

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance

AGENDA ITEM: 6 – B
DATE: October 5-6, 2022

SUBJECT

Affiliated Entity – Dissolve Early Learning Center of Brookings, Inc. and Transfer to SDSU

CONTROLLING STATUTE, RULE, OR POLICY

[SDCL § 13-52](#) – Grants and Donations to State Institutions

[BOR Policy 5:3](#) – Agreements and Contracts

[BOR Policy 5:9](#) – Foundations

BACKGROUND / DISCUSSION

At the Board's [December 2020 meeting](#) it approved a request to transition the Early Learning Center of Brookings, Inc. (ELC) nonprofit for the benefit of South Dakota State University (SDSU) as an affiliated entity. Following this approval, SDSU, in consultation with the SDBOR Executive Director and General Counsel, adopted revised governing documents and appointed an Early Learning Center of Brookings Board (ELC Board) to oversee this non-profit entity. The ELC Board has held numerous meetings to facilitate this transition and establish procedures to provide strong oversight to this non-profit affiliated entity. During this transition, it became apparent to the ELC Board that it would be in the best interest of SDSU and the ELC to transition the ELC to become an SDSU entity, relinquishing its affiliated entity and separate non-profit status. This transition will allow SDSU to utilize the ELC for University purposes that are not possible under the non-profit status regulations, to include the prioritization of children of University faculty, staff, and students for services at the ELC.

Proposed Transition:

SDSU proposes:

- THE ELC operations transition to leadership by the SDSU Office of Finance and Business and the current ELC Board be terminated;

(Continued)

DRAFT MOTION 20221005_6-B:

I move to approve SDSU's request for approval of the dissolution of the Early Learning Center of Brookings, Inc. for the benefit of South Dakota State University, as set forth herein, subject to execution of contractual documents acceptable to the Executive Director and in a format approved by the Board's General Counsel.

- The ELC domestic nonprofit corporation be dissolved and wind up business in accordance with SD law;
- The affiliation agreement between ELC nonprofit and SDSU be terminated;
- Any necessary documentation of designation of endowment beneficiary and use of funds be transitioned to an agency account operated by SDSU for the sole purpose of operating the ELC;
- Any necessary agreements with the current service provider, Bright Horizons, be updated to reflect the transition from ELC to SDSU.

IMPACT AND RECOMMENDATIONS

SDSU requests the approval of transition of the Early Learning Center of Brookings, Inc. to South Dakota State University, as set forth in Attachment I.

ATTACHMENTS

Attachment I – Bright Horizons Management and Services Agreement

Attachment II – ULC Lease

Attachment III – ULC Services Agreement

**CHILD CARE CENTER
DEVELOPMENT AND MANAGEMENT AGREEMENT**

This Child Care Center Development and Management Agreement (the “Agreement”) is made and entered into effective on January 1, 2022 (“Effective Date” or “Opening Date”) by and between Bright Horizons Children’s Centers LLC, a Delaware limited liability company with its principal office located at 2 Wells Avenue, Newton, MA 02459 (“BH” or “Bright Horizons”) and the South Dakota Board of Regents for the benefit of South Dakota State University, a nonprofit public institution of higher education for the State of South Dakota under the control and management of the Regents and located in Brookings, South Dakota (“Client” or “South Dakota State University”).

WITNESSETH:

WHEREAS, BH is engaged in the business of providing quality child care services for children and management/consulting services for employers regarding child care;

WHEREAS, Client desires to engage BH to develop and manage a child care center (“Center”) for Client at a site located at 405 1st Avenue, Brookings, South Dakota; and

WHEREAS, Client wishes to receive and BH wishes to render management services for the operation of such Center;

NOW THEREFORE, in consideration of the mutual agreements and undertakings contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I.
TERM**

This Agreement shall be considered effective on _____ and shall end on December 31, 2026 (the “Initial Term”). Thereafter, the Agreement shall automatically renew for successive terms each equal to three (3) years (each, a “Renewal Term”) unless and until terminated in accordance with the terms herein or unless either party gives notice to the other at least one hundred twenty (120) days before the expiration of the Initial Term or any Renewal Term of its intent not to renew this Agreement. The Initial Term and any Renewal Term are referred to collectively as the “Term.”

**ARTICLE II.
CENTER OPERATIONS, EQUIPMENT & SUPPLIES**

2.1 Operation of the Center. BH shall operate the Center as a quality child care center in a professional manner and in compliance with all requirements of law and regulation applicable to the operation of the Center, including all applicable state and local child care licensing requirements. BH shall provide all necessary personnel to staff the Center, and shall have responsibility for managing the staff, ensuring that there are adequate supplies, educational programming, training, quality assurance, risk management, financial administration and parent relations as provided in this Agreement. BH shall provide all necessary Center Support Services required in the operation of the Center. Center Support Services shall mean the annual amount allocated by BH to cover the cost of budgeting and analysis, accounting and audit, legal, purchasing, information technology support, staff training, regional manager and other operational oversight and support, curriculum planning and implementation tools, parent satisfaction surveys, public relations and parent marketing assistance, and all other related Center support

activities. Commencing on the Opening Date, Client shall pay BH an annual Center Support Services amount. The annual Center Support Services amount effective on _____ is Ninety-Four Thousand Nine Hundred Fifty Nine Dollars (\$94,959). The annual cost of Center Support Services shall increase each January 1 by the percentage increase in the CPI for the most recent twelve month period reported.

2.2 Description of Child Care Program.

- A. BH shall provide child development activities to children ages six (6) weeks through six (6) years enrolled in the Center. The program shall operate Monday through Friday, except for Holidays, eleven (11) hours per day.
- B. The program shall be designed to serve up to approximately one hundred nine (109) FTE enrollees, unless expanded by agreement of the parties. The actual Capacity served in the Center may vary depending on the age mix and groupings in place on any given day. Final capacity of the Center will be subject to state and local licensing requirements. BH will make recommendations to Client to enable the Facility to operate at this projected Capacity and to meet the current requirements of the National Association for the Education of Young Children Academy for Early Childhood Program Accreditation ("NAEYC").
- C. Priority for enrollment of children at the Center shall be as follows:
 - a. First, Siblings of children enrolled in the Center;
 - b. Second, Children of South Dakota State University ("SDSU") Employees and Students;
 - c. Third, Children of members of the SDSU Foundation;
 - d. Fourth, Children of members of the SDSU Alumni Association;
 - e. Fifth, Children of Bright Horizons staff employed at the Center;
 - f. Sixth, Other priorities agreed to by Bright Horizons and Client;
 - g. Seventh, Children from the community.
- D. Client may elect in its sole discretion to fund Tuition Scholarships for community enrollees in accordance with criteria provided to BH by Client.
- E. NAEYC Accreditation. At Client's election, BH will operate the Center to meet the requirements necessary to obtain accreditation from the National Association for the Education of Young Children-Academy for Early Childhood Program Accreditation (the "NAEYC Requirements"). Provided that (i) Client approves an adequate annual budget to allow BH to meet the NAEYC Requirements, (ii) BH agrees on such budget and (iii) BH is able to recruit and hire enough qualified staff that meet the NAEYC Requirements, BH will apply for accreditation within the first 24 months following the Opening Date of the Center and diligently take all reasonable steps to obtain accreditation within three (3) years of the Opening Date, except for delays caused solely by the NAEYC. BH will keep Client informed of any progress regarding NAEYC accreditation. In the event that BH has not obtained accreditation within such three (3) year period, BH will present a plan to Client within six months following such period which describes any accreditation issues and a strategy for obtaining accreditation for the Center. BH and Client will meet and discuss that plan and, upon Client's approval, BH will diligently take all reasonable steps to implement the plan and obtain accreditation. To the extent that current or future changes in the NAEYC Requirements necessitate additional funds to obtain or

maintain accreditation, BH will discuss the financial and operating implications of such changes with Client and BH will work with Client to create an adequate budget to enable BH to obtain or maintain accreditation, or upon Client's election, BH shall no longer be required to meet the NAEYC Requirements.

- F. Community Resources. BH shall use its best efforts to encourage Client's goal of incorporating intergenerational activities at the Center, and to work in partnership with South Dakota State University to utilize such resources in the Center's programs. Upon agreement of the parties, the Center may allow students from South Dakota State University who meet all participation requirements, subject to BH's policies and guidelines, to intern or volunteer at the Center ("Students"). Client assumes full responsibility for requiring Students to commit to BH confidentiality standards, and for verifying background qualifications of all Students and ensuring the appropriate behavior of Students while at the Center. No Students shall be considered an employee or agent of BH for any purpose, including, but not limited to, activities performed at the Center. BH and Client shall work together to ensure that the requirements and procedures for participation by Students or other volunteers at the Center are acceptable to both parties.

2.3 Parent Fees. All Parent Fees shall be paid either by payroll deduction or directly to BH by parents monthly, in advance. If Client elects to have Parent Fees paid via payroll deduction, such payroll deduction shall ensure the timeliness of the receipt by BH of all funds in advance of the month for which they are due. If Parent Fees are paid directly to BH by parents, BH may require payments to be made by automatic (ACH) withdrawal. All Parent Fees for back-up care, where applicable, are due the day care is provided. Parent Fees shall mean tuition, enrollment and registration fees, meal fees for breakfast and dinner, and student activity fees.

2.4 Facility for the Center. Client at its sole cost shall make available to BH the facility for the Center, the outdoor playground, and all related facilities serving the Center ("Facility"). Client shall be responsible for ensuring that the Facility shall remain in compliance with all applicable rules, regulations and ordinances throughout the Term. BH has reviewed the portion of the United Living Community campus which shall serve as the Facility and is satisfied that the space will meet the needs of the Center as envisioned by the Client and BH. BH shall use its best efforts and expertise to advise Client on necessary upgrades to the Facility with the goal of meeting licensing and accreditation standards, and Client shall be responsible for the cost of construction and implementation of such upgrades.

2.5 Facility-Related Services and Supplies. Client will be responsible for providing at its sole expense the following services, supplies, and support for the Facility:

- A. Payment of all lease payments or interest and principal related to the lease or mortgage of the Facility, as the case may be, along with property insurance premiums;
- B. Repair and maintenance of the Facility;
- C. All utilities consumed at the Facility, including electricity, heating, cooling, water, and gas;
- D. Telephone services and equipment (both cellular and landlines, including installation and other costs associated with Center operations);

- E. High speed Internet access;
- F. Security systems (including installation, as required, and other associated expenses);
- G. Fire alarm and detection equipment and monitoring;
- H. Appliances (dishwasher(s), stove, refrigerators, convention oven, microwave, freezer, washer and dryer); and
- I. Daily janitorial services and supplies (including germicidal solution, antibacterial hand soaps, toilet paper, paper towels, and trash bags), cleaning, snow removal, lawn maintenance, and pest control.

2.6 Other Equipment and Supplies. Following Client's approval of a budget for other equipment and supplies to be purchased for the Center, including the estimated costs of installation and the stocking of office and classroom supplies, BH will procure at Client's sole expense the following additional equipment and supplies for the Center ("Other Equipment and Supplies"):

- A. Classroom equipment, furniture and supplies, including interior and exterior play equipment, and classroom computers with appropriate child educational software; and
- B. Office Equipment, office furniture and office supplies.

Client agrees to enhance, maintain, repair or replace such Other Equipment and Supplies as reasonably requested by BH from time to time to ensure the safety and security of the children, and BH shall invoice Client for the cost of such enhancements, maintenance, repairs or replacements. Client may, at its option for any individual purchase orders in excess of \$10,000, elect to order or pay directly for such Other Equipment and Supplies, in which case BH will assist in the creation of purchase orders and provide Client access to BH's vendor discounts.

2.7 Communications Plan. BH and Client shall jointly develop a communications plan to market the Center to parents and the development of all necessary materials for such communications plan.

Any printed materials produced by or for the Center, including but not limited to Center brochures, parent handbooks, stationery and other promotional materials, may include the following reference: "operated by Bright Horizons." Client and BH shall have the right to review and approve in advance all printed materials specifically referencing the Center or the other party, and such approval shall not be unreasonably withheld or delayed. BH shall furnish its logo artwork for materials production.

All press releases to be issued by BH or Client referencing any operational issues concerning the Center or unique aspects of BH's relationship with Client shall be approved in advance by the other party. BH may refer to the Center and the Client in its center and client lists.

ARTICLE III.
FINANCIAL OBLIGATIONS AND PAYMENTS

3.1 Financial Obligations. Client shall be responsible for the following financial obligations:

- A. Operating Expenses. During the Term of this Agreement, Client shall pay all Operating Expenses of the Center in excess of Parent Fees received by the Center and the Management Fee described below ("Quality Subsidy"). Parent Fees shall be established by BH in advance of each fiscal year, and from time to time, subject to the approval of the Client. At least sixty (60) days prior to each fiscal year, BH will provide Client with an estimated budget of the Operating Expenses and Parent Fees for such year. Client shall either approve such budget or work with BH to develop an alternate approved budget for such year. Operating Expenses shall mean all expenses incurred in the operation of the Center, which shall include but not be limited to the following: wages, salaries and bonuses of Center personnel plus related Benefits, payroll taxes, workers' compensation, relocation, vacation and sick leave, Tuition discounts for Center employees, background check and recruiting costs, classroom materials, teacher resources, parent communications, events and supplies, food service, office supplies, depreciation, local telephone and long distance service, Internet access services, kitchen, laundry and diapering supplies, vehicle operations, travel and lodging for Center personnel, printing and postage, credit card fees, bad debts related to collections of Parent Fees, Insurance, Center Support Services, Facility-Related Expenses Client has requested and BH has agreed to pay on behalf of Client, and any other direct or indirect Center operating costs as agreed upon by the parties.
- B. Facility-Related Expenses and Other Equipment and Supplies. Client shall pay all Facility-Related Expenses and Other Equipment Supplies set forth herein, or promptly reimburse BH in the event BH purchases or provides these items, but only to the extent such direct payment by BH is approved in advance by Client. Facility-Related Expenses shall mean all expenses associated with the development, occupancy, use, maintenance, repair, and replacement of the Facility.
- C. Management Fee. Commencing on _____, Client shall pay to BH an annual fee of One Hundred Two Thousand One Hundred Seventy-Six Dollars (\$102,176) for management of the Center. Such annual Management Fee shall increase each year on the anniversary of the Opening Date falls by the percentage increase in the CPI for the most recent twelve month period reported. Client shall pay each annual Management Fee in twelve equal monthly installments.

3.2 Advance. In order to cover cash flow delays during the period between the expenditures of funds by BH and the reimbursement of those funds by the Client pursuant to the terms of this Agreement, the Client will advance BH an amount equal to two months of the budgeted Quality Subsidy. Within twenty (20) days of each succeeding month's end, BH will invoice the Client for the actual Quality Subsidy incurred for the month being invoiced. At the expiration or termination of this Agreement, BH will reimburse the advance to the Client, less any outstanding amounts due to BH at that time.

3.3 Regulatory Adjustments. The budgeted Operating Expenses shall be increased within a fiscal year to the extent Operating Expenses increase as a result of (a) changes in the federal or state wage or hour laws, (b) changes in the federal, state or local licensing requirements, and (c) changes in state or

local sales/use tax laws which would provide for the taxation of gross receipts derived from management of a child care center or any of the Operating Expenses.

3.4 Records and Audit. BH shall maintain accurate and complete financial records and accounts to document its performance and activities under this Agreement and its expenditures and other dispositions of funds received pursuant to this Agreement. Such records shall be kept in such a way that they may be readily audited, shall be consistent with generally accepted accounting principles and budgets presented to Client and shall conform to all applicable laws. While this Agreement remains in force, and for one (1) year after its expiration or termination, the Client and/or any independent accounting firm selected by the Client shall have the right at any time and from time to time, during normal business hours, at the Client's expense, and upon reasonable notice to BH, to examine and audit any and all of BH's financial records and accounts pertaining to this Agreement. Such financial records will be kept for four years from the date incurred (or longer if required by law) or until the final disposal of any claims or litigation arising out of the performance of this Agreement, whichever is longer. However, audits for any budget year must be completed within twelve (12) months following that budget year.

3.5 Payments. Client shall remit all payments due to BH within thirty (30) days of BH's invoice date. Interest shall accrue on any unpaid or overdue balance from the date payment was originally due and shall be applied at a rate of one percent per month on any unpaid balance.

ARTICLE IV. INSURANCE

4.1 BH Insurance. During the Term, BH shall procure and maintain the following minimum levels of insurance coverages:

- A. Workers' compensation insurance in statutory amounts and employer's liability insurance with limits of \$500,000 per employee and \$500,000 per disease;
- B. Commercial general liability insurance, written on a "ISO" commercial general liability form or its equivalent, with combined single limits for bodily injury and property damage, including sexual abuse, of not less than \$1,000,000 each occurrence and \$2,000,000 in the aggregate in a policy year;
- C. Business auto liability insurance including owned, non-owned and hired vehicles with combined single limits for bodily injury and property damage of not less than \$1,000,000 each accident;
- D. Umbrella liability insurance in excess of the employer's liability, commercial general liability and business auto liability insurance required above in an amount not less than \$25,000,000.

BH agrees to include Client, State of South Dakota, its officers and employees, as an additional insured on BH's commercial general liability and automobile liability insurance policies. BH shall provide Client with a certificate of insurance evidencing the coverages and limits described above not more than ten (10) days after the execution of this Agreement and a renewal certificate not more than ten (10) days after the expiration of the certificate it renews. This certificate shall provide for thirty (30) days' notice to Client in the event of a material change in the above terms of coverage or cancellation of such coverage (ten (10) days in the event of nonpayment). Such coverage shall be primary and non-contributory to any insurance held by Client. The Client, State of South Dakota, its officers and employees do not hereby waive sovereign immunity for discretionary conduct as provided by law.

4.2 Client's Insurance. Throughout the Term of this Agreement, Client shall maintain commercial general liability insurance coverage, written on an "ISO" commercial general liability form or its equivalent, with combined single limits for bodily injury and property damage of not less than \$1,000,000 per occurrence, such coverage to include contractual liability.

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

ARTICLE V. INDEMNIFICATION

5.1 Indemnification by BH. BH hereby agrees to defend, indemnify and hold harmless Client, as well as the State of South Dakota, the South Dakota Board of Regents, South Dakota State University, their officers, agents or employees from and against any and all actions, suits, damages, liability or other proceedings that may arise as a result of BH's negligence or willful misconduct in the performance of this Agreement. Nothing herein requires BH to be responsible for any action, suit, damage, liability or other proceeding that may arise as a result of the negligence, error or omission of Client, the South Dakota Board of Regents, South Dakota State University, their officers agents, or employees. To the fullest extent permitted by law, BH's obligations under this paragraph shall be limited to the extent that such directors, officers, or employees of Client are acting in their capacity as directors, officers, or employees of Client, and not as parents or guardians using the Center.

5.2 Indemnification by Client. The parties understand and agree that as set forth in SDCL 3-21-13, no hold harmless or defense (hereafter, "indemnification") provision by the State, its officers, agents, or employees, is enforceable against them except to the extent that liability coverage is provided pursuant to SDCL 3-22-1 and funds are specifically appropriated by the Legislature and available to provide for the indemnification, or the Legislature has expressly authorized the indemnification.

5.3 Notification. The indemnified party shall promptly notify the indemnifying party of any claims, demand, action, or proceeding for which indemnification will be sought under this Agreement. BH and Client shall cooperate with each other and provide each other with access to all relevant books and records in their possession.

5.4 Indirect Damages. In no event shall either BH or Client be responsible for any indirect, special, consequential, incidental, exemplary, or punitive damages, including without limitation damages for lost profits or business opportunity, even if informed of the possibility thereof.

ARTICLE VI. CONFIDENTIALITY – NON-SOLICITATION

6.1 Confidentiality. Client and BH acknowledge that during the Term of this Agreement, either party may be made aware of confidential or proprietary information with respect to the other party's products, improvements, designs, styles, services, contracts, customers, marketing methods, procedures, plans, proposals, employees and their children, curriculum, policies or methods, including information contained in this Agreement. The parties agree that neither party shall, without the prior written consent

of the party from whom such information was obtained, disclose any such proprietary information to any third party except (a) to any employee or agent of such party who needs to know such information in order to perform the party's obligations hereunder, or (b) as may be required by law or legal process. Client agrees to treat as confidential all terms and conditions of this Agreement, and agrees not to disclose the terms and conditions of this Agreement to any third party without BH's prior written consent.

6.2 Non-Solicitation. During the Term of this Agreement and for a period of one (1) year after termination, the Client agrees not to solicit or to cause or permit any agent or independent contractor acting for or in the interests of the Client to solicit any employee of BH to render child care or related services at the Center or at any other location. The prohibitions of this paragraph shall not apply to general solicitations of employment not targeted to BH employees.

6.3 Intellectual Property. BH is the sole and exclusive owner of all intellectual property used in connection with its business and the operation of the Center. This intellectual property includes but is not limited to all educational materials, parent handbooks and related materials, trademarks and service marks, graphics, data, text, manuals, forms, writings, charts, photographs, drawings, web sites, videotapes and other materials created by or for BH. The parties agree that BH shall continue to exclusively own and hold all rights to all such intellectual property during and after the Term. The permitted use of any such intellectual property by Client pursuant to the specific terms of this Agreement shall not create any ownership interest in such property or related rights whatsoever.

6.4 Use of Marks. The parties agree that BH's and Client's related trademarks and logos (the "Marks") are the registered trademarks of BH and Client, respectively, and each party shall remain the sole and exclusive owner thereof. In consideration of the mutual promises made by the Parties pursuant to this Agreement, the parties grant to one another a revocable, royalty-free, nonexclusive, nontransferable license in the United States to use the Marks in connection with use and/or promotion of the services contemplated under this Agreement. Both parties agree that all of their uses of the Marks shall be subject to the other party's reasonable review and instruction to assure the use is consistent with BH's and Client's trademark protocols. Upon the termination or expiration of this Agreement, this license shall automatically expire, and all use of the Marks by either party shall cease without any further action required by the parties.

ARTICLE VII. TERMINATION

7.1 Default by BH. If (a) within thirty (30) days after written notice from Client to BH specifying any material default or defaults, BH has not commenced diligently to correct the default or defaults so specified or has not thereafter diligently pursued such correction to completion; or (b) if any assignment shall be made by BH for the benefit of creditors; or (c) if a petition for liquidation pursuant to Chapter 7 of Title 11 of the U.S. Code is filed by BH or if such a petition is filed against BH and such petition is not dismissed within ninety (90) days thereafter, then, and in any of such cases the Client may, in addition to and not in derogation of any remedies for any preceding breach of this Agreement, immediately or at any time thereafter and without demand terminate this Agreement by giving written notice to BH effective upon BH's receipt of such notice. Notwithstanding anything to the contrary herein, the CLIENT'S rights upon an event of default caused by proceedings under the Bankruptcy Act shall be limited to the remedies permitted the CLIENT under such Act with respect to such event.

7.2 Default by Client. Without prejudice to any other rights or remedies which BH may have in such event under this Agreement, upon thirty (30) days written notice, BH may terminate this Agreement for cause if Client fails to comply with any material obligation under this Agreement,

including without limitation the failure to make any payment when due. Termination under such default shall not relieve Client of its obligations to pay any amounts due under this Agreement.

ARTICLE VIII. NOTICES

Any notice required to be served by either party hereto upon the other shall be deemed to have been properly given upon receipt if such notice is in writing and delivered or sent Certified Mail, Return Receipt Requested, with postage prepaid, or by overnight courier service, and addressed as follows:

To BH:	Bright Horizons 2 Wells Avenue, Newton, MA 02459 Attention: General Counsel
To Client:	South Dakota State University Box 2201 Brookings, SD 57007 Attention: _____

Either party may change the addresses to which notices are to be sent by notifying the other party in writing of such other address in accordance with the foregoing.

ARTICLE IX. MODIFICATIONS

This Agreement may be amended only by the written agreement of the parties hereto. No provisions of this Agreement may be modified, waived, or discharged unless such waiver, modification, or discharge is agreed to in writing by BH and Client.

ARTICLE X. ASSIGNMENT

This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their successors and permitted assigns. Neither party may assign its rights and/or obligations pursuant to this Agreement to another entity without the written consent of the other party, except in the event that (a) such assignment is made to a successor or affiliated corporation pursuant to a corporate reorganization or merger and that such assignment will not materially affect either the scope and quality of services to be delivered under this Agreement or the numbers and locations of its employees eligible to receive such services. and (b) that the assignee is fully subject to and bound by the assignor's obligations under this Agreement.

ARTICLE XI. GOVERNING LAW

This Agreement and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the law of the State of South Dakota without regard to conflict of law principles.

ARTICLE XII.
INDEPENDENT CONTRACTOR

BH shall be an independent contractor with respect to Client and the operation of the Center. Neither BH nor the employees or agents of BH shall be deemed to be agents, representatives, employees or servants of Client in the performance of BH'S obligations under this Agreement. Client and BH agree not to do any act or make any representation to any person to the effect that BH or any of its employees or agents is the agent of Client.

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ARTICLE XIII.
MISCELLANEOUS

No waiver of any term, provision or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further continuing waiver of any such term, provision or condition of this Agreement. No remedy available to a party for the other party's breach of this Agreement is intended to be an exclusive remedy; a party's exercise of any remedy for breach of this Agreement shall not be deemed or construed to be a waiver of their right to pursue any other remedy. Neither party shall be liable for the failure or delay in performance of its obligations under this Agreement beyond its reasonable control other than the obligation of payment. The singular number shall include the plural and the plural shall include the singular, and any reference to any gender shall include references to all genders.

If any term, condition or provision of this Agreement shall be found, by a court of competent jurisdiction, to be invalid or unenforceable, or to violate or contravene any federal or state law, then the term, condition or provision so found shall be deemed severed from this Agreement, but all other terms, conditions and provisions shall remain in full force and effect. Each of the parties agrees that it has read and had the opportunity to review this Agreement with its legal counsel. Accordingly, the rule of construction that any ambiguity contained in this Agreement shall be construed against the drafting party shall not apply. This Agreement is solely for the benefit of BH and Client, and no other person or entity shall be deemed a third party beneficiary hereof, except where expressly indicated. Each party to this Agreement shall be solely responsible for and the other party shall have no obligation to honor, any representations or warranties that such first party may provide to any other third party(ies) with respect to the services.

ARTICLE XIV.
ENTIRE AGREEMENT

This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the development and management of the Center and contains all of the covenants and agreements between the parties with respect to the Center.

ARTICLE XV
DEFINITIONS

The terms used in this Agreement shall have the following meaning:

- A. **Benefits** shall mean all health and life insurance, dental insurance, 401(k), disability insurance, internal and external benefit administrative costs, payroll processing, and all other costs related to the extension of employment benefits to employees. Benefits will be charged at a fixed rate in 2021 of 29% of actual salaries and wages of Center employees, subject to annual increases that reflect the increased costs of Benefits.
- B. **Capacity** shall mean the maximum number of FTEs that can be enrolled at the Center at any one time, based on the Center's design and licensed capacity.
- C. **CPI** shall mean the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index—All Urban Consumers, U.S. City Average, Not Seasonally Adjusted (Tuition, Other School Fees and Child Care), 1982-84=100.

- D. **Facility-Related Expenses** shall mean all expenses associated with the occupancy, use, maintenance, repair and replacement of the Facility.
- E. **Fiscal Year** shall be the calendar year, unless otherwise agreed to by Bright Horizons and Client.
- F. **FTE** shall mean full time equivalent number of children.
- G. **High Speed Internet Access.** All computers in the Center will require Internet access. Initial Internet service for the Center must meet or exceed 10Mbps download and 10Mbps upload. In the event updates or upgrades to Internet access are required during the Term, the parties shall mutually agree upon specifications.
- H. **Holidays** shall mean New Year's Day, Martin Luther King Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day after Thanksgiving Day, and Christmas Day.
- I. **Insurance** expenses shall include the cost of general liability insurance, personal property (equipment) insurance, umbrella coverage, student accident insurance, employment practices liability insurance, and all other insurance coverages purchased in connection with the operation of Bright Horizons' business, as well as other related insurance costs, including any self-insurance, deductible amounts, or retentions. Insurance will initially be charged at a fixed rate in 2021 of \$393 per year per FTE of Capacity, subject to annual increases that reflect increased costs of Insurance.
- J. **Office Equipment** shall include a computer capable of reaching Bright Horizons cloud based center management systems via Internet Explorer, laser/inkjet printers, a check-in computer for parents and teachers, a teacher's computer and one educational computer station and at least 1 iOS based tablet for each classroom, a copy machine with scanning capabilities, a heavy duty paper shredder, and a voice messaging system. All computers in the Center will require High Speed Internet Access. The computers shall be new and meet generally available commercial specifications at the time of purchase. Monitors shall be no less than a 19" LED display. The operating system shall be Windows 10 Professional, 64-bit, with the following software at a minimum: Microsoft Office 2016 Professional, anti-virus, and PDF reader. Center computers shall be networked using Wi-Fi and Category 5 or 6 Ethernet cabling to provide coverage in all classrooms and administrative areas. Bright Horizons strongly prefers the use of its networking standards in the Center inclusive of security appliances, switches, and wireless access points, which shall be provided to Client as needed. The Bright Horizons IT Department shall purchase all computer equipment with pre-installed child care management software, subject to Section 2.6. If Bright Horizons provides and configures the computers, the hardware and all software shall be supported by Bright Horizons. If Client provides the computers, all hardware and software (except for the family management software) shall be supported by Client, and Bright Horizons will guide the Client through installation and configuration of the family management software. In the event updates or upgrades to Office Equipment are required during the Term, the parties shall mutually agree upon specifications.
- K. **Opening Date** shall mean the first day Bright Horizons provides child care services in the Center. Notwithstanding the foregoing, Bright Horizons shall not open the Center for

operation until it has received all of the licenses and approvals necessary to operate a child care program at the Center.

- L. **Other Equipment and Supply Expenses** shall mean all expenses for equipment or supplies required to operate the Center as set forth in Section 2.6 of this Agreement.
- M. **Parent Fees** shall mean Tuition, enrollment and registration fees, meal fees for breakfast and dinner and student activity fees.
- N. **Telephone Services** shall mean at least four (4) telephone lines and lines for security and fire systems.
- O. **Tuition** shall mean amount charged to parents for child care services.

IN WITNESS WHEREOF, the parties hereto duly execute this Agreement as of the day and date first above written, each by a duly authorized officer or officers.

BRIGHT HORIZONS CHILDREN'S CENTERS LLC SOUTH DAKOTA BOARD OF REGENTS

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

LEASE AGREEMENT

This Agreement is made and entered into this ____ day of _____, 2022, by and between United Retirement Center, d/b/a United Living Community, a South Dakota nonprofit corporation of 405 1st Avenue, Brookings, SD 57006 ("Lessor"), and the South Dakota Board of Regents for the benefit of South Dakota State University, a nonprofit public institution of higher education for the State of South Dakota under the control and management of the Regents and located in Brookings, South Dakota ("Lessee").

WITNESSETH

WHEREAS, Lessor is the owner of certain real estate and facility located thereupon within the corporate limits of Brookings, South Dakota;

WHEREAS, Lessor maintains a childcare center that has certain improvements originally financed through Economic Development Revenue Bond, Series 2011 issued by Brookings County on July 15, 2011, which have been paid in full, but were intended in part for the improvement of the childcare center;

WHEREAS, Lessor maintained a lease for said facility with a nonprofit corporate exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, which was dissolved on _____;

WHEREAS, Lessor desires to lease to Lessee a portion of said real estate and facility for a childcare center located thereupon hereinafter described under the terms and conditions set forth in this Agreement.

THEREFORE, in consideration of the mutual covenants, agreements and promises set forth in this Agreement, Lessor and Lessee agree as follows:

ARTICLE I.
DESCRIPTION OF PROPERTY

Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, under the terms and conditions hereinafter set forth, certain real estate and facility located thereupon ("Leased Premises") situated in the City of Brookings, County of Brookings more particularly described as follows:

That portion of the United Retirement Center d/b/a United Living Community, 405 1st Avenue, Brookings, SD 57006, as described in Exhibit A, and consisting of approximately 20,800 square feet and the parking lot immediately south of the front entrance to the portion described in Exhibit A, which is incorporated herein by this reference.

ARTICLE II.
TERM

The term of this Agreement shall be for three years commencing on the ____ day of _____ 2022. This Agreement may be renewed for three (3) additional periods of three (3) years upon the written mutual agreement of the parties six (6) months prior to the expiration of the initial term.

ARTICLE III.
RENT

As rent for the facility herein described, the Lessee shall pay Five Thousand Eight Hundred Dollars (\$5,800.00) per month, on or before the fifth (5th) business day of each month beginning the first month of the Term. Payments shall be made in conformity with the South Dakota Prompt Payment Act.

Lessee is a tax-exempt public entity and shall in no way be held responsible for taxes related to said real estate or facility.

ARTICLE IV.
UTILITY SERVICE AND CHARGES

Lessee shall be responsible for the payment of all utilities which are separately metered to the Leased Premises. Lessee shall also be responsible for the payment of all utilities that are not separately metered but that are directly attributable to Lessee's occupancy of the Leased Premises. Lessee shall also be responsible for all insurance premiums, maintenance charges, and other costs directly attributable to the Leased Premises which are necessary for the business of Lessee. Upon written notice from Lessor of such obligations, Lessee shall promptly pay the uncontested amounts. In the case of those charges, including those direct costs previously mentioned which are costs related to the space occupied by both the Lessor and Lessee or common spaces, the costs shall be allocated to Lessee based on the ratio of square feet of the Leased Premises to the total square feet of the space occupied by Lessee to the total square feet of the entire facility, or multiple facilities if the charge is related to the entire campus of the Lessor. Notwithstanding the foregoing, Lessee shall not be liable for any indirect costs such as management or accounting fees and other indirect costs of the Landlord related to the campus.

ARTICLE V.
USE OF PROPERTY

The Lessee agrees that it shall use the Leased Premises exclusively for a childcare and development center and for such other lawful purposes as may be incidental thereto. The Lessee further agrees to use due care and diligence in guarding the Leased Premises from any material injury or damage from any source and to keep the Leased Premises in a neat, clean, and respectable condition. Any change in such use may be made only with the prior written approval of Lessor. The Lessee shall refrain from making or suffering any waste on the Leased Premises and from doing any acts or taking any steps that might cause any substantial detriment to the general condition of the Leased Premises. Lessee shall conduct its business, control Lessee's official representatives, and require its contractors and subcontractors to conduct their business in a lawful and reputable way and as not to create any nuisance. Lessor and Lessee shall not use or permit the use of the Leased Premises for the use, storage, or distribution of hazardous substances or for any unlawful purposes.

ARTICLE VI.
SIGNS

Lessee shall be allowed to install signs, insignia, advertisement, or notices ("Signs") on the Leased Premises at Lessee's cost. Signs to be displayed, painted or affixed by Lessee on any part of the exterior of the Leased Premises shall require the prior written consent of Lessor which consent shall not be unreasonably withheld.

ARTICLE VII.
CONSTRUCTION, IMPROVEMENTS AND MAINTENANCE

Lessee shall maintain its own custodial service within the Leased Premises. Lessor shall ensure that grounds surrounding Leased Premises are maintained and adequate waste disposal is maintained at no additional cost to Lessee. Lessor shall make a concerted effort to have first snow removal efforts of parking lot, south sidewalk, and south entrance by 6:15 am Monday through Friday. Clearing of fire exits will be addressed once emergency routes have been cleared. Lessee should open emergency doors once snow accumulates. If snow has impeded the opening of any doors, please contact Lessor. Snow removal efforts will continue throughout Lessee's hours of operation.

Lessor shall not be liable in any manner for any construction, improvements, alterations, additions, or modifications to or within the Leased Premises. The Lessee shall not construct any new buildings on the Leased Premises or alter the Leased Premises without the prior written consent of Lessor. All appurtenances, fixtures, improvements, and other property attached to or installed in the Leased Premises, whether by Lessor or Lessee or others, and whether at Lessor's expense or Lessee's expense, or the joint expense of Lessor and Lessee, shall be and remain the property of Lessor, except that any such fixtures, improvements, additions, and other property which have been installed at the sole expense of Lessee and which are removable without material damage to the Leased Premises shall be and remain the property of Lessee. If no uncured Event of Default, as such term is defined below, has occurred, Lessee may remove any such property belonging to Lessee at the end of the term hereof, and Lessee shall repair or shall pay to Lessor the cost of repairing any damage arising from such removal. Any replacements of any property of Lessor, whether made at Lessee's expense or otherwise, shall be and remain the property of Lessor.

Lessor represents and warrants that the roof of the Facility and all systems and equipment serving the Leased Premises and common areas, including but not limited to the HVAC, electrical, plumbing, utility lines, life safety, and sprinkler systems shall be in and maintained in good working order; that the Facility and its systems and equipment comply with applicable federal, state, local laws, and covenants; and that the Facility is clean, pest free, and free of obstructions. Except as otherwise set forth herein, Lessor makes no other representation or warranty regarding the condition of the Leased Premises.

Except for express responsibilities stated herein, Lessor is responsible for the maintenance and repair of every part of the Facility, its systems, the parking lot and egress areas, and any fixtures thereto, including normal wear and tear and casualty not the result of the negligence of Lessee. Said maintenance and repair must be to the standard ensuring Facility, common areas, and Leased Premises are suitable for use by Lessee, its officers, agents, employees, and invitees for the full lease term. The Lessor, shall, at the Lessor's sole cost and expense, be responsible for all costs and expenses in connection with the maintenance and repair of every part of the Facility, its systems, parking lot and egress areas, and the replacement of the HVAC, the roof, the structural elements of the walls of the building, and the foundation of the building.

Lessee shall maintain, keep in good condition and repair improvements located within the Leased Premises in the same state of repair as the Leased Premises and improvements existed at the effective date of this Lease, normal wear and tear excepted. Damage to Leased Premises caused by Lessee's occupancy shall be repaired at Lessee's cost.

At the termination of this Agreement, Lessee shall deliver the Leased Premises "broom clean" to Lessor in the same good order and condition as existed at the commencement of this Agreement, ordinary wear and tear excepted.

ARTICLE VIII. SERVICES AND STANDARDS

Lessor and Lessee agree to comply with all laws, regulations, policies, and procedures applicable to their respective responsibilities in fulfillment of this Lease. Exhibit B attached and incorporated herein by this reference sets forth detailed services and maintenance, with related standards and criteria. Additional services may be itemized and agreed by and between the Lessor and Lessee in accordance with standard purchasing processes and set forth in mutually signed writings of the parties and are subject to the terms and conditions of this Lease and the standard terms and conditions of the State of SD, for which State terms will control.

ARTICLE IX. INSURANCE POLICIES AND COVERAGE

The Lessee agrees to participate in a policy of general public liability and property coverage with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence, and Lessor expressly agrees that this requirement is met in full by Lessee's participation in the Public Entity Pool for Liability. Lessor, in no event, shall be responsible for any loss, damage, or inconvenience caused solely from errors or omissions of the State, its officers, agents or employees. Lessee shall deliver to Lessor duly executed, original certificates of PEPL fund participation as evidence of in-force coverage on or before the commencement of lease.

Lessor shall maintain occurrence-based comprehensive general liability and commercial and landlord insurance in the amount of One Million Dollars (\$1,000,000) per occurrences, with such insurance including a fire and legal liability endorsement. If insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit. The insurance policies shall name Lessee, State of South Dakota, its officers and employees, as additional insureds, but liability coverage is limited to claims not barred by sovereign immunity. The Lessee, State of South Dakota, its officers, and employees do not hereby waive sovereign immunity for discretionary conduct as provided by law. Lessor shall maintain building and contents insurance coverage for the Leased Premises and contents under a special form property coverage. The coverage shall insure buildings and contents at one hundred percent (100%) of replacement cost, subject to a Fifty Thousand Dollars (\$50,000) deductible.

ARTICLE X. FIRE AND CASUALTY

If the Leased Premises should be totally destroyed by fire, tornado, or other casualty not the fault of Lessee, or if it should be so damaged thereby that rebuilding or repairs cannot reasonably be completed within one hundred twenty (120) days after the date on which Lessor is notified by Lessee or others of such damage, at the option of Lessee, this Agreement shall terminate, and the rent shall be abated during the unexpired portion of this Agreement effective upon the date of occurrence of such damage.

If the Leased Premises should be damaged by any peril that will be wholly compensated (subject to deductibles) by the insurance maintained by Lessor, or if Lessor or Lessor's lender, in their sole discretion, so chooses notwithstanding a deficiency in such proceeds, and if rebuilding or repairs can reasonably be completed within one hundred twenty (120) days after the date on which Lessor is notified by Lessee or others of such damage, this Agreement shall not terminate, Lessor shall then proceed with reasonable diligence to rebuild and repair the Leased Premises to substantially the same condition in which it existed prior to such damage. If the Leased Premises are untenable in whole or in part during restoration, the rent payable hereunder during the period in which they are untenable shall be abated, in whole or in part based on the diminution in value of the Leased Premises as a result of the casualty, until the Leased Premises is rendered tenable.

ARTICLE XI.
ENVIRONMENTAL LAWS

Environmental Laws: Lessor warrants and ensures that during the term of this Agreement, Lessor and its other Lessees shall comply with all environmental laws, ordinances, rules or regulations, and shall not permit the generation, creation, treatment, incorporation, discharge, escape, release or threat of release of any contaminant above, upon, under, within or from the Leased Premises, and shall not permit any underground storage tanks containing any contaminant to be located upon the Leased Premises. Lessee shall do the same.

Contaminants: For the purpose of this Lease, contaminants includes a "Petroleum Product" as described in SDCL § 37-2-5, asbestos, or a "regulated Substance" as described in SDCL § 34A-12-1(8) or substances regulated under and defined in the provisions of 15 U.S.C. 2601-2671 (1989) (FWCPA) or 42 U.S.C. 6901-6999(i) (1989) (RCRA) or 42 U.S.C. 9601-9675 (1989) (CERCLA) or 42 U.S.C. 7401-7642 (1989) (CAA), and any corresponding federal and state regulations promulgated under the above federal and state statutes as well as amendments, deletions or corrections to such laws, ordinances, rules or regulations and further including laws, ordinances, rules or regulations concerning substances harmful to the environment which are passed subsequent to the commencement of this Agreement and which will become effective during the term of this Agreement and until Lessee surrenders possession of the Leased Premises.

Removal of Contaminants: Lessor will, at its own expense, abate, remedy and remove any contaminant discovered on the Leased Premises which was located, generated, created, stored, treated, incorporated, discharged, disposed of, allowed to escape, released, or about to be released by Lessor.

ARTICLE XII.
CONDEMNATION

If, during the Term (or extension or renewal) of this Agreement, all or a substantial part of the Leased Premises are taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain or by private purchase in lieu thereof, or, if as a result of such taking there is no reasonable access to the Leased Premises or Lessor is unable to provide the parking as set forth in this Agreement, and the taking would prevent or materially interfere, in Lessee's judgment, with the then current use of the Leased Premises or, in Lessor's judgment, would materially impair Lessor's operation of the Leased Premises, then this Agreement shall terminate upon written notice from Lessee, and the rent shall be abated during the unexpired portion of this Agreement effective on the date physical possession is taken by the condemning authority.

ARTICLE XIII.
INDEMNIFICATION

Lessor agrees to hold harmless and indemnify the Lessee, the State of South Dakota, the South Dakota Board of Regents, South Dakota State University, their officers, agents or employees from and against any and all claims or proceedings for actions, suits, damages, liabilities, other losses or equitable relief that may arise at least in part as a result of an act or omission in performing services under this Agreement. Lessor shall defend the State of South Dakota, its officers, agents, and employees against any claim, including any claim, action, suit, or other proceeding related to the claim. Lessor's obligation to indemnify includes the payment of attorney fees and other costs of defense. In defending the State of South Dakota, its officers, agents, and employees, Lessor shall engage other professionals, subject to the written approval of the State which shall not be unreasonably withheld. Notwithstanding the foregoing, the State may, in its sole discretion and at the expense of Lessor, engage attorneys and other professionals to defend the State of South Dakota, its officers, agents, and employees, or to assist Lessor in the defense. This section does not require Lessor to be responsible for or defend against claims or proceedings for

damages, liabilities, losses or equitable relief arising solely from errors or omissions of the State, its officers, agents or employees. The parties understand and agree that as set forth in SDCL 3-21-13, no hold harmless or defense (hereafter, "indemnification") provision by the State, its officers, agents, or employees, is enforceable against them except to the extent that liability coverage is provided pursuant to SDCL 3-22-1 and funds are specifically appropriated by the Legislature and available to provide for the indemnification, or the Legislature has expressly authorized the indemnification.

ARTICLE XIV. ASSIGNMENT OR SUBLETTING

The Lessee shall not assign this Agreement or sublease the Leased Premises without the prior written consent of Lessor. Lessor expressly consents to Lessee subcontracting management and operations of childcare center and all supporting services within the Leased Premises without necessity of further consent.

ARTICLE XV. EMINENT DOMAIN

In the event any portion of the Leased Premises is taken from Lessor under eminent domain proceedings, the Lessee shall have no right, title, or interest in any award for such taking, except for any separate award for equipment and improvements installed by the Lessee. Rent shall be abated during the unexpired portion of the Agreement on the date physical possession is taken. The Lessee shall be free to pursue any remedy available against the taking authority, or Lessor if applicable, for any damage caused to the Lessee.

ARTICLE XVI. LESSOR ACCESS

Lessor shall have access to the Leased Premises at all reasonable times to view, examine and for all such purposes as may be necessary, to perform and assure the performance of this Agreement. Lessor acknowledges that Lessee is operating a childcare center and that the Leased Premises and all documents, files, and information, including medical records of its clients (collectively, "Records") must be maintained and secured in accordance with certain state and federal laws. Lessor agrees to abide by the applicable laws and the requests, policies, and procedures of Lessee to safeguard such Leased Premises and Records. This section survives expiration or sooner termination of the Agreement.

ARTICLE XVII. PEACEFUL AND QUIET ENJOYMENT

Lessor warrants that it has full right to execute and to perform this Agreement and agrees that the Lessee, upon compliance with the terms and conditions of this Agreement, peacefully and quietly shall have, hold, and enjoy the Leased Premises for the term of this Agreement.

Lessor shall have the right to enter the Leased Premises to inspect the same or for determining if any event of default under this Agreement has occurred, provided that such entry shall not unreasonably interfere with Lessee's rights under this Lease. Lessor will notify Lessee before entry when such entry is required.

ARTICLE XVIII. TERMINATION BY LESSEE AND DEFAULT

This Lease depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds restrictions, this Lease will be terminated by Lessee. Termination for any of these reasons is not default or beach by the Lessee nor does it give rise to a claim against Lessee, its officers, governed entity, or employees.

In the event the Lessee fails to keep and perform any of the other terms and conditions of this Agreement, time being of the essence, Lessor shall notify the Lessee in writing of such default and the nature thereof. Unless such default is corrected by the Lessee within thirty (30) days after the Lessee receives such notice, this Agreement, at the option of Lessor, shall terminate. In the event of such termination, Lessor may resort to any and all legal remedies that Lessor may desire to assert, including without limitation the following:

1. Retain or take any property on the Leased Premises pursuant to a Lessor's lien;
2. Enter the Leased Premises and remove all persons and property therefrom;
3. Declare this Agreement at an end and terminated;
4. Sue for the rent due and to become due under this Agreement and for any damages sustained by Lessor; and
5. Continue this Agreement in effect and relet the Leased Premises on such terms and conditions as Lessor may deem reasonable, and Lessee shall be liable for the monthly rental, less the rental received from any such reletting, if any.

ARTICLE XIX. WAIVER OF DEFAULT OR REMEDY

Failure of Lessor to declare a default immediately upon its occurrence, or delay in taking any action in connection with an event of default, shall not be a waiver of the default. Lessor shall have the right to declare the default at any time and take such action as is lawful or authorized under this Agreement. Failure by Lessee to enforce one or more of its remedies upon an event of default shall not be construed as a waiver of the default or of any other violation or breach of any of the terms contained in this Agreement.

Any duty, obligation, or debt and any right or remedy arising hereunder and not otherwise consummated and/or extinguished by the express terms hereof at or as of the time of termination of this Agreement, whether at the end of the term hereof or otherwise, shall survive such termination as continuing duties, obligations, and debts of the obligated party to the other or continuing rights and remedies of the benefited party against the other.

Time is to be of the essence of this Agreement and of each and every covenant, term, condition and provision hereof.

ARTICLE XX. DEFAULT BY LESSOR

Lessor shall not be in default, and Lessee shall have no right to any remedy at law or in equity, unless the act, omission, or condition allegedly giving rise to such default shall have continued uncured or unabated for a period of thirty (30) days following written notice to Lessor or, if such cure or abatement cannot be accomplished within said 30-day period, then, so long as Lessor or Mortgage holder has commenced such cure or abatement within such 30-day period and diligently pursues same, such period shall be extended a reasonable time to allow completion of the cure or abatement provided that the rent shall be proportionately abated until such default is cured. The rights conferred herein are cumulative and are not in lieu of other rights which the Lessee may have at law or in equity for defaults by the Lessor. Moreover, if the Lessor defaults in the observance or performance of any term or covenant requiring to be performed by the Lessor under the Agreement, Lessee after not less than ten (10) days prior written notice to Lessor may, but shall not be obligated to, remedy such default and in connection therewith may pay or incur reasonable expenses. Notwithstanding the foregoing, Lessee shall not have such right in the event Lessor takes action to cure the default pursuant to this section and diligently cures such default to completion. Lessee shall have the right to remedy any default of an emergency nature in the event Lessor fails to commence curing any default created under an emergency situation promptly upon being given notice which is reasonable under the circumstances, and Lessee shall have the right to remedy such a

default without notice (if the giving of notice is not reasonably practical) in the event of an emergency. All sums expended or obligations incurred by Lessee in connection with all of the foregoing shall be paid by Lessor to Lessee upon demand, and if Lessor fails to reimburse Lessee, Lessee may, in addition to any other right or remedy that Lessee may have, deduct such amount from subsequent installments of rent hereunder, which from time to time thereafter become due to Lessor.

ARTICLE XXI. SURRENDER

The Lessee agrees that it will, at the expiration or termination of this Agreement, quietly yield and surrender the Leased Premises to Lessor in as good a condition and repair as when taken, reasonable wear and tear and damage by the elements along excepted.

ARTICLE XXII. HOLDING OVER

At the termination of this Agreement by lapse of time or otherwise, if Lessee holds over and if the parties do not otherwise agree, the hold over tenancy shall be from month to month, subject to termination by Lessor at any time upon not less than one (1) month advance written notice. Further, all of the terms and provisions of this Agreement shall be applicable during the hold over period. No holding over by Lessee, whether with or without consent of Lessor, shall operate to extend this Agreement except as otherwise expressly agreed by the parties.

ARTICLE XXIII. LIENS/MORTGAGES/TITLE

Lessor shall maintain good and clear title to the Leased Premises at all times during this Agreement and shall not cause or bring any action in bankruptcy affecting said premises. The Lessee shall not permit the Leased Premises to be subject to any liens or other encumbrances whatsoever on the Leased Premises made by the Lessee. Lessee accepts this Agreement subject and subordinate to any previously recorded Mortgage presently existing with respect to the Leased Premises.

ARTICLE XXIV. LESSOR APPROVALS

Notwithstanding anything to the contrary contained in the Agreement, it is specifically understood and agreed that as regards any approvals or matters to be performed to the satisfaction of Lessor, Lessor shall not unreasonably withhold or delay its approval or indication of satisfaction and shall approve or be satisfied as to any matter so long as any deviation from the requirements of Lessor are of a minor or insubstantial nature such that Lessor will realize substantially the benefits to which it is entitled.

ARTICLE XXV. FORCE MAJEURE

Whenever a period of time is herein provided for either party to do or perform any act or thing, that party shall not be liable or responsible for any delays, and applicable periods for performance shall be extended accordingly due to strikes, lockouts, riots, acts of God, shortages of labor or materials, national emergency, pandemic or outbreak of disease, acts of a public enemy, governmental restrictions, laws or regulations, or any other cause or causes, whether similar or dissimilar to those enumerated, beyond its reasonable control. The provisions of this Section shall not operate to excuse Lessee from prompt payment of rent or other monetary payments required by the terms of this Agreement.

ARTICLE XXVI.
NOTICES

Any notices or demands to be given hereunder shall be effective on personal delivery on when sent, if given in writing, via certified U.S. mail, return receipt requested, to the party to be notified.

To Lessor:

To Lessee:

United Living Community

South Dakota State University

ARTICLE XXVIII.
BINDING EFFECT AND RELATIONSHIP

This Agreement shall be binding upon the parties hereto and their respective successors, representatives and assigns. This Lease is not intended to and does not in any way or for any purpose create a partnership, joint venture, or similar relationship between the parties.

ARTICLE XXIX.
GOVERNING LAW

This Agreement shall be deemed to have been entered into in the State of South Dakota and all duties, obligations and rights thereunder shall be governed by the laws of the State of South Dakota. Any suit brought on this Agreement shall be venued in the Third Judicial Circuit, Brookings County, South Dakota.

ARTICLE XXX.
NON-DISCRIMINATION

The parties agree not to discriminate or harass individuals on the basis of sex, race, color, creed, national origin, ancestry, citizenship, gender, gender identification, transgender, sexual orientation, religion, age, disability, genetic information, or U.S. veteran status, or any other status that may become protected under U.S. and South Dakota law against discrimination.

ARTICLE XXXI.
COMPLETE AGREEMENT

This Agreement constitutes the entire agreement between the parties with respect to its subject matter and it may not be amended, modified or altered without the written consent of both parties. If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby; and it is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid, or unenforceable there be added as a part of this Agreement a clause as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

ARTICLE XXXII.
JOINT PREPARATION

This Agreement shall be deemed to have been jointly prepared by the parties hereto and any uncertainty or ambiguity shall not be interpreted more strongly against either of the parties.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Agreement on the day and year first written above.

LESSOR:

LESSEE:

UNITED RETIREMENT CENTER
dba UNITED LIVING COMMUNITY

SOUTH DAKOTA BOARD OF REGENTS

By: _____

By: _____

Its: Administrator

Its: _____

ACKNOWLEDGEMENT

STATE OF SOUTH DAKOTA
COUNTY OF _____

I, _____, a Notary Public in and for said County and State, do hereby certify that _____, of the United Retirement Center d/b/a United Living Community, to be the person whose name is subscribed to the within instrument, and personally came before me this day and acknowledged that he/she is _____ of the United Living Community, and that by authority duly given and as the act and deed of said entity.

IN WITNESS HEREOF, I have hereunto set my hand and official Notarial Seal, this the _____ day of _____, 20____.

Notary Public: _____

[SEAL]

My Commission Expires: _____

ACKNOWLEDGEMENT

STATE OF SOUTH DAKOTA
COUNTY OF _____

I, _____, a Notary Public in and for said County and State, do hereby certify that _____, of the South Dakota Board of Regents, to be the person whose name is subscribed to the within instrument, and personally came before me this day and acknowledged that he/she is President of the South Dakota Board of Regents, and that by authority duly given and as the act and deed of said entity.

IN WITNESS HEREOF, I have hereunto set my hand and official Notarial Seal, this the _____ day of _____, 20____.

Notary Public: _____

[SEAL]

My Commission Expires: _____

Exhibit A
Leased Premises

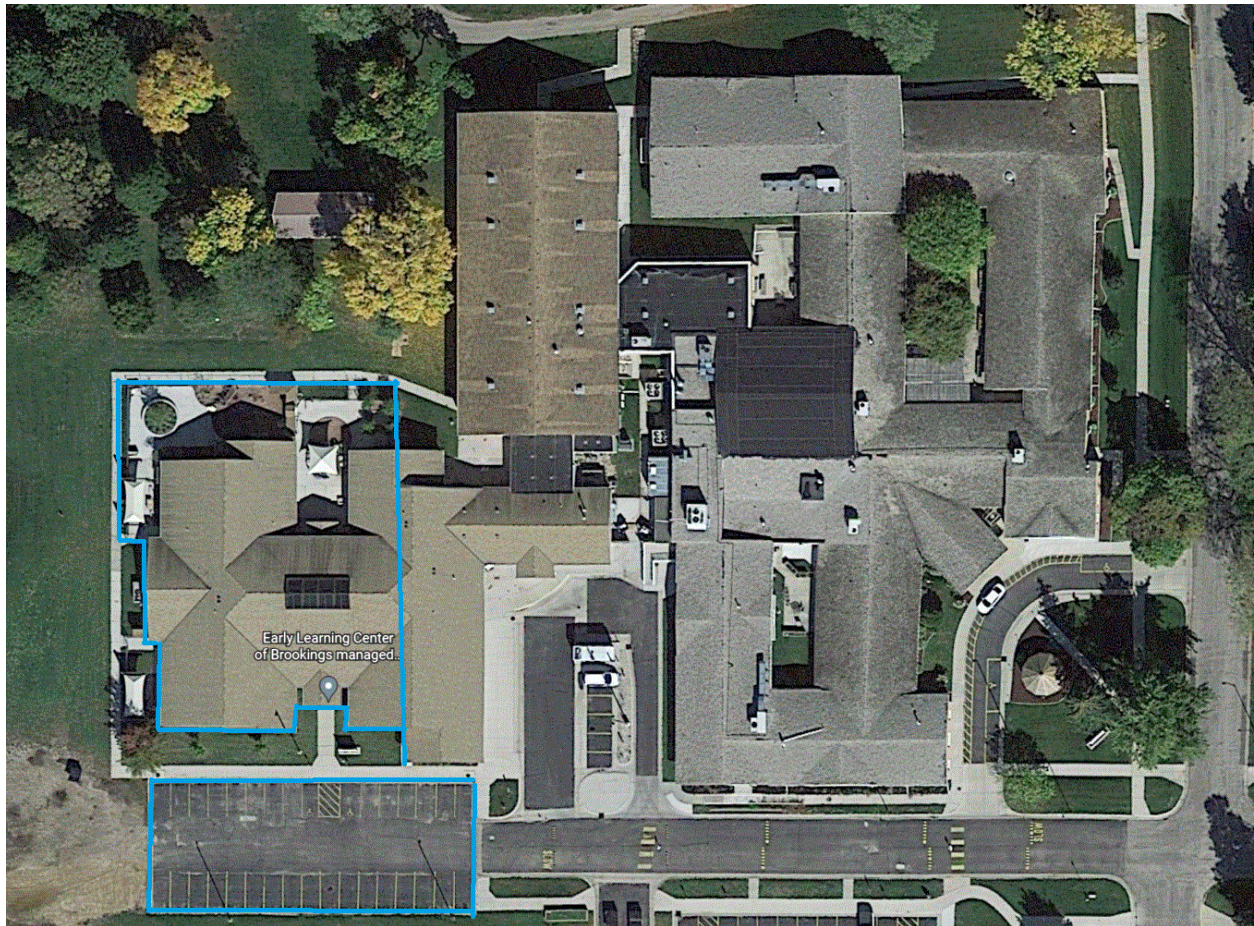


Exhibit B
Facility Operations and Maintenance

Staffing

A. LESSOR shall insure adequate staffing of the facilities with qualified and properly certified personnel. LESSOR shall provide a staffing roster, which contains LESSOR personnel titles, areas approved to support, normal working schedule and after hours contact information.

B. LESSOR staff shall be available as necessary, and as required by any regulating authorities, for compliance with regulated operations.

Training and Safety

A. LESSOR shall conduct on-going training of Bright Horizons and SDSU personnel on HVAC, Fire & Safety, and location of utilities disconnects.

System and Equipment Operation

A. LESSOR shall operate the Facilities' equipment and systems pursuant to the applicable recommendations of the manufacturers and designers of such equipment and systems.

B. LESSOR shall take commercially appropriate measures to maintain warranty rights, including conducting scheduled maintenance and keeping standard records.

Periodic Inspections, Testing and Monitoring

A. LESSOR shall inspect and monitor the performance and condition of the facilities on a regular basis, to include the following.

- Fire Panel Inspection
- Air Handlers inspection
- A/C and Heating systems inspection
- Boiler inspection
- Fire sprinkler inspection
- Sprinkler testing
- Changing of filters
- Fire Extinguisher monthly check
- Security lighting monthly check
- Magnetic Fire Doors monthly check
- Generator testing
- GFCI outlet monthly testing
- Other items as required

B. LESSOR shall coordinate between Bright Horizons and the Police\Fire Departments during fire and tornado drills.

Records and Reporting

A. LESSOR shall maintain all records and provide all reports required by Laws and Regulations or this Agreement in a timely manner.

B. LESSOR shall prepare and submit to SDSU for review, a bi-annual report regarding the performance, condition, associated inspections and status of the above items listed in Periodic Inspections, Testing and Monitoring above.

Preventive and Corrective Maintenance

- A. LESSOR shall provide management and oversight to ensure that the required maintenance and replacement is done as required by regulating authorities and manufacturer's warranty of the facility's equipment and systems.
- B. LESSOR shall be the point of contact for Preventative Maintenance contracts.
- C. LESSOR shall maintain records of all maintenance of facility, equipment, and systems.
- D. LESSOR shall make any reports of maintenance required by regulating authorities.
- F. LESSOR shall provide annual external window cleaning and install canopy covers annually no later than May 1 and take down by October 1.
- G. LESSOR shall provide filters, softener salt, and diesel fuel.

Waste Removal

- A. LESSOR shall insure proper disposal of all materials related to work being done by LESSOR personnel in accordance with Laws and Regulations.

South Dakota State University Brookings, SD 57007	Consultant <input type="checkbox"/> or Services <input checked="" type="checkbox"/> Contract	Contract Number
BETWEEN: United Living Center 405 1st Ave, Brookings, SD 57006 Hereinafter referred to as "Contractor"		AND South Dakota State University Business Services Hereinafter referred to as "State"
Services shall commence on: Services shall terminate on:		Contractor's Banner ID Number (Axxxxxxx) (Do not use SSN)
Has the Contractor ever been an employee of the State of South Dakota? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> (If "yes," please contact Accounts Payable before proceeding)		
Will Contractor use state facilities, equipment, or supplies? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> (If "yes," specify the conditions under which it will be used.)		
Services to be provided by Contractor: (Use additional sheet if more space is needed) United Living Center will provide facilities management and dietary support and procurement for the Bright Horizons childcare center. Please see attached for scope of work. Facilities Management at \$29.36/hr plus actual materials and outside services. Dietary support and procurement at \$29.36/hr plus actual food costs		
The State will make payment for services upon satisfactory completion of services in the amount not to exceed\$ _____ Will the State pay expenses as a separate item? Yes <input type="checkbox"/> No <input type="checkbox"/> If "yes" is checked, expenses must be within state rates and receipts will be required. Total amount for such expenses will not exceed\$ _____ TOTAL CONTRACT WILL NOT EXCEED.....\$ _____		
The State agrees to: (Outline <u>special</u> provisions to be performed by the State. Use additional sheet if more space is needed.)		
<p>A. COMPLETE AGREEMENT PROVISION: This contract (hereinafter "Agreement") contains the entire agreement between the parties, and is subject to and will be construed under the laws of the State of South Dakota. It is expressly agreed by the parties that in the event of conflict in terms between this document and any attachments or incorporated documents, the terms of this Agreement shall prevail. The parties expressly agree that no effect shall be given to any terms or conditions of any EULA, click-through, click wrap, browse wrap or similar agreements regardless of title, purchase orders, or other documents of Contractor, or Contractor's agents, employees, or contractors, and the State expressly revokes all such terms and conditions.</p> <p>B. AMENDMENT PROVISION: This Agreement may be amended or supplemented only in writing signed by both properly authorized representatives of each of the parties hereto.</p> <p>C. TERMINATION PROVISION: This Agreement can be terminated upon thirty (30) days written notice by either party and may be terminated for cause by the State at any time with or without notice. If termination for such a default is effected by the State, any payments due to Contractor at the time of termination may be adjusted to cover any additional costs to the State because of Contractor's default. If after the State terminates for a default by Contractor it is determined that Contractor was not at fault, then the Contractor shall be paid for eligible services rendered and expenses incurred up to the date of termination. Upon termination the State may take over the work and may award another party an agreement to complete the work under this Agreement.</p> <p>D. FORCE MAJEURE: Should the performance of any State covenants in this Agreement be prevented by any cause beyond the reasonable control of State, including an Act of God, nature, war, riots or manifestation of civil disorder, fire, accident, vandalism, technical or mechanical difficulties including loss of utilities, pandemic or outbreak of disease, strikes, official acts of the State of South Dakota, the South Dakota Board of Regents, or State, or other legitimate cause beyond the control of State, State shall be authorized to cancel this Agreement, be relieved of its obligations under this Agreement, and not be liable for any damages/claims related to or arising out of this Agreement.</p> <p>E. INSURANCE PROVISION: Contractor agrees, at all times during the term of this Agreement, at its sole cost and expense, to maintain in force insurance coverage of the types and with the limits as follows:</p> <p>■ MINIMUM INSURANCE QUALIFICATIONS:</p> <ul style="list-style-type: none"> • COMMERCIAL GENERAL LIABILITY INSURANCE: Contractor shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than <u>\$1,000,000</u> for each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit. Such insurance shall include South Dakota State employees as additional insureds in the event a claim, lawsuit, or other proceeding is filed against a State employee as a result of the services provided pursuant to this Agreement. • PROFESSIONAL LIABILITY INSURANCE OR MISCELLANEOUS PROFESSIONAL LIABILITY INSURANCE: Contractor agrees to procure and maintain Professional Liability Insurance or miscellaneous Professional Liability Insurance with a limit not less than <u>\$1,000,000</u>. Malpractice Insurance with a limit not less than <u>\$5,000,000</u>. • BUSINESS AUTOMOBILE LIABILITY INSURANCE: Contractor shall maintain business automobile liability insurance or equivalent form with a limit of not less than <u>\$1,000,000</u> for each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles. • WORKER'S COMPENSATION INSURANCE: Contractor shall procure and maintain worker's compensation and employer's liability insurance as required by South Dakota law. <p>F. INSURANCE VERIFICATION PROVISION: If requested by the State, before beginning work under this Agreement, Contractor shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement and which provide that such insurance may not be canceled, except on 30 days' prior written notice to the State.</p> <p>G. DEBARMENT, SUSPENSION AND INELIGIBILITY PROVISION: The Contractor certifies that neither the Contractor nor its principals are presently debarred, suspended, proposed for debarment or suspension, or declared ineligible from participating in transactions by the federal, state or local government.</p> <p>H. NON-DISCRIMINATION PROVISION: The parties agree not to discriminate or harass individuals on the basis of sex, race, color, creed, national origin, ancestry, citizenship, gender, gender identification, transgender, sexual orientation, religion, age, disability, genetic information, U.S. veteran status, or any other status that may become protected under U.S. and South Dakota law against discrimination.</p>		

- I. **HOLD HARMLESS AND INDEMNIFICATION PROVISION:** The Contractor agrees to hold harmless and indemnify the State of South Dakota, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as a result of performing services hereunder. This section does not require the Contractor to be responsible for or defend against claims or damages arising solely from acts or omissions of the State, its officers or employees. The parties understand and agree that as set forth in SDCL 3-21-13, no hold harmless or defense (hereafter, "indemnification") provision by the State, its officers, agents, or employees, is enforceable against them except to the extent that liability coverage is provided pursuant to SDCL 3-22-1, and funds are specifically appropriated by the Legislature and available to provide for the indemnification, or the Legislature has expressly authorized the indemnification in statute.
- J. **OWNERSHIP PROVISION:** All reports, recommendations, documents, drawings, plans, specifications, technical data and information, copyrights, patents, licenses, or other products produced as a result of services rendered under this Agreement will become the sole property of the State. The State hereby grants the Contractor the unrestricted right to retain copies of and use these materials and the information contained therein in the normal course of the Contractor's business for any lawful purpose. Either the originals, or reproducible copies satisfactory to the State, of all technical data, evaluations, reports and other work product of the Contractor shall be delivered to the State upon completion or termination of services under this Agreement.
- K. **SEVERABILITY PROVISION:** In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.
- L. **SUPERSESSON PROVISION:** All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire Agreement with respect to the subject matter hereof.
- M. **NOTICE PROVISION:** Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to South Dakota State University on behalf of the State, and by the Contractor, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party. Notices from the State will be provided in English, and any interpretation or translation is the responsibility of the Contractor. The parties agree that in the event of any discrepancy between the English version and the non-English version of any notices, communications, or terms of this Agreement, the English version shall prevail.
- N. **ASSIGNMENT PROVISION:** This agreement may not be assigned without the express prior written consent of the State.
- O. **RECORDS INSPECTION AND RETENTION PROVISION:** The State, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Agreement. The contractor will retain all books and records related to the services performed for a period of not less than the greater of any applicable federal law retention requirement or three years following termination of this Agreement.
- P. **INDEPENDENT CONTRACTOR PROVISION:** While performing services hereunder, the Contractor is an independent contractor and not an officer, agent, or employee of the State of South Dakota.
- Q. **REPORTING PROVISION:** Contractor agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to the person or property of third parties, or which may otherwise subject Contractor or the State to liability. Contractor shall report any such event to the State immediately upon discovery. Contractor's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Contractor's obligation to the report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this section shall not excuse or satisfy any obligation of Contractor to report any event to law enforcement or other entities under the requirements of any applicable law.
- R. **EXPORT CONTROLS PROVISION:** Contractor understands that the State's right to furnish US information or technology, or the direct product thereof, is subject to the continuing approval of US Governmental authorities. Contractor acknowledges that it is familiar with U.S. laws and regulations concerning the export or re-export of U.S. information and technology, or the direct product thereof, to unauthorized destinations and persons and Contractor agrees to abide by all such regulations in respect of all information or technology supplied by State under this Agreement. Contractor further agrees not to export, directly or indirectly, the State's technology or information to any restricted or prohibited destination under applicable U.S. regulations unless a request to do so has been submitted by State and until such request is approved in writing by the appropriate U.S. Government Agency.
- S. **CONTROLLING LAW PROVISION:** This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.
- T. **ANTI-KICKBACK PROVISION:** By agreeing to this binding Agreement, the parties certify that they have not paid kickbacks directly or indirectly to anyone for the purpose of obtaining this Agreement and agree to cooperate fully with any U.S. agency investigating a possible violation of anti-kickback laws. Furthermore, the Contractor recognizes their duties under the U.S. Foreign Corrupt Practices Act, which makes it unlawful for certain persons and entities to make payments to foreign government officials and agrees to comply with all such provisions.
- U. **COMPLIANCE PROVISION:** The Contractor will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on them.
- V. **FUNDING OUT PROVISION:** This agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds restrictions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.
- W. **SUBCONTRACTOR PROVISION:** Contractor may not use subcontractors to perform the services described herein without the express prior written consent of the State. Contractor will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. Contractor will cause its subcontractors, agents, and employees to comply with federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure compliance.

This agreement made and entered into as of the final date written below. The parties signify agreement by signature.

_____ *Contractor's signature / Contractor's Printed Name	_____ Date	_____ *Department Head/Director signature	_____ Date
_____ *Dean/Vice President signature	_____ Date	_____ *Authorized Agent signature	_____ Date

CODING: _____ _____ _____ _____ _____ _____
 Index Code Account Code Amount Index Code Account Code Amount

Negotiator or individual who can provide additional information regarding this contract: Name: _____ Phone Number: _____

This section to be completed by authorized agent

____ This agreement becomes effective only upon the approval of the Board of Regents

____ This agreement becomes effective upon the execution by the authorized agent of South Dakota State University

SCOPE OF WORK**FACILITIES MANAGEMENT**

A. ULC will plan, propose, design, and manage bidding and construction of new projects that expand, upgrade, or rehabilitate the facility.

B. SDSU will review basis of all new projects and allocated funding through the South Dakota State University Office of Business Services as appropriate.

ULC shall have all third-party providers who provide any of the foregoing services to invoice direct to SDSU for costs up to \$5,000. ULC shall use efforts like the efforts it uses to negotiate these services as if it were for their own account.

DIETARY SUPPORT AND PROCUREMENT

A. ULC shall provide menus in 5 a week cycle. Cycles will provide 2 seasonal rotations (Fall/Winter and Spring/Summer). Menus will be reviewed in partnership with Bright Horizons prior to the seasonal updates.

B. ULC shall provide breakfast, lunch and an afternoon snack per specified menus with the understanding that the menu pattern will be coordinated with the food selection in meals provided to ULC's long term care program.

C. ULC shall provide nutrition Monday through Friday at per-determined, agreed upon scheduled time as listed: Breakfast 8:00-8:30 am; Lunch 11:00-11:30 am; Snack 2:00-2:30 pm.

D. ULC shall meet all CACFP requirements including serving size guidelines per CACFP Child Care Meal Patterns and Infant Meal Patterns for Children on Table Foods. This agreement will exclude ULC from providing infant formula; iron fortified infant cereal or equivalent.

E. ULC shall follow Food Service Code mandated by the state of South Dakota Department of Health and Federal Government.

F. ULC shall be responsible for delivery of serving and dining ware and all food and beverage to the Bright Horizons classrooms. This excludes dining table set up within classrooms. Bright Horizons is to provide serving bowls for family style dining, child size dishes, glasses, dining ware, serving utensils and fluid pitchers.

G. Bright Horizons shall delivery meal count requisitions to the ULC Nutrition Service Care Attendant by Thursday of the week prior for the following week's counts. Requisition will detail count per classroom, including infants on table foods and special diet requirements. Special diets will be provided only as specified by Bright Horizons Nutrition Policies and Procedures. Special diets include those Bright Horizons has received diagnosed food allergy care plans and/or prescribed food intolerance. Meal substitutions for food preferences will be provided a substitute as able.

The foregoing list may be amended based on the requirements of Bright Horizons and SDSU at any time, subject to any change in price as necessary to compensate ULC for any out-of-pocket costs.