTER Operations.

- a. Operation of the CENTER by CCLC Except for the equipment and services expressly provided by the COUNTY, as outlined in this Agreement in Sections 7 and 23, and in Exhibit A section 4.e.2, CCLC shall solely operate and manage the CENTER. CCLC shall exercise reasonable care in the use of COUNTY facilities and COUNTY-supplied equipment and consumables.
- b. CENTER Design The CENTER is designed to serve a maximum of 42 FTE positions. The actual capacity served in the CENTER may vary depending on the age mix and groupings in place on any given day.
- c. Project Manager Each Party shall designate in writing an employee or agent to act as a Project Manager. The Project Manager shall serve as contact point for all matters related to this Agreement.
- d. Child Care Services Offered CCLC agrees to provide full-day and part-day high quality child care services to COUNTY employees and other eligible families with children ages 6 weeks through 5 years, year-round. CCLC agrees to provide services that meet all conditions and quality standards set forth in this Agreement. The CENTER shall operate 11 hours daily, Monday through Friday, with the exception of COUNTY holidays, which include 10 national holidays, plus Christmas and New Years days. Holiday schedule will be provided to CCLC by FIRST 5 upon approval of this Agreement, and then by December 15 each year for each of the following years. CCLC is expected to provide flexibility in hours of operations based upon the business needs of COUNTY and parents.

CCLC will operate a model child care program design that continually aligns with local quality best practices and meets the needs of the COUNTY and parents.

1. CCLC shall establish and maintain a high quality child care program, meeting or surpassing all State of California CCL requirements and the current standards and criteria of the National Association for the Education of Young Children (NAEYC).
2. CCLC shall provide sufficient direct care staff at all times to meet or exceed the staff/child ratios according to NAEYC criteria for high quality child care programs. The direct care staff shall include a mix of lead teachers, teachers and other staff so that each child and individual placing the child in the CENTER has reasonable access to direct care staff throughout the CENTER's hours of operation.

3. A developed curriculum shall be utilized by CCLC that has been demonstrated through research to make a positive impact upon a child's emotional, cognitive, and social development and is appropriate for the ages of children whom the program serves.
  4. CCLC shall participate, to the fullest extent possible, in all of the quality improvement projects offered by FIRST 5 and other local quality improvement programs.
  5. CENTER must be accredited by the National Association for the Education of Young Children as soon as is possible after beginning operation of the site. If there is a delay in becoming accredited, CCLC will ensure that its programming staff and administrative functions meet accreditation standards within 90 days of the commencement of this Agreement, and continue to do so until accredited.
- e. Licensing In accordance with Agreement Section 3, CCLC shall obtain and maintain a license in good standing at all times, i.e. be in substantial compliance with applicable statutes and regulation from the State Department of Community Care Licensing (CCL). If CCLC's license should lapse, be revoked, or placed on a Compliance Plan, or falls below the criteria stated in this Agreement, COUNTY may terminate services. CCLC is to notify FIRST 5 immediately if CENTER is involved in any administrative action from CCL, or if there are substantial changes to CCLC's standing with CCL. In the event that CCLC'S license should lapse, or be revoked, this Agreement shall automatically terminate, and CCLC must cease the provision of services immediately, and must vacate the CENTER within 30 days.

The program must be licensed for a total of not more than 42 children from 6 weeks through 5 years, with proportional ages served based on COUNTY parent needs. CCLC agrees to operate in accordance with all Federal, State and local laws, rules and regulations and conform to the general licensing and operating requirements of the California Code of Regulations, Title 22, Division 12 and Title 5 if applicable. CCLC shall forward to FIRST 5 a copy of all licensing visit reports.

- f. CENTER Eligibility and Enrollment CCLC is responsible for handling enrollment and eligibility verification as vacancies arise and maintaining waiting lists.
1. Eligibility and Priority for Enrollment of children for the CENTER shall be as follows:
    - a. First Priority: siblings of children of COUNTY employees enrolled in the CENTER
    - b. Second Priority: children, step-children, foster children, grandchildren, or legal dependents of COUNTY employees

- c. Third Priority: children of employees of other local, state, and federal governmental entities who live in Santa Barbara COUNTY or whose work location is in Santa Barbara COUNTY.
- d. Exceptions to the provisions in this section may be made on written authorization by FIRST 5.
- e. Up to 4 children at a time of parents who do not meet the CENTER eligibility requirements, but are eligible for and receive subsidies such as CalWORKS or Alternative Payment may be enrolled at the CENTER.
- f. Children currently enrolled when this Agreement commences on March 1, 2011, shall continue to be served through August 31, 2011, regardless of their CENTER eligibility status, if they agree to pay full tuition rates, or if their current scholarship from previous operator or other agency continues with CCLC.

The COUNTY and CCLC may jointly evaluate and modify any procedures, guidelines, and/or application thereof established under this Article during this Agreement.

- 2. CCLC shall provide information to the COUNTY to permit the COUNTY to verify attendance eligibility of COUNTY employees. CCLC shall verify attendance eligibility from other governmental entities described above at the time an application for enrollment is made and at least quarterly thereafter. CCLC shall promptly advise the COUNTY if it learns that an individual will become ineligible to keep his or her child enrolled in the CENTER. Except on express written authorization of the COUNTY, CCLC shall advise any individual who is ineligible to remain enrolled in the CENTER that attendance must be halted no later than one month from the date of ineligibility. CCLC shall also provide information quarterly as to current enrollment and wait list. Except in an emergency, the COUNTY shall make all request to access and review or audit CENTER records, whether located on or off-site, directly to CCLC at least 2 business days in advance. The Parties agree that permission to access, review and audit CENTER records may be obtained only from CCLC or, in an emergency, from an individual specifically authorized to grant access.

#### 4. Administration of the CENTER

- a. Monitoring/Evaluation FIRST 5, for the COUNTY, will monitor the operation of the CENTER in any manner it deems necessary, which is consistent with law. The COUNTY will interact with CCLC, assuring Agreement compliance and the success of the CENTER.

b. Marketing

1. CCLC shall establish and implement a detailed annual marketing plan for the CENTER for each calendar year of this Agreement, beginning in April, 2011. The annual marketing plan shall include, but is not limited to, regular educational classes, open houses, tours, children's programs, departmental outreach and other events. CCLC and FIRST 5 must agree, in writing, to changes in the marketing plan.
2. Costs for marketing and promoting the CENTER shall be the obligation of CCLC.

c. Recruiting and Maintaining Staff CCLC is solely responsible for recruiting and maintaining high-quality staff.

1. CCLC shall perform a background check, consistent with state licensing requirements, of all staff employed by CCLC to work at the CENTER, prior to the employee's first day of work. The COUNTY shall have the background check on file at the CENTER within one month of employment.

d. Maintenance and Repair Responsibilities for the Maintenance and Repair of CENTER are identified in Section 7 of Agreement

e. Equipment and Furniture Utilized by CENTER CCLC shall have full responsibility for selecting and providing, at its sole cost, all necessary program furnishings, equipment and supplies with the exception of such items that are the property of the COUNTY, in accordance with Section 23 of Agreement. CCLC agrees to maintain equipment and furnishings in safe and working order.

1. An inventory of all COUNTY equipment and furniture to be utilized by CCLC shall be created and agreed upon within 30 days of commencement of this Agreement.
2. Equipment Replacement/Repair CCLC shall notify the COUNTY of any loss or unserviceability of any COUNTY-supplied equipment within five (5) business days after the loss or the unserviceability is discovered. Disposal of COUNTY-supplied equipment is prohibited without prior approval of the COUNTY. CCLC shall be responsible for any fees or costs associated with the unauthorized disposal of COUNTY-owned or supplied equipment, up to and including the cost of replacement. The COUNTY will work with CCLC to replace lost or unserviceable COUNTY-supplied equipment. If it is determined a CCLC employee, representative, or agent is responsible for the loss or damage to any COUNTY supplied equipment (not attributable to normal wear and tear), CCLC shall be responsible for replacing the lost or unserviceable equipment.

3. All property paid for by the COUNTY or supplied by the COUNTY shall be deemed the personal property of the COUNTY during this Agreement and after the termination or cancellation of this Agreement. Upon termination or cancellation of this Agreement, all property paid for or supplied by the COUNTY shall remain in or around the CENTER.

f. Fees and Tuition

1. Parent Fees The individual placing a child in the CENTER will be responsible for Parent Fees and Tuitions, or obtaining payment for such.
2. Fee Schedules. CCLC has established a fee schedule for the CENTER for the first year of this Agreement, which allows for the transition of current families, reflective of CENTER ELIGIBILITY AND ENROLLMENT requirements in section 3.g, and is set forth in Exhibit C. All rates are Not To Exceed amounts, and may be set lower to meet family needs. A tuition increase of up to 5% is allowable annually, beginning March, 2012, for the term of this Agreement, and must be approved by FIRST 5. Any additional increase in tuition requires approval by FIRST 5 and Board of Supervisors.
3. Fee Increase Notification Parents must receive at least 30 days notice of any tuition increase.

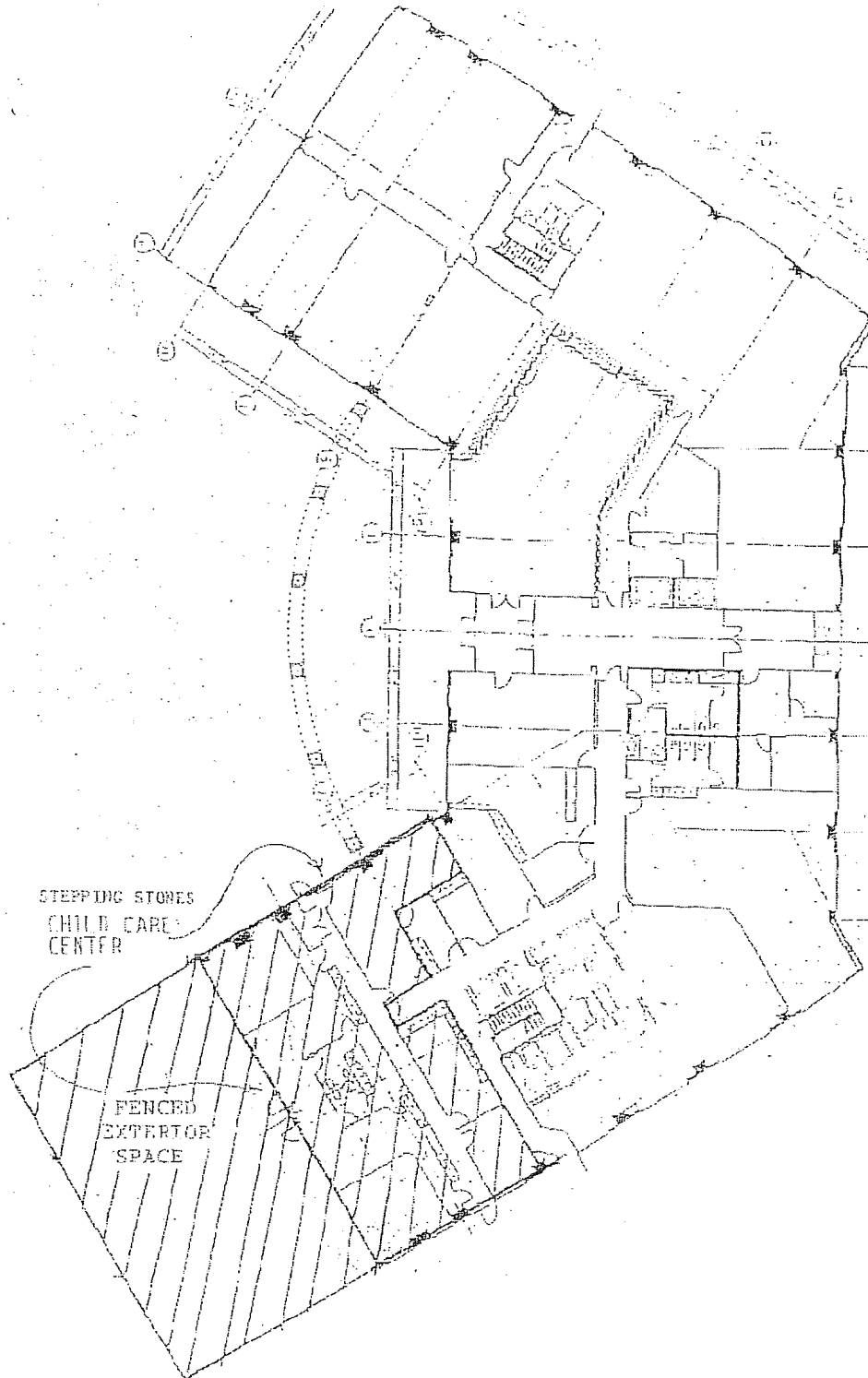
- g. Accountability and Reporting CCLC shall provide mechanisms of accountability and quality control, and will provide information, such as: staff credentials, staffing assignments, programming information, attendance records, complaint and accident logs, action plans to improve operations, written policies and procedures and similar reports, on request to FIRST 5 regarding any aspect of the operation of the CENTER unless access is otherwise prohibited by law.

CONTRACTOR shall submit to FIRST 5 the following reports:

1. Accident/Injury Report where an external intervention or medical attention was required. (due within 24 hours of occurrence)
2. Quarterly Reports – due to FIRST 5 monthly from April 2011 through June, 2011; then by the 21<sup>st</sup> day of September, December, March and June
  - a. Enrollment by classroom
  - b. Staff to children ratios by classroom
  - c. Marketing activities
  - d. Potential/existing problems at CENTER
  - e. Staff turnover
  - f. Enrollment and Waiting List in these categories: COUNTY Employees, Contractor employees, and any non-COUNTY employees.
3. Annual Report – due on or before February 25<sup>th</sup> beginning 2012:
  - a. Updated Inventory of Contractor and COUNTY Equipment
  - b. Proposed budget, including fees, for upcoming (fiscal) year
  - c. Results of Annual Parents' Survey

**EXHIBIT B**

**BETTERAVIA CHILD CARE CENTER SITE PLAN**





**EXHIBIT C**  
**Children's Choice**  
**Betteravia Children's Center**

**Monthly Tuition Rates**  
**2011**

|  |   | Infant | Todd | Preschool |
|--|---|--------|------|-----------|
| Current  | (As of February 28, 2011)                     | 667    | 555  | 477       |
| New Rates (All amounts are Not To Exceed, and may be less) |   |        |      |           |
|  | Existing Families                             | 767    | 638  | 549       |
|  | (Rates through August 31, 2011)               |        |      |           |
|  | New Families                                  | 825    | 694  | 596       |
|  | (And existing families after August 31, 2011) |        |      |           |

## EXHIBIT D

### STANDARD INDEMNIFICATION AND INSURANCE PROVISIONS for contracts NOT requiring professional liability insurance

#### INDEMNIFICATION

CCLC shall defend, indemnify and save harmless the COUNTY, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of the CCLC or his agents or employees or other independent contractors directly responsible to him; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting from the sole negligence or willful misconduct of the COUNTY.

CCLC shall notify the COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement.

#### INSURANCE

Without limiting the CCLC's indemnification of the COUNTY, CCLC shall procure the following required insurance coverages at its sole cost and expense. All insurance coverages are to be placed with insurers which (1) have a Best's rating of no less than A: VII, and (2) are admitted insurance companies in the State of California. All other insurers require the prior approval of the COUNTY. Such insurance coverage shall be maintained during the term of this Agreement. Failure to comply with the insurance requirements shall place CCLC in default. Upon request by the COUNTY, CCLC shall provide a certified copy of any insurance policy to the COUNTY within ten (10) working days.

1. Workers' Compensation Insurance: Statutory Workers' Compensation and Employers Liability Insurance shall cover all CCLC's staff while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation, or expiration or reduction of coverage shall be effective or occur until at least thirty (30) days after receipt of such notice by the COUNTY. In the event CCLC is self-insured, it shall furnish a copy of Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if CCLC has no employees as defined in Labor Code Section 3350 et seq. during the entire period of this Agreement and CCLC submits a written statement to the COUNTY stating that fact.
2. General and Automobile Liability Insurance: The general liability insurance shall include bodily injury, property damage and personal injury liability coverage, shall afford coverage for all premises, operations, products and completed operations of CCLC and

shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed by the CCLC in the indemnity and hold harmless provisions [above] of the Indemnification Section of this Agreement between COUNTY and CCLC. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of CCLC pursuant to CCLC's activities hereunder. CCLC shall require all subcontractors to be included under its policies or furnish separate certificates and endorsements to meet the standards of these provisions by each subcontractor. COUNTY, its officers, agents, and employees shall be Additional Insured status on any policy. A cross liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each shall be included in the policies. A copy of the endorsement evidencing that the policy has been changed to reflect the Additional Insured status must be attached to the certificate of insurance. The limit of liability of said policy or policies for general and automobile liability insurance shall not be less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Any deductible or Self-Insured Retention {SIR} over \$10,000 requires approval by the COUNTY.

Said policy or policies shall include a severability of interest or cross liability clause or equivalent wording. Said policy or policies shall contain a provision of the following form:

*"Such insurance as is afforded by this policy shall be primary and if the COUNTY has other valid and collectible insurance, that other insurance shall be excess and non-contributory."*

If the policy providing liability coverage is on a 'claims-made' form, the CCLC is required to maintain such coverage for a minimum of three years following completion of the performance or attempted performance of the provisions of this agreement. Said policy or policies shall provide that the COUNTY shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

CCLC shall submit to the office of the designated COUNTY representative certificate(s) of insurance documenting the required insurance as specified above prior to this Agreement becoming effective. COUNTY shall maintain current certificate(s) of insurance at all times in the office of the designated COUNTY representative as a condition precedent to any payment under this Agreement. Approval of insurance by COUNTY or acceptance of the certificate of insurance by COUNTY shall not relieve or decrease the extent to which the CCLC may be held responsible for payment of damages resulting from CCLC'S services of operation pursuant to the contract, nor shall it be deemed a waiver of COUNTY'S rights to insurance coverage hereunder.

In the event the CCLC is not able to comply with the COUNTY'S insurance requirements, COUNTY may, at their sole discretion and at the CCLC'S expense, provide compliant coverage.

The above insurance requirements are subject to periodic review by the COUNTY. The COUNTY'S Risk Program Administrator is authorized to change the above insurance

requirements, with the concurrence of COUNTY Counsel, to include additional types of insurance coverage or higher coverage limits, provided that such change is reasonable based on changed risk of loss or in light of past claims against the COUNTY or inflation. This option may be exercised during any amendment of this Agreement that results in an increase in the nature of COUNTY's risk and such change of provisions will be in effect for the term of the amended Agreement. Such change pertaining to types of insurance coverage or higher coverage limits must be made by written amendment to this Agreement. CCLC agrees to execute any such amendment within thirty (30) days of acceptance of the amendment or modification.