

**OHLONE COMMUNITY COLLEGE DISTRICT
STATE PRESCHOOL
AGREEMENT FOR CHILD DEVELOPMENT SERVICES**

THIS AGREEMENT is entered into this 1 day of July, 2005, by and between the Governing Board of Ohlone Community College District (Ohlone) and Kidango, Inc., a California public benefit corporation (Kidango).

WITNESSETH

WHEREAS, the California Department Of Education (CDE) has awarded a contract to Ohlone for the operation of a State Preschool program under the Child Care Development Act (Education Code sections 8200 et seq.);

WHEREAS, Ohlone and Kidango agree that Kidango is willing and qualified to assist Ohlone in providing the services that are more particularly described below and that Kidango has prior experience in operating programs funded by the Child Development Division of the CDE, including but not limited to state preschool programs;

WHEREAS, Ohlone and Kidango agree that the child care services to be provided by Kidango under this Agreement are personal and that the child care services described herein may or may not be satisfactorily provided by an entity other than Kidango, notwithstanding similar qualifications of the other entity; and

WHEREAS, Ohlone intends to subcontract to Kidango the State Preschool contract from the CDE for the operation of the child care facility at Ohlone College.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. SERVICES TO BE PERFORMED BY KIDANGO: In consideration of the payments hereinafter set forth, Kidango shall provide child development services on behalf of Ohlone to children of eligible families in the Ohlone State Preschool program, in accordance

with the Funding Terms and Conditions of the agreement between Ohlone and CDE which, contract is fully incorporated by reference herein.

The minimum number of days of service is 180 days per year. All employees for the child care center will be employees of Kidango and not of Ohlone. Kidango agrees to any and all requirements as set forth by CDE. Kidango also agrees to abide by all Funding Terms and Conditions, Policy Memorandums, Management Bulletins and regulations of CDE. The requirements of Exemplary Program Standards for Child Development Programs or other Quality Program Standards issued by CDE are herein incorporated into this contract for services to qualified children and their families.

2. TERM: The term of this Agreement shall commence on July 1, 2005 and shall terminate on June 30, 2006. The parties may renew this Agreement in writing. It is the intent of both parties to renew the contract unless otherwise communicated in writing within 90 calendar days of the end of term.

3. TERMINATION OF AGREEMENT: Either party may terminate this agreement, for any reason, by giving the other party 90 calendar days written notice. Upon termination, Kidango shall be entitled to receive payment for work or services provided prior to the termination of Agreement. If Ohlone does not have the State Preschool contract renewed by CDE in subsequent fiscal years, this agreement will terminate.

4. PAYMENT: In full consideration for Kidango's services, Ohlone shall make payment to Kidango at the rate Ohlone is reimbursed from CDE. Kidango's rates for travel and per diem shall

not exceed the rates that are set according to the California Code of Regulations, Title 5, section 18034(j) that sets the rates as those paid to the majority of CDE represented employees computed in accordance with Department of Personnel Administration's regulations, Title 2, California Code of Regulations, subchapter 1. In no event shall the total

payment for services performed under this agreement exceed the amount Ohlone receives from the California Department of Education under the CDE contract with Ohlone. Kidango shall invoice Ohlone on a monthly basis for services performed under this Agreement. Ohlone shall make payments within ten days to Kidango upon receipt of funds from the CDE. Ohlone will reimburse Kidango at the rate that the California Department of Education reimburses Ohlone for the adjusted child days of enrollment. Ohlone will pass on to Kidango any cost of living increases, any special one time only grants or any special monies specifically related to the State Preschool contract or child care facility. Ohlone shall provide an advance to Kidango equal to the advance provided by the State Dept of Education to Ohlone based on the earnings calculations done by SDE under the contract. Kidango shall not make a profit from the operation of the Sate Preschool Contract as prohibited by CDE.

5. CERTIFICATION OF ELIGIBILITY: Kidango shall have full responsibility for certification of eligibility for services under this contract, and any errors, audit exceptions or other non-qualification that result in funds due back to CDE under this contract shall be borne by Kidango. Kidango shall prioritize the admission of children and their parents for services under this contract as required by CDE and any other State Law or regulation.

6. REPORTING: Kidango shall furnish to the California Department of Education attendance data, any required fiscal and any other data required for reporting to CDE by the due dates given from CDE. Kidango shall furnish reports to California Department of Educations by their due date and submit all copies to Ohlone. Ohlone agrees to promptly furnish Kidango with all and any documentation, forms, contracts, etc. that are related to the CDE State Preschool contract. For purposes of this part only, "day" means any day the Ohlone administrative offices are open to public.

7. ACCOUNTING: Kidango shall keep separate fund accounting for the State Preschool program using the California School Accounting Manual for account line items and for determination of proper allocation of income and expenses and shall provide detailed information as required by Ohlone and CDE.
8. AUDITING: Services and records provided by Kidango under this Agreement must be audited by an independent Certified Public Accountants as required by CDE and the Federal Office of Management and Budget, and a copy of the independent audit shall be delivered to Ohlone on or before November 15, 2005, or such other date as required by CDE.
9. RECORDS: Kidango shall maintain all required records relating to Kidango's services for a minimum of 5 years after Ohlone makes final payment. Kidango's records relating to this Agreement shall be subject to examination or Audit by Ohlone or its designee, or the government of the United States or the State of California upon reasonable notice. Kidango shall make available such records at its main office. Findings or audit exceptions must be submitted to Ohlone within 20 working days.
10. RELATIONSHIP OF PARTIES: Kidango agrees and understands that the services provided under this agreement are performed as an independent contractor and not as an officer, employee or agent of Ohlone or the State of California or CDE.
11. HOLD HARMLESS: Kidango shall indemnify and hold harmless Ohlone and its officers, agents, employees and servants from all claims, suits or actions of every name, kind and description, brought for, or on account of (A) injuries to or death of any person, including each party, its officers, its employees, and agents, to the extent resulting from any negligent act or omission of Kidango, its officers, employees or agents, or (B) damage to any property of any kind whatsoever and to whomsoever belonging resulting from any negligent act or omission of Kidango, its officers, employees or agents, which arises from Kidango's

performance of its responsibilities under this agreement or any extension or renewal thereof. The duty to indemnify and hold harmless, as set forth herein shall include the duty to defend as described in section 2778 of the California Civil Code.

12. INSURANCE: Kidango shall not commence work under this agreement until the President of Ohlone or his or her designee has approved all insurance. Kidango shall furnish Ohlone with certificates of insurance evincing the required coverage and there shall be a specific contractual liability endorsement extending Kidango's coverage to include the contractual liability assumed by Kidango under this Agreement. The certificates shall also specify or be endorsed that the insurer will provide Ohlone with 30 calendar days' written notice of any pending change in the limits of liability or any cancellation or modification of the policy.

A. Worker's Compensation and Employee Liability Insurance: Kidango shall have in Effect during the entire term of this agreement Workers' Compensation and Employer Liability Insurance providing full coverage required by the laws of the State of California.

B. Liability Insurance: Kidango shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect it while performing work covered by this agreement from any and all claims for damages for bodily injury, including accidental death, and harm to personal or real property. Such insurance shall include a duty to pay as damages on account of personal injury or property damage caused by an accident or occurrence resulting from any operation conducted pursuant to this agreement, whether on or off premises, up to the policy limit. Additionally, such insurance shall include a duty to defend Kidango in any action brought against Kidango seeking damages for a

covered claim. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below:

Commercial General Liability	\$2,000,000
Motor Vehicle Liability Insurance	\$1,000,000

Ohlone, its officers and agents, employees and servants shall be named as additional insured on such policies, and the policies shall also provide that the insurance shall be primary insurance to the full limits of liability of the policy and that, if Ohlone, its officers and agents, employees and servants have other insurance against the loss covered by such policy, the other insurance shall be excess insurance only.

13. **COMPLIANCE WITH LAWS:** Kidango shall perform all services under this Agreement in accordance with applicable federal, state and local laws. Kidango understands and agrees that Ohlone will not withhold federal or state taxes from monies due to Kidango for work or services performed. Kidango further agrees to obtain and maintain any license, permit or approval necessary at Kidango's own expense prior to the commencement of this Agreement.

14. **NON-ASSIGNABILITY:** Due to the personal nature of the services provided by Kidango under this Agreement, Ohlone shall be excused from accepting performance of the services undertaken by Kidango under this Agreement from some person or entity other than Kidango without the prior written consent of the President of Ohlone. Kidango shall not assign this agreement or any portion thereof without the prior written consent of the Ohlone President. This consent will not be unreasonably withheld.

15. **NON-DISCRIMINATION:** No one shall be unlawfully excluded from

participation in or denied the benefits of or be subject to discrimination under this Agreement on account of his or her race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition, affiliation or non-affiliation with a labor organization, marital status, sex, or sexual orientation. Kidango shall ensure full equal employment opportunity for all of Kidango's employees. Kidango shall ensure compliance with the provisions of Title 2, California Code of Regulations, Chapter 5, Section 8107.

16. FACILITIES AND EQUIPMENT: Ohlone will provide facilities, which Ohlone deems adequate and in compliance with CDE and the State Department of Social Services Title 22 Health and Safety Code requirements, for Kidango's services. Such facility use shall be by separate agreement. Any renovation of facilities must be with written approval of Ohlone at the sole cost of Kidango or from separate grants. Any renovations approved by Ohlone shall not financially obligate Ohlone for the renovations. Kidango shall have exclusive use but not title to equipment, as defined by the California Department of Education Accounting Manual as having a useful life of two years or more, as long as this contract, or its renewal or extension, remains in effect. A detailed written list of equipment shall be agreed upon by authorized representatives of both Ohlone and Kidango.

17. MERGER CLAUSE: This Agreement, including the General Operational Agreement, attached hereto as Exhibit A, respectively, constitutes the sole agreement of the parties hereto and correctly states the rights, duties and obligations of each party. Any prior agreement, promises, negotiations or representations between the parties not expressly stated in this document are not binding. All subsequent

modifications or amendments shall be in writing and signed by the parties.

18. NOTICES: Any notices under this Agreement shall be deemed delivered if delivered personally to the other party or when delivered by certified mail, return receipt requested, addressed as follows:

FOR KIDANGO: Paul Miller
Executive Director
Kidango, Inc.
4533 Mattos Drive
Fremont, CA 94536

FOR OHLONE: Dr. Douglas Treadway
President
Ohlone Community College District
43600 Mission Boulevard
Fremont, CA 94539

19. CONTINGENCY: This contract is contingent upon appropriation and availability of funds from CDE and the State of California and its approval of this contract.

(This Space is left Intentionally Blank)

20. **IN WITNESS WHEREOF**, the parties hereto, or their duly authorized representative, affixed their hands, in Fremont, California.

Ohlone Community College District

Dated: _____

Dr. Douglas Treadway, President

Dated: _____

Paul Miller, Executive Director

CONTRACT IS NOT VALID UNTIL SIGNED BY BOTH PARTIES