

## AMENDMENT TO AGREEMENT

This is an Amendment to the Agreement between the Ohlone Community College District formerly known as the Fremont Newark Community College District (hereinafter referred to as Ohlone) and Kidango Inc., a California Public Benefit Corporation (hereinafter referred to as Kidango) dated May 22, 2002.

The following provisions are amended as set forth below:

- a) This Amendment is effective the date a new state funded facility is cleared for occupancy and a Community Care License is issued.

### I. TERM

- 1.1 This Agreement shall be effective from the date determined in a) above through June 30, 2007. Thereafter, this agreement shall be automatically extended for a two (2) year period unless terminated as hereinafter set forth. All terms and provisions of this agreement shall continue in full force and effect during the extension period.

### II. OBLIGATION OF PARTIES

- 2.1(e) to care for children of Ohlone students and employees and members of the community from birth through six years (unless they have started first grade) unless prohibited by the laws of the United States, the State of California, the County of Alameda, or the Cities of Fremont and Newark.

- 2.1(h) to operate the child development center a minimum of 7:00 am to 6:00 pm Monday through Friday, except for Kidango designated holidays and one training day per year and at other times as agreed to by the parties.
- 2.1(j) to make reasonable efforts to publicize and market the center as appropriate and to cooperate with Ohlone to conduct a market analysis of what demand would be for providing night or other options Ohlone will assist Kidango in marketing to Ohlone employees and students.
- 2.1(l) to be responsible for collecting tuition/charges directly from each patron for each child's care. Ohlone assumes no responsibility for collection of tuition charges/fees. Kidango has discretionary authority to raise tuition charges/fees with 30 days prior written notice to parents. Kidango shall pay to Ohlone from tuition/charges and/or other sources the sum of \$5,000 per month for use of the new facility by the tenth of each month.
- 2.2(a) to provide Kidango the new facilities for the child development center, and all fixture-type improvements, including partitions, toilets, lavatories, kitchen sinks and cabinets, plumbing, electrical and telephone outlets, carpet, window blinds, office standard lighting and lighting fixtures, playground, in good working order and that meet all requirements of the State of California for licensure by the Department of Social Services, Community Care Licensing. The space that is granted to Kidango for use under this agreement is described in *a* new Exhibit 1 to this Agreement.
- 2.2(b) to provide at no cost to Kidango custodial services, grounds and mechanical maintenance of the facilities, utilities of the building (including heat and air conditioning, lights, electricity, garbage, sewer, and water), and telephone wiring

for three phone lines in accordance with a new Exhibit 2. Custodial services, mechanical maintenance and provision of utilities will be in accordance with the requirements of the state of California for licensure.

2.2(c) to provide to Kidango, the equipment and other movable fixtures necessary to the center's opening, as provided for in a new Exhibit 3 including but not limited to, kitchen equipment (refrigerator, microwave oven, stove, dishwasher), children's tables and chairs, cubbies, cribs, sleeping mats, computer, printer, indoor and outdoor play equipment, puzzles, toys, washing machine, and laundry dryer. Ohlone will also provide desks, chairs, tables, computer, printer, and file cabinets for Kidango's administrator and staff. These items will remain the property of Ohlone.

2.2(i) This provision is deleted.

~~2.3~~—This provision is deleted.

d)

#### IV.

#### TERMINATION

4.1 Either party, with or without cause, may terminate this Agreement by giving at least 120 days prior written notice to the other party. Such termination may only be effective on any date after June 30, 2007. This paragraph shall not restrict the right of either party to terminate this Agreement as set forth elsewhere in this Agreement.

e) All other provisions of the Agreement dated May 22, 2002 are in full force and effect.

4.3

c) If the facility has insufficient enrollment to sustain operation due to causes beyond Kidango's control, such as staff reductions by Ohlone or lack of participation by Ohlone employees, or an operating loss by Kidango, Kidango

reserves the right to renegotiate or terminate this agreement by giving 90 days written notice to Ohlone as provided for in Paragraph 4.8. Both parties will meet to negotiate a change in the agreement terms or termination of the agreement within 10 days of such notice.

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

*Kidango Inc., a Public Benefit Corporation*

*by:* \_\_\_\_\_

*Date* \_\_\_\_\_

*Ohlone Community College District, formerly known as  
Fremont-Newark Community College District,  
a California Community College District*

*by:* \_\_\_\_\_

*Date* \_\_\_\_\_

PDS/OHLONE/AMENDMENT