

AGREEMENT
BETWEEN ROCKLIN UNIFIED SCHOOL DISTRICT AND
CONTINUING DEVELOPMENT, INC. FOR PRESCHOOL CHILD CARE AND
DEVELOPMENT SERVICES

This agreement ("Agreement") is made by and between Rocklin Unified School District, a public school district of the State of California ("District"), and Continuing Development, Inc., a 501(c)(3) nonprofit corporation, organized and existing under the laws of the State of California ("CDI") (collectively "the Parties").

RECITALS

WHEREAS, CDI is a 501(c)(3) tax exempt nonprofit corporation organized for in part, providing pre-school and development services in coordination with public school districts;

WHEREAS, CDI is further a private agency, staffed, prepared and capable of providing preschool services in the manner described in Section 3 of this Agreement;

WHEREAS, the District and CDI have been in negotiations for CDI to provide preschool child care and development services for District students;

WHEREAS, the Parties intend to establish and operate such programs at the District's Rock Creek Elementary School (two buildings) the Ruhkala Elementary School (one building) and the Sunset Ranch Elementary School (one building); and

WHEREAS, CDI and the District, by entering into this Agreement, wish to memorialize their mutual rights and obligations regarding CDI's obligations in providing preschool child care and development services.

NOW THEREFORE, the District and CDI hereby agree as follows:

AGREEMENT

1. **DEFINITIONS.**

A. "CDI" means Continuing Development, Inc.

B. "District" means the Rocklin Unified School District.

C. "Environmental Laws" means and refers to all federal, state and local laws, ordinances, court orders and administrative directives, rules and regulations now or hereafter in force, as amended from time-to-time, in any way relating to or regulating human health or safety, or industrial hygiene or environmental conditions, or protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater, and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq. ("CERCLA"); the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq.; the Clean Water Act, 33 U.S.C. §§ 1251, et seq.; the

Hazardous Substance Account Act, California Health & Safety Code §§ 25300, et seq.; the Hazardous Waste Control Law, California Health & Safety Code §§ 25100, et seq.; the Medical Waste Management Act, California Health & Safety Code §§ 15015, et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §§ 13000, et seq.; California Education Code §§ 17210, et seq.; and California Code of Regulations, Title 5, §§ 14010, et seq.

D. "Field Act" means all applicable seismic safety laws governing the construction and use of school facilities, including, but not limited to, any regulations adopted pursuant to the California Education Code §§ 17280, et seq. and §§ 81130, et seq.

E. "General Conditions" means those additional duties and responsibilities of the Parties as set forth at Section 11 herein.

F. "Lease Agreement" means that Lease and Facility Use Agreement entered into between the District and CDI and incorporated into the terms and conditions of this Agreement.

G. "Premises" means any facility used by CDI to provide preschool child care and development services within those classroom facilities made available by the District and presently as identified in the Lease Agreement.

H. "Program" means those pre-school child care and development services provided by CDI in accordance with this Agreement.

2. COMPLIANCE WITH LAW. CDI shall not use the Premises, or permit anything to be done in or about the Premises, that will in any way conflict with any applicable law, statute, applicable ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. District and CDI shall each do all acts required to comply with all applicable laws, applicable ordinances, regulations and rules of any authority relating to their respective obligations as set forth herein.

CDI's use of the Premises shall comply in all material respects with all applicable Environmental Laws relating to industrial hygiene and environmental conditions on, under or about the Portable Classrooms, including, but not limited to, air, soil and ground water conditions. CDI shall not use hazardous materials on, under or about the Portable Classrooms; provided, however, that CDI may use normal and customary cleaning solutions and office supplies so long as the use of such solutions and supplies are in quantities and in a manner wholly consistent with all applicable Environmental Laws and with all applicable school standards. Without limiting the generality of the foregoing, CDI shall not, nor shall CDI allow any party to, transport, use, store, maintain, generate, manufacture, handle, dispose, release or discharge any hazardous material upon or about the Premises in violation of Environmental Laws, nor permit any subtenant, employee, agent, invitees or contractor to engage in such activities in violation of Environmental Laws upon or about the Premises, during the Term of this Agreement. Appropriate Safety Data Sheets (SDS) shall be provided to the District as required by OSHA.

The parties to this Agreement acknowledge that District students are not required to attend classes and/or programs operated by CDI. Nevertheless, CDI shall ensure that use of

the Premises shall comply with any applicable laws or regulations relating to the Field Act that may be determined to apply to the Program.

3. SERVICES TO BE PROVIDED BY CDI.

A. CDI shall provide preschool child care and development services as further defined and outlined in Addendum A hereto.

B. CDI shall be responsible for hiring qualified staff and for maintaining required ratios in accordance with applicable licensing requirements.

C. CDI shall be responsible to ensure that all sites used pursuant to this Agreement and the Lease Agreement shall meet all applicable licensing requirements.

D. During the first and second years of operation pursuant to this Agreement, CDI shall comply with those conditions as are set forth in Addendum B hereto. During each school year and at the conclusion of the first year of operation, CDI and District shall meet to confer and agree upon any conditions to be applicable to CDI's ongoing operations during the second and any subsequent years of CDI's operations pursuant to this Agreement.

4. ADMINISTRATION.

A. CDI shall comply with all applicable laws, ordinances, and codes of the federal, state, and local governments.

B. CDI shall provide to the District a certificate of insurance verifying the CDI has Employment Practice insurance as well as Director and Officer Insurance.

5. REPORTS AND RECORDS.

A. CDI shall maintain and provide access to records for program review and evaluations, and audit records maintained and provided pursuant to this section shall be made available, upon written request, to the agents of the District. Such records shall be maintained for a minimum of five (5) years.

B. CDI shall report all expenditures in accordance with California School Accounting Manual procedures and generally accepted accounting principles.

C. CDI and District agree to maintain confidentiality of all information and records regarding program participants and their families obtained in the course of providing services, in compliance with federal and state law.

D. Upon written request, the District shall have access to registrant contact information.

E. CDI has budgeted for marketing and community outreach.

6. DISTRICT RESPONSIBILITIES.

A. District shall monitor, evaluate, and provide technical assistance to CDI regarding the conduct of activities delegated or required under this Agreement.

B. District shall provide designated restrooms for both student use and use by CDI staff.

C. District shall make available appropriate school grounds for outside use by CDI's participants.

7. INDEMNIFICATION. CDI shall indemnify, hold harmless, and defend the District, its trustees, officers, employees and agents against and from any and all claims, demands, actions, suits, losses, liability, expenses and costs for any injury, death or damage to any person or property occurring in, on or about the Premises, or arising from CDI's use, or CDI's use of the Premises or from the conduct of its business, or from any activity, work, or other things done, permitted or suffered by CDI in or about the Premises, excepting those claims, demands, actions, suits, losses, liability, expenses and costs arising out of or relating solely to the intentional acts or omissions of District, its trustees, officers, employees, and agents as they relate to the Premises.

CDI shall further indemnify, hold harmless, and defend District against and from any and all claims arising from any breach or default in the performance of any obligation on CDI's part, or on the part of CDI's to be performed relating to its preschool child care and development services, or arising from any act, omission or negligence of CDI, or any officer, agent, employee, guest, or invitee of CDI, and from all costs, attorney's fees, and liabilities incurred in or about the defense of any such claim or any action or proceeding brought thereon, excepting those claims, demands, actions, suits, losses, liability, expenses and costs arising out of or relating to obligations or acts or omissions of District, its trustees, officers, employees, and agents. If any action or proceeding is brought against District by reason of such claim (regardless of whether a claim is filed), CDI upon notice from District shall defend the same at CDI's expense. CDI shall give prompt written notice to the District in case of casualty or accidents in or on the Premises.

8. INSURANCE. CDI shall, at its sole cost and expense, pay for and keep in full force and effect insurance as outlined in this section, and as provided by a carrier and in a form acceptable to the District.

A. Workers' compensation insurance with limits of One Million Dollars (\$1,000,000.00) or more with an insurance carrier satisfactory to the District in accordance with all applicable state and federal laws. Said policy shall be endorsed with the following specific language: "This policy shall not be canceled or materially changed without first giving thirty (30) days' prior written notice to Rocklin Unified School District. In the event CDI is self-insured, it shall furnish a certificate of permission to self-insure, signed by the Department of Industrial Relations Administration of Self-insurance, Sacramento, California."

B. Commercial general liability insurance for claims related to bodily injury or death and property damage with minimum combined single limits of One Million Dollars

(\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate, as well as an umbrella policy in an amount not less than Ten Million Dollars (\$10,000,000.00), to extend over the policies described in herein. Said insurance shall include, but not be limited to: Premises and operations liability, independent contractors liability, and personal injury liability.

C. Automobile Liability Insurance: CDI shall carry automobile liability insurance, including coverage for all owned, hired and non-owned automobiles. The limits of liability shall not be less than One Million Dollars (\$1,000,000.00) combined single limit for each accident for bodily injury and property damage combined.

D. CDI shall promptly replenish any and all insurance policies to the full limits required by this section.

E. The insurance policies procured in accordance with this section shall be endorsed with the following:

(1) A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District stating date of cancellation or reduction. Date of cancellation or reduction may not be less than ten (10) calendar days after date of mailing notice. Such notice shall not be required if a reduction in required limits of liability or amount of insurance is solely due to claim activity;"

(2) A clause stating: "If a reduction in required limits of liability or amount of insurance is solely due to claim activity, notice of any reduction shall be provided to the District not less than ten (10) calendar days after said reduction;"

(3) Language stating in particular those insured, extent of insurance, locations and operations to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period;

(4) A statement that the District and its officers, employees and agents are named as additional insured's under this policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by the District. (This requires the production of an additional insured endorsement; a certificate of insurance containing reference to the endorsement will not be accepted in lieu of the actual endorsement.)

(5) The policy or policies shall include a cross liability clause. The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of liability.

(6) The insurance provided herein is primary coverage to District with respect to any insurance or self-insurance programs maintained by District and no insurance held or owned by District shall be called upon to contribute to a loss, except for the sole negligence of District.

(7) Documentation

The following documentation shall be submitted to District:

(a) Properly executed Certificates of Insurance clearly evidencing all coverage, limits, and endorsements required above. Said certificates shall be submitted prior to occupancy.

(b) Signed copies of the specified endorsements for each policy. Said endorsement copies shall be submitted within thirty (30) days of execution of this Agreement.

(c) Upon District's written request, certified copies of insurance policies. Said policy copies shall be submitted within thirty (30) days of District's request.

(8) Policy Obligations

CDI's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

9. TERM AND TERMINATION. This Agreement shall take effect immediately upon its full adoption by CDI's governing board and the District's governing board. This Agreement shall become effective June 30, 2015 and shall remain in effect for 5 years from the date of its adoption as provided for above and may be renewed with the mutual consent of both the District and CDI for three subsequent 5 year terms.

This Agreement may be terminated by the District or CDI at any time upon ninety (90) days written notice. Upon termination, CDI shall restore the premises to a condition suitable to the District and shall provide payment in full for all sums due and owed to the District along with the return of any facilities, fixtures or other property provided by the District to CDI during the term of this Agreement.

Any failure by CDI to fully maintain insurance as required by Section 8 above shall constitute a material breach of the Agreement and the District shall be entitled to immediately terminate the Agreement.

District and CDI have signed this Agreement on the dates set forth below.

10. NONDISCRIMINATION.

A. During the performance of this Agreement, the District, CDI, and its subcontractors shall not deny the Agreement's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age, or sex.

B. CDI and District shall comply with the provisions of the fair employment and housing act (government code, section 12900 et seq.), the regulations promulgated there

under (California Code Of Regulations, Title 2, Section 7285.0 et seq.), the provisions of article 9.5, chapter 1, part 1, division 3, title 2 of the government code (Government Code, Sections 11135-11139.5) and the regulations or standards adopted by the awarding state agency to implement such article.

C. District, CDI, and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

11. GENERAL CONDITIONS.

A. CDI, its agents and employees, in the performance of this agreement, are acting in an independent capacity and not as agents or employees of District.

B. CDI, by signing this agreement, swears under penalty of perjury that no more than one final unappealable finding of contempt of court has been issued by a federal court against CDI within the last two years because of failure to comply with all order of the national labor relations board.

C. Pursuant to Section 11A, the status of the CDI under this Agreement shall be, at all times during the term of this Agreement, that of an independent contractor and at no time shall CDI (or agents and/or employees of CDI) represent itself to be, officers, employees, or agents of the District.

D. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by CDI and District. No oral understanding or Agreement not incorporated into this agreement shall be binding on either party.

E. In the event that a dispute arises over the terms, language, or interpretation of this Agreement, and such dispute is submitted to a court of competent jurisdiction, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to any other relief awarded by the court.

F. The rights and remedies granted in this Agreement in the event of default are cumulative and the exercise of those rights and remedies shall be without prejudice to the enforcement of any other violation or breach of this Agreement, and forbearance to enforce one or more of the provisions of this agreement should not be construed to be a waiver of that default or breach.

G. If any part of this Agreement is declared invalid for any reason, such declaration shall not affect the validity of the remainder of this Agreement. All other parts of the Agreement shall remain in effect as if the Agreement had been executed without the invalid part. Both parties hereby declare that they intend and desire that the remaining parts of the Agreement continue to be effective without any part or parts that have been declared invalid.

H. The captions of the sections of this Agreement are for reference only and are not to be construed in any way as a part of this Agreement.

I. This Agreement is not assignable by CDI, either in whole or in part, without prior written consent of the District.

J. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and that the subcontract supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of the subcontract.

12. MAINTENANCE AND ALTERATIONS/MODIFICATIONS/CUSTODIAL.

District shall conduct maintenance, repair, and upkeep of the Premises, and shall ensure that the Premises are being operated in a manner that conforms to the District's policies or practices for the maintenance, repair, and upkeep of similar buildings and facilities. Emergency repairs shall be performed as necessary for student and operational safety as soon as feasible.

District shall be responsible for providing custodial services necessary to maintain each Portable at the same level and to the same standards as District maintains its other classrooms. CDI shall reimburse the District for its reasonable expenses in providing such custodial services within thirty (30) days of receipt of an appropriate invoice by the District. If CDI fails to pay for such services within thirty (30) days of presentation of invoice, District may charge interest on any overdue amount at a rate equal to 5 percent per annum. Should CDI determine that custodial services provided by the District are inadequate in the opinion of CDI, CDI has the option of seeking an outside source to provide on-going custodial services, and relieve the District of said requirement, provided that before any such outside custodial services are performed CDI receives advance written approval from the District.

13. INSPECTION BY DISTRICT. Upon reasonable notice, District reserves the right to enter the Premises to inspect the same to ensure compliance with this Agreement.

14. DISPUTE RESOLUTION. The District and CDI desire to resolve as quickly as possible any disputes as to the meaning of any portion of this Agreement, or the rights or obligations of the District or CDI pursuant thereto. It is the intent of the Parties to attempt to resolve any differences arising from this Agreement through mediation prior to the initiation of litigation. In the event of any disagreement over the meaning or application of this Agreement, the Parties shall first attempt to resolve the matter informally. Should that prove unsuccessful, any Party may ask for mediation. A neutral mediator shall be appointed to hear each side in an informal setting, and to render an advisory recommendation. Any such mediation costs shall be equally shared by the Parties. If the Parties fail to resolve any disputes through mediation, then any such disputes shall be resolved by binding arbitration conducted by a mutually agreed-upon retired judge of the Placer County Superior Court. If the District and CDI are unable to agree on the arbitrator within thirty days of the receipt of a request for arbitration, they shall request that the presiding judge of the Placer County Superior Court designate one. The District and CDI shall each pay one-half the cost of the arbitration and each shall be responsible for its own attorneys' fees and costs as to any such arbitration. CDI shall provide indemnification to District relating to any disputes arising from the terms and conditions of this Agreement, involving any third party, including but not limited to the Operator.

15. GOVERNING LAW AND VENUE. This Agreement and all rights and obligations arising out of it shall be construed in accordance with the laws of the State of

California. Any mediation, arbitration, litigation or other proceeding arising out of this Agreement shall be conducted only in Placer County.

District:

CDI:

Rocklin Unified School District
a public school district of the State of
California

Continuing Development, Inc.
a 501(c)(3) nonprofit corporation, organized
and existing under the laws of the State of
California

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

ADDENDUM A

(See Preschool Program Overview Documents)

ADDENDUM B

During the first year of operation under this Agreement, CDI has agreed to the following:

- The ability to consolidate or close locations only after the first year of operations, but retaining the ability to modify hours where enrollment dictates only after consideration and agreement from District.
- Interview all current staff of Club Rocklin prior to opening up positions for external candidates.
- Continue the name Club Rocklin, but identifying CDI as the provider and District as the sponsor.

During the second year of operation under this Agreement, CDI has agreed to the following:

- Review actual costs and expenditures with the District at the conclusion of the second year with the general understanding that once CDI has recouped all losses and is able to earn 15% indirect costs, there will be opportunity to reconsider the facility rental rate.