

# Attachment 1

## LEASE AGREEMENT

### RECITALS

**A.** The City of Santa Rosa ("City") is the owner of the real property commonly known as 1225 Fulton Rd, Santa Rosa, California, Sonoma County Assessor's Parcel Number 034-460-032, and the building and other improvements thereon (hereinafter the "Property"), which was acquired for the construction of a new sewer lift station.

**B.** The City does not anticipate construction of the new sewer lift station for approximately 8-10 years; the existing building located on the Property is now vacant.

**C.** The City now desires to lease a portion of the Property including the existing building ("Building Area"), the outdoor space immediately east of the existing building ("Outdoor Area East") and the outdoor space immediately west of the existing building ("Outdoor Area West") as identified in Exhibit A (collectively, "Premises"), attached hereto, in accordance with the terms and conditions of this Lease Agreement ("Lease").

**1. PARTIES.** This Lease is entered into as of the date on which this Lease is fully executed by the parties as indicated on the signature page ("Effective Date"), by and between the City of Santa Rosa, a municipal corporation ("City") and Child Family Community Inc., a California corporation ("Tenant").

**2. PREMISES.**

2.1 City hereby leases to Tenant and Tenant leases from City the Premises. Notwithstanding the foregoing to the contrary, City has the right, upon ninety (90) days prior written notice to Tenant, to reduce the Premises by that portion comprised of either the Outdoor Area East or the Outdoor Area West.

2.2 Tenant acknowledges that City retains the right to the exclusive use and possession of the remainder portion of the Property, of which the Premises is a part. Tenant accepts the Premises and this Lease subject to City's rights as herein set forth and Tenant agrees not to disrupt, disturb or interfere with City's use of the remainder of the Property or access thereto.

2.3 City acknowledges that Tenant shall have nonexclusive rights to utilize the parking lot located immediately to the south of the Premises on the Property for parking purposes. City has the right to relocate the parking lot to another location on the Property at no additional cost or expense to Tenant.

2.4 Tenant will be performing improvements to the Premises which include complying with all building, health and safety, and licensing requirements for a daycare operation. The process for and description of the proposed tenant improvements are as set forth in Exhibit B, attached hereto and made a part of this Lease.

2.5 City covenants and warrants that as long as Tenant is not in default of the terms of this Lease, Tenant shall have quiet and peaceful possession of the Premises and shall enjoy all the rights herein granted without interference, subject to the limitations, reservations and conditions set forth herein.

### **3. TERM; POSSESSION**

3.1 The initial term ("Term") shall commence on the full execution of this Lease ("Commencement Date") for a term of ten (10) years and shall automatically expire without notice on the full execution date in 2029, unless extended in writing by mutual written agreement or sooner terminated as provided herein.

3.2 Upon full execution of this Lease and submittal and acceptance of proof of insurance required hereunder, Tenant may enter upon and take possession of the Premises for purposes of planning and constructing tenant improvements in accordance with Exhibit B. Tenant shall abide by all terms and conditions of this Lease. Tenant shall not occupy the Premises until such time as (i) the City has issued a Temporary Occupancy Permit for the Use and (ii) Tenant has completed all necessary improvements to accommodate the use and same have been inspected and approved by City.

### **4. RENT; VOUCHERS; SECURITY DEPOSIT.**

4.1 The initial rent under this Lease ("Rent") shall be five thousand-five hundred and eighty-one dollars (\$5,581.00) per month, payable in advance on the first day of each month, without notice or demand, commencing six months from the date which is the first day of the month following the Commencement Date and continuing thereafter during the Term of this. Rent for any period during the Term which is less than one month shall be a prorated portion of the monthly Rent based on a thirty-day month. Rent shall be paid by Tenant without deduction or offset, notice or demand at the place designated in Section 20 below. Rent shall increase by an amount equal to three percent (3%) of the then current monthly Rent, beginning on the date which is the second anniversary of the Commencement Date (i.e., June 3, 2021) and on every other anniversary thereafter during the Term.

In the event that Tenant is able to secure, through its collaboration and partnership with Sonoma 4C's program, approval of State of California to vend voucher dollars' worth a minimum of ten or more vouchers dedicated to Tenant's program, then City agrees that the Biennial increase in Rent would change to an increase in an amount equal to three percent (3%) of the then current monthly Rent to every third anniversary of the Commencement Date, and continuing on that schedule for the remainder of the Term.

4.2 Security Deposit. On execution of this Lease, Tenant shall deliver to City cash in the amount of one month's rent (\$5,581) ("Security Deposit"). The Security Deposit shall be held by City as security for the performance by Tenant of all of the provisions of this Lease. If Tenant fails to pay Rent or other charges due hereunder, or otherwise defaults with respect to any provision of this Lease, City may use, apply or retain all or any portion of the Security Deposit for the payment of any Rent or other charge in default, or the payment of any other sum to which City may become obligated by reason of Tenant's default, or to compensate City for any loss or damage which City may suffer thereby. If City so uses or applies all or any

portion of the Security Deposit, then within ten (10) days after demand therefor Tenant shall deposit cash with City in an amount sufficient to restore the deposit to the full amount thereof, and Tenant's failure to do so shall be a material breach of this Lease. City shall not be required to keep the Security Deposit separate from its general accounts. If Tenant performs all of Tenant's obligations hereunder, the Security Deposit, or so much thereof as has not theretofore been applied by City, shall be returned to Tenant without payment of interest for its use within thirty (30) days after the expiration or earlier termination of this Lease, and after Tenant has vacated the Premises. No trust relationship is created herein between City and Tenant with respect to the Security Deposit.

**5. RIGHT OF FIRST NEGOTIATION.** For the Term of this Lease and any extension thereof, City hereby agrees that Tenant shall have the Right of First Negotiation ("RFN") for the purchase of the Property or any portion thereof. Before City enters into any agreement to sell or convey any portion of the Property, or lists the Property for sale, City shall notify Tenant in writing of City's intent and Tenant shall have thirty (30) days from the receipt of such notice to provide City written notice that Tenant desires to enter into good faith negotiations with City for the purchase of the Property or any such portion considered for sale. If Tenant does not provide written notice that Tenant is exercising its RFN option within such (30) thirty-day period, then City shall have no further obligation with respect to the RFN and shall be free to sell the Property, or such portion as City may have identified in its notice to Tenant. If Tenant exercises the RFN as described above, then the parties shall negotiate exclusively, reasonably and in good faith concerning the purchase and sale of the Property, or any portion thereof in question, for a period of not less than sixty (60) days. If the parties do not execute and deliver an agreement with respect to the purchase within such sixty (60) day period, then City shall be free to sell the Property, or any portion thereof described in City's notice to Tenant.

**6. LOW TO MODERATE INCOME FAMILY SUPPORT.** As part of Tenant's proposal, Tenant offered that certain support would be provided to moderate- and low-income families, and this was a basis for the City selecting Tenant's proposal over other proposals for lease of the Premises and as such is part of the consideration hereunder to the City. Tenant hereby agrees that its facility will support moderate- and low- income families through scholarship programs, and further that Tenant will collaborate in good faith with Sonoma 4Cs, to increase its ability to support moderate- and low-income families at this facility in accordance with the parameters set forth in Exhibit C attached hereto and made part of this Lease. Tenant shall submit to the City's Real Estate Manager, annually (by January 15 of each year) a letter certifying that Tenant's child care facility at the Premises has met the minimum requirements listed in Exhibit C, and shall provide, at the request of City, such additional documents as are necessary to support Tenant's certification. The City may, every three years during the Term of this Lease, at City option, elect to conduct an independent audit of Tenant's facility to verify that Tenant has met the minimum requirements contained in Exhibit C. Such audit will be paid for by City unless the outcome of the audit indicates that Tenant has failed to meet these requirements. In such case, Tenant shall be responsible for the cost of the audit as well as the payment to the City of any funds necessary to compensate for Tenant's lack of compliance.

## **7. USE.**

7.1 The Premises shall be used and occupied by Tenant and its employees or contractors. Tenant acknowledges and agrees that in entering into this Lease, it is not relying on any representations of City or any of its officers, agents or employees for permission for any use beyond that expressly provided herein. The Premises shall be used for a daycare facility and shall not be used for any other unrelated use without the prior written consent of City, which may be withheld in City's sole and absolute discretion. Tenant shall be solely responsible for obtaining any permits necessary to allow such use prior to occupancy of the Premises.

7.2 Tenant hereby understands and acknowledges that the Property is currently zoned under a PD zone or Planned Development zone, which allows for the uses specifically identified in the policy statement specific to that PD zone and in the case of the Property limits use of the Premises for that of a Church. Tenant further understands and acknowledges that use of the Premises as a daycare facility will require a temporary use permit (allowing a temporary five-year use), which is subject to the discretion of the Director of Planning and Economic Development. Tenant shall be solely responsible for applying for a temporary use permit consistent with the City Code requirements and nothing in this Lease guarantees issuance of said permit. In the event that Tenant's application is denied, Tenant shall have the right to terminate this Lease and receive a refund of any Security Deposit paid to City hereunder, provided that Tenant shall still be responsible for any Rent that may become due under this Lease prior to such termination.

7.3 The City hereby agrees that, within one year from the Commencement Date, the City shall at its own cost and expense initiate a rezoning of the Property to eliminate the PD zone and to rezone the Property to zoning that will better accommodate use of the Premises as a daycare facility on a more permanent basis. Rezoning of the Property is a legislative action within the sole discretion of the Santa Rosa City Council, and nothing herein shall guarantee the outcome of the rezoning application. In the event that the City Council denies a rezoning of the Property, then Tenant understands that Tenant's use of the Premises shall be limited to the term, if any, granted in the temporary use permit and therefore, the Term of this Lease would terminate upon the expiration of the temporary use permit. In the event that the City Council approves rezoning the Property, then Tenant shall have the right and the obligation, at Tenant's sole cost and expense, to apply for a conditional use permit for use of the Premises as a daycare facility, which may include the payment of additional impact and/or sewer and water demand fees that were not required with the temporary use permit, in order to extend Tenant's right to use of the Premises for the full Term of the Lease. Tenant acknowledges this risk and agrees to surrender use and possession of the Premises at the expiration of the temporary use permit unless the Property is rezoned, and Tenant has obtained issuance of a conditional use permit for a child care facility on the Premises.

In consideration for and as a material condition of this Lease by City at the Rent and on the terms provided herein, Tenant shall, in addition to all other covenants and

requirements of Tenant herein, complete all improvements to accommodate use of the Premises as licensed child care facility in accordance with Exhibit B. Tenant shall endeavor to complete all necessary improvements not later than January 1, 2020.

7.4 Upon taking possession of the Premises, Tenant shall be deemed to have examined and determined the condition of the Premises and have accepted the present condition and repair, subject only to improvements to be performed in accordance with Exhibit B. All work conducted through tenant improvements shall have been reviewed and approved by City in accordance with the provisions of Exhibit B. City makes no representation or warranty concerning the condition of the Premises or its fitness for use for the purposes described above. Tenant assumes all responsibility and all costs of making any tenant improvements, alterations, refurbishment and repairs which may be necessary or appropriate for Tenant's use and occupancy.

7.5 Tenant shall promptly comply with all applicable statutes, ordinances, rules, regulations, orders and requirements of any governmental agency in effect during the Term or any part of the Term of this Lease regulating Tenant's use of the Premises. Without limiting the generality of the foregoing, Tenant shall, at Tenant's sole cost and expense, comply with all applicable laws, ordinances and regulations with respect to any and all required permits for operation of the Premises for its intended purpose. Tenant shall also promptly comply with all reasonable rules and requirements issued by City during the Term, so long as such rules and requirements are in conformity with common practice and usage in similar properties, and are not inconsistent with the provisions of this Lease or Tenant's permitted use of the Premises, and providing further that a written copy thereof is received by Tenant sufficiently in advance of the time any new rule is effective. Tenant shall not use or permit the use of the Premises in any manner that will tend to create waste or a nuisance or use the Premises for any unlawful or hazardous purpose.

7.6 Tenant agrees that its use of the Premises shall be conducted in compliance with all applicable state, local and federal laws and regulations.

**8. DESIGN AND CONSTRUCTION OF SEWER LIFT STATION.** Though not anticipated to be constructed immediately, preparation for design and construction of the sewer lift station may begin at any time during the Term of this Lease and continue throughout the Term or until construction of such facility is completed. Construction activity, which may include heavy equipment in and out of the Property and loud noise and dust, is anticipated periodically during preparation for and construction of the facility. The City will work with Tenant to communicate dates when the actual construction of the Sewer Lift Station will begin. Construction itself is anticipated to take up to one (1) years' time. Upon completion of construction of the facility, City will access, maintain and operate the facility on the Property.

**9. MAINTENANCE, REPAIRS AND ALTERATIONS.**

9.1 The obligations and duties enumerated below which require Tenant to repair and maintain the Premises are a part of the consideration for City's renting the

Premises:

(a) Subject to the provisions of Section 9 of this Lease and except as otherwise expressly provided herein, Tenant shall, at Tenant's expense, keep and maintain the Premises and every part thereof in good order, condition and repair (normal wear and tear excepted), including without limitation, all plumbing, the exterior of the building, including exterior walls, exterior doors and window frames, gutters and downspouts, parking lot surface and lighting, heating, ventilation and air conditioning systems, and wiring and plumbing within the walls and floors and equipment within the Premises, fixtures, interior walls and interior surfaces of exterior walls, ceilings, windows, doors, and plate glass, located within the Premises. Tenant shall maintain all exterior landscaping in a pleasing condition.

(b) If Tenant fails to perform Tenant's obligations under this Section 9.1 City may, at City's option, enter upon the Premises if Tenant fails to cure the deficiency after ten (10) days' prior written notice to Tenant, and put the same in good order, condition and repair, to the same condition as when accepted by Tenant pursuant to Section 7.2 above, and the reasonable cost of such repair shall be due and payable as additional rent to City together with Tenant's next rental installment, provided City has provided Tenant at least ten (10) days' written notice and reasonable opportunity for cure and submits copies of detailed invoices or receipts for the cost of such repairs.

(c) On the last day of the Term of this Lease or on any sooner termination, Tenant shall surrender the Premises to City in as good a condition as received, broom clean, ordinary wear and tear excepted. City shall inspect the Premises prior to Tenant's departure and notify Tenant in writing of City's requirements to return the Premises to good condition, ordinary wear and tear excepted.

(d) Tenant shall promptly give City written notice of any damage, destruction or deterioration of or to the Premises, including without limitation the discharge by Tenant of any hazardous materials which are not immediately and completely remedied by Tenant.

9.2 Tenant may, as part of the consideration to City hereunder for its use and occupation of the Premises, install and construct certain improvements to the Premises, in accordance with the provisions of Exhibit B attached hereto and made part of this Lease. All of the improvements installed in the Premises during the Term shall remain part of the Premises at the end of the Term and shall become the property, free and clear, of City, subject to City's discretion. Tenant shall maintain all such improvements, equipment and fixtures in good working order and condition, reasonable wear and tear accepted, and shall be solely responsible for the repair or replacement of same during the Term of the Lease. At the end of the Term, Tenant shall deliver all such improvements, equipment and fixtures to City in good working order and condition, except as otherwise provided herein.

(a) Except as set forth in Section 7.1 above, Tenant agrees not to make any alterations of, changes in, or additions to the Premises without the prior

written consent of City, which consent shall not be unreasonably withheld. Any request for alteration should also inquire as to whether such alteration will be required to be removed by Tenant at the end of the Term, or alternatively whether such alteration may remain on the Premises. Tenant agrees that should City give written consent, that unless otherwise agreed to in writing, all such alterations, additions and improvements, including fixtures, made in, to or on the Premises shall be made at the sole cost and expense of Tenant and shall (except for unattached movable personal property not the property of City) become the property of City and shall remain upon and be surrendered with the Premises. If, at the time of consent of the proposed alteration, City requires removal of the alteration at the end of the Term, then Tenant shall restore the Premises to the same condition as before the alteration, entirely at Tenant's cost and expense.

(b) Tenant covenants and agrees to indemnify, defend and hold City harmless from all claims, liens or demands arising out of any work performed, materials furnished, or obligations incurred by or for Tenant upon the Premises during the Term.

(c) All work done by Tenant under these provisions shall be done in a good and workmanlike manner, and in compliance with all applicable laws and all ordinances, regulations and orders of governmental authority.

(d) Upon completion of the tenant improvement plans, Tenant shall promptly provide City, at no cost to City, with copies of all engineering, architectural and/or mechanical plans and specifications and original final building permits for all alterations, modifications and repairs to the Premises made by or on behalf of Tenant.

## **10. TAXES.**

10.1 The City of Santa Rosa is a public agency and therefore is not typically subject to taxes, assessments, license fees and other charges ("taxes") levied and assessed against real or personal property. Tenant is hereby specifically made aware of the terms of Revenue & Taxation Code Section 107.6 (possessory interest tax). Tenant shall be solely responsible for any and all taxes that may be assessed as a result of Tenant's lease and occupancy of the Premises under this Lease and shall pay all in a timely manner so as to avoid any fines or penalties that may be assessed to the Premises. Tenant shall indemnify, defend and hold City harmless from and against any taxes, fines, penalties or other charges against the Premises or City in connection with Tenant's rights and interest under this Lease and use of the Premises hereunder.

10.2 If any taxes on Tenant's personal property or possessory interest for use of the Premises by or through Tenant, are levied against City, the Property or the Premises, and if City pays the taxes on any of these items or the taxes based on the increased assessment of these items, Tenant shall, on demand, immediately reimburse City for the sum of the taxes levied against City, or the proportion of the taxes resulting from the increase in City's assessment. City shall have the right to pay these taxes regardless of the validity of the levy.

## **11. INDEMNITY AND INSURANCE.**

11.1 Tenant agrees to indemnify and defend City from any claims, demands, causes of action and liability of any nature and any reasonable expense incident to the defense, for injury to or death of persons or loss of or damage to property occurring on or about the Premises arising out of or resulting from Tenant's use, and use by its employees, contractors, clients, invitees and guests, occupation of the Premises, any improvements made thereon, or the condition of the Premises (unless the condition is one for which City has expressly assumed the responsibility for remedying), during the Term, excepting only that caused by the sole, active negligence or intentional misconduct of City, its officers, agents, licensees, invitees, volunteers, or employees.

11.2 Tenant shall, at all times during the Term, maintain and keep in full force and effect, policies of insurance covering the Premises and Tenant's use thereof in the amounts and coverages set forth in Attachment One attached hereto. City reserves the right to modify these insurance requirements while this Lease is in effect, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. Failure to maintain the insurance required hereunder shall be an event of default under this Lease.

11.3 Except to the extent caused by the sole, active negligence or intentional misconduct of City, its employees, agents, contractors, guests or invitees, Tenant agrees that City shall not be liable for injury to Tenant's business or any loss of income therefrom or damages to the goods, wares, merchandise or other property of Tenant, Tenant's employees, invitees, contractors or any other person on or about the Premises or Property by or through Tenant, nor shall City be liable for injury to Tenant's employees, agents, contractors, clients, guests or invitees whether such damage or injury is caused by or results from fire, steam, electricity, water or rain, or from breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause.

11.4 Tenant agrees to pay for all damage to the Premises and Property caused by Tenant, its employees, agents, contractors, clients, guests or invitees misuse or neglect of said Premises and its apparatus and appurtenances.

## **12. DAMAGE OR DESTRUCTION.**

12.1 In the event of damage or destruction of the Premises, not otherwise the responsibility of Tenant hereunder, during the Term of the Lease, City shall, to the extent of available insurance proceeds, repair the damage to the Premises, provided such repairs can be made within sixty (60) days under the laws and regulations of state, federal, county or municipal authorities, but such destruction shall in no way annul or void this Lease except if such damage or destruction is without fault of Tenant and/or Tenant's agents, employees and invitees, in which case Tenant may opt to terminate this Lease immediately. Tenant shall be entitled to a reduction of Rent while such repairs are made proportionate to the extent to which the repair operations interfere with Tenant's business conducted on the Premises. If the repairs cannot be made in sixty (60) days, either party has the option to terminate this Lease. City shall



provide Tenant with written notice of City's election to terminate within thirty (30) days after such damage or destruction. If City elects to repair and restore the Premises but fails to do so within sixty (60) days of the event causing the damage, Tenant may elect to terminate this Lease. Tenant shall not be responsible for Lease payments during the time the Premises were unusable following termination.

12.2 If the damage or destruction does not result from a peril covered by insurance, either that carried by the Tenant or City, City may, at its sole election, either repair and restore the Premises or terminate this Lease; provided, however, that Tenant may elect to restore the Premises to substantially the same condition as they were in immediately before destruction at Tenant's cost, in which event such damage or destruction shall not terminate this Lease. Tenant shall, at City's option, restore the Premises if the destruction is caused by the negligence of Tenant.

12.3 Notwithstanding anything in this Lease to the contrary, if at any time during the Term of this Lease any governmental agency having jurisdiction over the Premises, other than City, shall require the making of any repairs, improvements or alteration to the building or Premises:

(a) City may, but shall not be required to, elect, in City's sole and absolute discretion, to make said repairs, improvements or alterations to the Premises, in which event this Lease shall continue in full force and effect;

(b) If City, in City's sole and absolute discretion, elects not to make said repairs, improvements or alterations to the Premises, then Tenant shall have the right, at Tenant's sole option and at Tenant's sole cost and expense, to make such repairs, improvements or alternations and to continue the Lease in full force and effect; or

(c) If neither Tenant or City elects to make such repairs, improvements or alterations, then, Tenant shall be required to vacate and surrender to City such portion of the building(s) or Premises (together with exclusive or non-exclusive access thereto) upon which the repairs or alterations are required without making such repairs or alterations, and continue the Lease in effect as to the balance of the Premises but with a proportionate reduction, adjustment or abatement of the Rent or other charges due hereunder, if any. However, if Tenant determines that the remaining available portion of the Premises is inadequate for Tenant's permitted use of the Premises, Tenant may terminate the Lease and neither party shall have any further liability to the other.

**13. UTILITIES.** Tenant shall pay for gas, power, water, sewer, garbage collection service, telephone and other communication services supplied to the Premises, which are separately metered to the Premises. City shall not be responsible to Tenant for any disruption, decrease or loss in utility services not within the control of City. The garbage collection services will provide sufficient container capacity and sufficient frequency of collection to ensure that the Premises are maintained in a safe and sanitary condition in compliance with applicable health and safety laws and regulations.

**14. SURRENDER OF PREMISES; HOLDING OVER.** On the termination or the end of any extension or renewal of this Lease, Tenant shall promptly surrender and deliver the Premises to City in as good condition as they are as of the Effective Date, but including the installation of all improvements, equipment and fixtures, reasonable wear and tear excepted. At the end of the Term, should Tenant hold over for any reason, it is agreed that in the absence of a written agreement to the contrary, that tenancy shall be from month-to-month only and not a renewal of this Lease, nor an extension for any further term. Tenant shall pay a monthly amount equal to One Hundred Twenty-Five Percent (125%) of the Rent payable prior to the end of the Term and the month-to-month tenancy shall be subject to every other term, covenant, and condition in this Lease that is consistent with and not contrary to a month-to-month tenancy.

**15. HAZARDOUS MATERIALS.**

15.1 "Hazardous Materials Laws" means any and all federal, state or local laws, ordinances, decrees, orders, regulations or court decisions relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Premises, or soil and ground water conditions, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. §9601, et seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq., the California Hazardous Waste Control Act, Cal. Health and Safety Code §25100, et seq., the Carpenter-Presley-Tanner Hazardous Substances Account Act, Cal. Health and Safety Code §25300, et seq., the Safe Drinking Water and Toxic Enforcement Act, Cal. Health and Safety Code §25249.5, et seq., the Porter-Cologne Water Quality Control Act, Cal. Water Code § 13000, et seq., any amendments to the foregoing, and any similar federal, state or local laws, ordinances, rules, decrees, orders or regulations.

15.2 Hazardous Materials. "Hazardous Materials" means any chemical, compound, material, substance or other matter that: (a) is defined as a hazardous substance, hazardous material, hazardous waste or toxic substance under any Hazardous Materials Law; (b) is controlled or governed by any Hazardous Materials Law or gives rise to any notice or publication requirements hereunder, or gives rise to any liability, responsibility or duty on the part of Tenant or City with respect to any third person hereunder; or (c) is flammable or explosive material, oil, asbestos, urea formaldehyde, radioactive material, nuclear medicine material, drug, vaccine, bacteria, vims, hazardous waste, toxic substance, or related injurious or potentially injurious material (by itself or in combination with other materials).

15.3 Use. Tenant shall not allow any Hazardous Material to be used, generated, manufactured, released, stored or disposed of on, under or about, or transported from, the Premises, unless: (a) such use is specifically required in the ordinary course of Tenant's business operations on the Premises; and (b) such use is conducted in compliance with the provisions of this Section 15, and further provided that Tenant shall handle, use, store and dispose of such Hazardous Materials in a safe and lawful manner and shall not allow such Hazardous Materials to contaminate the

Premises.

15.4 Compliance with Laws: Handling of Hazardous Materials. Tenant shall strictly comply with, and shall maintain the Premises in compliance with, all Hazardous Materials Laws. Tenant shall obtain, maintain in effect and comply with the conditions of all permits, licenses and other governmental approvals required for Tenant's operations on the Premises under any Hazardous Materials Laws, including, but not limited to, the discharge of appropriately treated Hazardous Materials into or through any sanitary sewer serving the Premises and the use of private disposal service licensed to remove, transport and dispose of Hazardous Materials. At City's request, Tenant shall deliver copies of, or allow City to inspect, all such permits, licenses and approvals. All Hazardous Materials removed from the Premises shall be removed and transported by duly licensed handlers to duly licensed disposal facilities, in compliance with all Hazardous Materials Laws. Tenant shall perform any monitoring, investigation, clean-up, removal, detoxification, preparation of closure or other required plans and any other remedial work (collectively, "Remedial Work") required as a result of any release or discharge of Hazardous Materials affecting the Premises or any violation of Hazardous-Materials Laws by Tenant or any successor or sublessee of Tenant or their respective agents, contractors, employees, licensees or invitees. City shall have the right in City's sole and absolute discretion (but not the obligation) to intervene at Tenant's cost and expense, in any governmental action or proceeding involving any Remedial Work, and to review and approve performance of the Remedial Work, in order to protect City's interests. Tenant shall not enter into any settlement agreement, consent decree or other compromise with respect to any claims relating to Hazardous Materials without notifying City in writing and providing ample opportunity for City to intervene.

15.5 Notice; Reporting. Tenant shall notify City, in writing, and provide copies of any written notices or related correspondence received by Tenant within three (3) business days after any of the following: (a) Tenant has knowledge, or has reasonable cause to believe, that any Hazardous Material has been released, discharged or is located on, under or about the Premises, whether or not the release or discharge is in quantities that would otherwise be reportable to a public agency; (b) Tenant receives any order of a governmental agency requiring any Remedial Work pursuant to any Hazardous Materials Laws; (c) Tenant receives any warning, notice of inspection, notice of violation or alleged violation, or Tenant receives notice or knowledge of any proceeding, investigation or enforcement action, pursuant to any Hazardous Materials Laws; or (d) Tenant receives notice or knowledge of any claims made or threatened by any third party against Tenant or the Premises relating to any loss or injury resulting from Hazardous Materials. If the potential risk of any of the foregoing events is material, Tenant shall deliver immediate oral notice to City, in addition to written notice as set forth above. Tenant shall promptly deliver to City copies of all test results, reports and business or management plans required to be filed with any governmental agency pursuant to any Hazardous Materials Laws.

15.6 Indemnity. Tenant shall indemnify, protect, defend and hold harmless City (and its officers, directors, employees and agents) from and against any and all liabilities, claims, suits, judgments, actions, investigations, proceedings, costs and expenses (including reasonable attorneys' fees and court costs) to the extent arising out of or in connection with any breach of any provisions of this Section 15 or

directly or indirectly arising out of the use, generation, storage, release, disposal or transportation of Hazardous Materials by Tenant, or any successor or sublessee of Tenant, or their respective agents, contractors, employees, licensees, or invitees, on, under or about the Premises, including, but not limited to, all foreseeable and unforeseeable consequential damages and the cost of any Remedial Work. Neither the consent by City to the use, generation, storage, release, disposal or transportation of Hazardous Materials nor the strict compliance with all Hazardous Materials Laws shall excuse Tenant from Tenant's indemnification obligations pursuant to this Section 15. Tenant's indemnity obligation in this paragraph does not extend to any liabilities, claims, suits, judgments, actions, investigations, proceeds, costs or expenses arising out of or in connection with City's active negligence, or breach of any provision of this Lease, or non-compliance with or violation of any Hazardous Material Laws. The foregoing indemnity shall be in addition to and not a limitation of the indemnification provisions of Section 16 of this Lease. Tenant's obligations pursuant to this Section 15 shall survive the termination or expiration of this Lease.

**16. ASSIGNMENT AND SUBLETTING.** Tenant shall not voluntarily or by operation of law assign, transfer, mortgage, sublet or otherwise transfer or encumber ("Transfer") all or any part of Tenant's interest in this Lease or in the Premises. Any attempt at transfer of this Lease or the Premises shall be voidable at the City's option and shall constitute a material breach of this Lease. Given the fact that City is a public agency and not a commercial entity, tenant hereby acknowledges that this prohibition is reasonable. Notwithstanding the foregoing to the contrary, subject to the provisions of this Section 16, the City shall not withhold its consent to a Transfer to: (i) an entity that wholly owns Tenant (as "Parent"); (ii) an entity arising as a result of a merger, acquisition or consolidation of Tenant or a Parent; (iii) any successor entity of Tenant or a Parent created by merger, acquisition, reorganization, recapitalization or otherwise; or (iv) an entity wholly owned by a Parent (any of the foregoing being a "Preferred Transferee"). Tenant's request for consent to a Transfer to a Permitted Transferee shall be accompanied by a written statement setting forth the details of the proposed Transfer, including the name, business and financial condition of the transferee, including but not limited to information regarding proposed transferee's experience in the daycare business (or similar experience) and in a form acceptable to City, financial details of the proposed Transfer and any other information that the City may reasonably require. The City's obligation to consent to a Transfer to a Preferred Transferee other than a Parent shall be subject to the City's review and approval of the Financial strength and creditworthiness of the Preferred Transferee (which approval shall not be unreasonably withheld).

**17. DEFAULT.**

17.1 The occurrence of any of the following events shall constitute a material default and breach of this Lease by Tenant:

(a) Vacation or abandonment of the Premises for a period of ninety (90) days or longer, unless the Premises have become unusable for Tenant's

permitted use as set forth in Section 7, above.

(b) The failure by Tenant to make any payment of Rent or other payment required to be made by Tenant under the provisions of this Lease, as and when due, unless otherwise excused under Section 12 above.

(c) The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant within thirty (30) days after receiving written notice thereof, or if such breach cannot be cured within said thirty (30) day period, then the failure to commence cure within said thirty (30) day period and thereafter diligently pursue to completion.

(d) Transfer or attempted transfer of this Lease by Tenant contrary to the provisions of Section 17 above.

17.2 Upon the happening of any such event of default, City shall have the following remedies. These remedies are not exclusive; they are cumulative in addition to any remedies now or later allowed by law:

(a) City can continue this Lease in full force and effect and this Lease will continue in effect as long as City does not terminate Tenant's right to possession, and City shall have the right to collect rent when due. During the period Tenant is in default, City can enter the Premises and re-let them, or any part of them, to third parties for Tenant's account. Tenant shall pay to City the rent due under this Lease on the dates the rent is due, less the rent City receives from any reletting. No act by City allowed by this paragraph shall terminate this Lease unless City notifies Tenant that City elects to terminate this Lease. After Tenant's default and for as long as City does not terminate Tenant's right to possession of the Premises, if Tenant obtains City's consent Tenant shall have the right to assign or sublet its interest in this Lease, but Tenant shall not be released from liability. City's consent to a proposed assignment or subletting shall not be unreasonably withheld. If City elects to re-let the Premises as provided in this paragraph, rent that City receives from reletting shall be applied to the payment of:

(i) First, any indebtedness from Tenant to City other than rent due from Tenant;

(ii) Second, Rent due and unpaid under this Lease. After deducting the payments referred to in this paragraph, any sum remaining from the Rent City receives from reletting shall be held by City and applied in payment of future Rent as Rent becomes due under this Lease. In no event shall Tenant be entitled to any excess Rent received by City.

(b) City can terminate Tenant's right to possession of the Premises at any time. No act by City other than giving notice to Tenant shall terminate this Lease. Acts of maintenance, efforts to re-let the Premises or the appointment of a receiver on City's initiative to protect City's interest under this Lease shall not constitute a termination of Tenant's right to possession. On termination, City has the right to

recover from Tenant:

(i) The worth, at the time of the award, of the unpaid rent that had been earned at the time of termination of this Lease;

(ii) The worth, at the time of the award, of the amount by which the unpaid rent that would have been earned after the date of termination of this Lease until the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided;

(iii) The worth, at the time of the award, of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided; and

(iv) Any other amount, and court costs, necessary to compensate City for all detriment proximately caused by Tenant's default.

"The worth, at the time of the award," as used in (i) and (ii) of this paragraph, is to be computed by allowing interest at the maximum rate allowable by law. "The worth, at the time of the award," as referred to in (iii) of this paragraph, is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

(c) City, at any time after Tenant commits a default, may cure the default at Tenant's cost following not less than thirty (30) days prior written notice and opportunity to cure.

## **18. CONDEMNATION.**

18.1 If any part of the Premises are condemned for a public or quasi-public use by right of eminent domain, with or without litigation, or transferred by agreement in connection with such public or quasi-public use, by a public agency other than City, this Lease and the leasehold estate of the Tenant, as to the part taken, shall terminate as of the date title shall vest in the condemner, and Tenant shall have no further obligation to pay Rent once Tenant is no longer in possession of the Premises.

18.2 All compensation awarded upon such condemnation or taking shall belong and be paid to City and Tenant shall have no claim thereto, and Tenant hereby irrevocably assigns and transfers to City any right to compensation or damages to which Tenant may become entitled during the Term of this Lease by reason of the condemnation of all or part of the Premises, except that Tenant shall receive from the award: (i) the pro rata value of Tenant's additions, alterations and improvements as determined by the same appraiser establishing the value of the Premises for City; (ii) the value of Tenant's trade fixtures to the extent taken; and (iii) in the event of a partial taking and Tenant restores the Premises, Tenant shall receive a sum attributable to that portion of the award constituting severance damages for the restoration of the Premises. In addition, Tenant shall not be deprived of making any direct claims against the condemning authority for loss of goodwill and/or relocation assistance payments.

**19. MISCELLANEOUS.**

19.1 Whenever any notice, approval, consent, request or election is given or made pursuant to this Lease, it shall be in writing. Communication and payments shall be addressed, if to City, at City's address as indicated below or at such other address as may have been specified by prior notice to Tenant, and if to Tenant, at Tenant's address as indicated below or at such other place as may have been specified by prior notice to City. Any communication so addressed shall be deemed duly served when personally served, or if mailed, as of seventy-two hours from the time such notice was deposited in the U.S. Mail, by registered or certified mail, return receipt requested. Any change of address shall be communicated in writing in accordance with the requirements of this provision.

City Communication:  
City of Santa Rosa  
Attn: Director of Water Department  
69 Stony Circle  
Santa Rosa, CA 95401

Tenant:  
Child Family Community Inc.  
3421 Bonita Vista Lane  
Santa Rosa, CA 95401

Rent Delivered to:  
City of Santa Rosa  
Attn: Accounts Payable  
90 Santa Rosa Avenue  
Santa Rosa, CA 95404

19.2 Each party hereunder shall provide to the other, and keep updated in the event of any change, the name and contact information for the on-site representative in order to facilitate the coordination of day-to-day operations at the Premises.

19.3 The receipt by City of Rent or additional rent with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach. No provision of this Lease shall be deemed to have been waived by City, or by Tenant, unless such waiver is in writing signed by the party to be charged. No consent or waiver, express or implied, by City or Tenant to or of any breach of any agreement or duty shall be construed as a waiver or consent to or of any other breach of the same or any other agreement or duty.

19.4 If any term of this Lease shall to any extent be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term of this Lease shall be valid and enforceable to the fullest extent permitted by law.

19.5 City and its agents shall have the right at any time, upon not less than twenty-four hours' notice, except in cases where City believes there exists an emergency in which case such notice shall be deemed waived, to enter upon the Premises, provided that City shall take all reasonable measure to assure that such entry does not interfere with the activities of Tenant on the Premises. Entry may be had for

purposes of inspection, serving or posting notices, maintaining the Premises or the Property, and making any necessary repairs, alternations or additions to the Premises or the Property to the extent required or permitted to City under this Lease.

19.6 Time is of the essence for each and every provision of this Lease requiring performance within a specified time.

19.7 This Lease contains all agreements of the parties with respect to any matter mentioned in this Lease. No prior agreement or understanding pertaining to any such matter shall be affected. This Lease maybe modified in writing only, signed by the parties in interest at the time of the modification.

19.8 Each provision of this Lease performable by either party shall be deemed both a covenant and a condition.

19.9 In any action to enforce the terms of this Lease, the prevailing party shall be entitled to an award of reasonable attorneys' fees and litigation expenses in addition to other relief.

19.10 City and City's agents shall have the right to enter the Premises, after prior notice to Tenant, at reasonable times for the purpose of inspecting the same, showing the same to prospective purchasers or lenders and making such alterations, repairs, improvements or additions to the Premises or to the building of which they are a part as City may deem necessary or desirable, with Tenant's consent. Tenant's consent to such alterations, repairs, improvements or additions shall not be withheld unreasonably. City may at any time place on or about the Premises any ordinary "for lease" signs, all without rebate of rent or liability to Tenant.

19.11 All exhibits attached to this Lease shall be deemed incorporated herein by this reference and all such exhibits shall be deemed to be a part of this Lease as though set forth in full in the body of this Lease.



IN WITNESS WHEREOF, the parties have executed this Lease of the date last written below, which shall be the Effective Date.

TENANT:

Child Family Community Inc.,  
a California corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: \_\_\_\_\_

CITY:

City of Santa Rosa,  
a Municipal Corporation

By: \_\_\_\_\_  
City Manager

Dated: \_\_\_\_\_

Approved as to form:




By: \_\_\_\_\_  
Santa Rosa City Attorney

Attachments:

- Exhibit A – Premises
- Exhibit B – Building and Use Action Plan
- Exhibit C – Low to moderate income plan
- Attachment One – Insurance Requirements

Exhibit A "Premises"



-  OUTDOOR AREA WEST
-  BUILDING AREA
-  OUTDOOR AREA EAST

1225 FULTON ROAD  
EXHIBIT A - PREMISES

## Exhibit B

### Tenant Improvements and Permits

The information contained in this document, which is attached to and made part of the Lease as Exhibit B, is intended to identify the actions that will be undertaken by Child Family Community Inc. ("Tenant"), and the City of Santa Rosa ("City") in regard to the Premises.

1. Promptly following full execution of this Lease by all parties, Tenant shall apply for a temporary use permit from the City under the resiliency ordinance at Tenant's sole cost and expense and in accordance with Section 7 of this Lease.
2. Once City and Tenant execute this Lease and Tenant has provided evidence of all required insurance, Tenant shall have a right of entry and possession for purpose of preparing plans and specifications for the tenant improvements based on the rough floor plan included as part of this Exhibit B. Plans must be prepared by an architect or engineer licensed by the State of California. Tenant shall assure that all tenant Improvements meet all applicable building code and licensing requirements for use of the Premises as a day-care facility. Prior to submitting the tenant improvement plans for a building permit, Tenant shall submit said plans to the City's Real Estate Manager for review and comments to Tenant. Said review shall be completed within 15 days of receipt of said plans.
3. Tenant will incorporate any necessary changes, if needed, into tenant improvement plans based on comments received from the City's Real Estate Manager. Once reviewed, then Tenant shall have the right to submit for a building permit application for all improvements, at Tenant's sole cost and expense.
4. Tenant shall require Tenant's contractor for any and all work on the Premises to indemnify the City of Santa Rosa and to name the City of Santa Rosa, its officers, agents and employees as additional insured in at least the same amount as the insurance coverage required under the Attachment One to the Lease. Tenant shall not commence any work on the Premises until such time as Tenant has received a valid building permit for such work and has been issued a temporary use permit for the use of the Premises as child care facility.
5. City shall complete installation of perimeter fencing within six months from the execution of this Lease by all parties, at City's sole cost and expense.
6. Tenant shall be responsible to complete any necessary or desired interior fencing, at Tenant's expense subject to the prior approval of the City not to be unreasonably withheld. Same shall be constructed in accordance with all applicable requirements of this regarding permits and insurance.

Exhibit C  
Low to moderate income plan

A minimum of fifteen percent (15%) of the slots available for enrollment shall be reserved for Eligible Families. "Eligible Families" shall be defined as those families who make below eighty percent (80%) of the California state median income. For Eligible Families, the parent share cost of the tuition rate shall be a maximum of sixty-five percent (65%) of the full tuition rate cost.

1. Offer a minimum of 15% of slots for 25-65% scholarship depending on need. The actual number of children and families served will depend on the specific schedule. A percentage is provided to allow for increased access should total licensed capacity increase.
2. Licensed capacity of 60 proposed currently
3. Annual Scholarship value of \$30,000- \$120,000
4. Collaborate with 4C's to increase access to the program.

Because specifics of this partnership must be determined and approved by The State of California this program must be developed and implemented on an annual basis based upon regulations. Additionally, through partnership with Sonoma 4Cs to develop a scholarship program within their agency based on local donations. Families receiving a state Alternative Payment Voucher 4cs or Sonoma Works and/or the 4Cs Value in Preschool program will receive priority registration and acceptance to any open slot in the program of up to 50% of total enrollment. With a minimum of 15 % in the Scholarship, Alternative Payment Voucher and/or the 4Cs Value in Preschool program.

Internal Scholarship Program will be established to support income-qualifying families not eligible or pulled from the eligibility list. Number of children supported will be based on total actual enrollment.

5. Priority enrollment is as follows
  - a. AP Voucher/VIP
  - b. 2. Scholarship Internal
  - c. 3. Scholarship External
  - d. 4. Siblings
  - e. 5. Referrals- City of Santa Rosa Employees
  - f. 6. General public

**ATTACHMENT ONE  
INSURANCE REQUIREMENTS FOR LEASE AGREEMENTS**

**A. Insurance Policies:** Tenant shall, at all times during the terms of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum coverage as indicated below and issued by insurers with AM Best ratings of no less than A-:VI or otherwise acceptable to the City.

<b>Insurance</b>	<b>Minimum Coverage Limits</b>	<b>Additional Coverage Requirements</b>
1. Commercial general liability	\$ 2 million per occurrence \$ 2 million aggregate*	Coverage must be at least as broad as ISO CG 00 01 and must include property damage, bodily injury and personal injury coverage. *The general aggregate shall apply separately to this project location or it shall be twice the occurrence limit. <b>Coverage may be met by a combination of primary and umbrella or excess insurance but umbrella and excess shall provide coverage at least as broad as specified for underlying coverage.</b>
2. Business auto coverage	\$ 1 million	(For lessees using and/or commercially parking autos on premises) ISO Form Number CA 00 01 covering any auto (Code 1), or if Lessee has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$ 1 million per accident for bodily injury and property damage.
3. Workers' compensation and employer's liability	\$ 1 million	(For Lessees with employees only) As required by the State of California, with Statutory Limits and Employer's Liability Insurance with limit of no less than \$ 1 million per accident for bodily injury or disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Tenant, its employees, agents and subcontractors.
4. Property Insurance	Full replacement cost of tenant improvements	Against all risks of loss to any tenant improvements or betterments with no coinsurance penalty provision.
5. Builder's Risk Insurance	Cost of Renovations/ Construction	

**B. Endorsements:**

1. Liability, umbrella and excess policies shall provide or be endorsed to provide

the following: **The City of Santa Rosa, its officers, agents, employees and volunteers are to be covered as additional insureds** with respect to liability arising out of ownership, maintenance, or use of that part of the premises leased to the lessee.

2. The Property insurance shall **name the City of Santa Rosa as Loss Payee.**

**C. Other Insurance Provisions:**

1. For any claims related to this project, **Tenant's insurance coverage shall be primary** and any insurance or self-insurance maintained by City shall be excess of the Consultant's insurance and shall not contribute with it; and,
2. No policy required by this Agreement shall prohibit Tenant from waiving any right of recovery prior to loss. Tenant hereby waives such right with regard to the indemnitees.
3. All insurance coverage amounts provided by Tenant and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage. Defense costs must be paid in addition to coverage amounts.
4. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either Contractor or City. Self-insured retentions above \$10,000 must be approved by the City. At the City's option, Tenant may be required to provide financial guarantees.
5. Sole Proprietors must provide a representation of their Workers' Compensation Insurance exempt status.
6. City reserves the right to modify these insurance requirements while this Agreement is in effect, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

- D. Verification of Coverage and Certificates of Insurance:** Tenant shall furnish City with original certificates and endorsements effecting coverage required above. Certificates and endorsements shall make reference to policy numbers. All certificates and endorsements are to be received and approved by City before tenant takes occupancy and must be in effect for the duration of the Agreement. City reserves the right to require complete copies of all required policies and endorsements.