

**AGREEMENT FOR PARTICIPATION
MORGAN HILL UNIFIED SCHOOL DISTRICT
PRESCHOOL PROGRAMS**

This agreement is entered into this first day of July, 2019 by and between the Morgan Hill Unified School District, (hereinafter referred to as the "District") and Continuing Development Inc., a California nonprofit corporation, (hereinafter referred to as the "Child Care Provider").

RECITALS

1.1 District is a local educational agency contracting with the state under agreements as described in California State Preschool Program Funding Terms and Conditions.

1.2 Child Care Provider is a private agency, staffed, prepared, and capable of providing preschool services as defined in Section 3 of this agreement.

1.3 District wishes to delegate operating responsibility to Child Care Provider for preschool services authorized by contracts with the California Department of Education (hereinafter "State"), as the most cost-efficient means of providing these services at any of the following locations:

El Toro Child Development Center
455 E. Main Avenue
Morgan Hill, CA 95037

P.A. Walsh Child Development Center
353 West Main Street
Morgan Hill, CA 95037

Nordstrom Child Development Center
1425 East Dunne
Morgan Hill, CA 95037

TERM

2.1 This Agreement shall commence not earlier than July 1, 2019, and shall terminate, unless terminated earlier pursuant to the terms of this agreement, no later than June 30, 2020.

SERVICES TO BE PROVIDED BY CHILD CARE PROVIDER

3.1 Child Care Provider agrees to provide preschool services as defined and outlined in the approved application, budget, and contracts between District and State. Services to be provided by Child Care Provider include, but are not limited to, school readiness activities, creative arts activities, recreational activities, and daily interaction with parents as set forth in the District's application.

3.2 Child Care Provider agrees to provide adequate child days of certified enrollment (supported by at least 95% attendance) to earn a portion of the Maximum Reimbursable Amount (less District indirect charges) of the contract as described in Attachment A. Maximum Reimbursable Amount is subject to change based on contract amendments from the State.

3.3 The Budget Act of 2014 amended *Education Code* Section 8273.2, and added *EC* Section 8273.2 (e), exempting families whose children are enrolled in a part-day CSPP from being assessed a family fee. The Child Care Provider should not assess or collect family fees for families enrolled in part-day CSPP programs.

3.4 Child Care Provider shall maintain participation in the Child Care Food Program throughout the term of this Agreement.

3.5 Child Care Provider shall be responsible for hiring qualified staff and for maintaining required ratios in accordance with licensing and State requirements.

3.6 Child Care Provider shall be responsible for seeing that all sites used pursuant to this Agreement shall meet all necessary licensing requirements.

ADMINISTRATION

4.1 Child Care Provider shall administer the program in accordance with the rules, regulations, and policies of District and State, including those stated in the "general assurances" form submitted with District's contracts with State and attached hereto.

4.2 All activities authorized by this agreement to be performed by Child Care Provider shall be performed within the approved program policies, the approved budget, the contract funding, the terms and conditions, and appropriate State directives, in accordance with the applications and contracts between District and State attached hereto.

4.3 Child Care Provider shall comply with all applicable laws, ordinances, and codes of the federal, state, and local governments.

4.4 Child Care Provider shall require that all Child Care Provider personnel who are authorized to sign checks be bonded in an amount which will cover the total amount under the control of the Child Care Provider at any one time. Child Care Provider shall provide to the District a certificate of insurance verifying the Child Care Provider fidelity bond coverage. Said certificate of insurance shall not be canceled without thirty days prior written notice to District.

REPORTS AND RECORDS

5.1 Child Care Provider shall maintain and provide to District records for program review, evaluations, audit, and/or other purposes. Records maintained or provided pursuant to this section shall be made available to the agents of State upon request of District or State. Such records shall be maintained for a minimum of five (5) years.

5.2 Child Care Provider agrees to submit to the District such reports as required by State directives or by the District.

5.3 Child Care Provider shall report all expenditures in accordance with California School District Accounting Manual Procedures.

5.4 Child Care provider shall provide an annual line-item budget by expenditure category for approval by State and District as requested. All revenues and expenses shall be identified in separate accounts.

5.5 Child Care Provider will close its accounting and attendance records on the last day of each month for preparation of the required monthly statement. Monthly reports of enrollment, attendance, and expenditures shall be submitted to the District no later than the 16th day of each month.

5.6 Child Care Provider records shall be subject to the same audit and/or audit review requirements as imposed on District through its contracts with State. In any event, Child Care Provider shall provide to District an annual audit in accordance with State audit guidelines.

5.7 Child Care Provider shall be liable for any audit exception caused by or as a result of Child Care Provider's lack of performance as required by this Agreement.

5.8 Child Care Provider, in its discretion, may purchase necessary equipment or supplies to the extent such purchase may be reimbursed from State funds. Any unit of equipment purchased pursuant to this Agreement costing over \$7,500, and/or having a useful life expectancy of two years or more, shall have prior written authorization from District and State. Title to any equipment or supplies so purchased shall vest in Child Care Provider for the term of this Agreement. Insurance on all property purchased pursuant hereto shall be provided by Child Care Provider. Upon termination of this agreement, title to all equipment and remaining supplies purchased pursuant hereto shall revert to District.

DISTRICT RESPONSIBILITIES

6.1 District shall monitor, evaluate, and provide technical assistance to Child Care Provider regarding the conduct of activities delegated or required under this Agreement.

6.2 District shall compensate Child Care Provider monthly, based upon units of enrollment and attendance. Such compensation by the District to Child Care Provider shall be made only upon receipt of records certifying units of enrollment and attendance.

6.3 District agrees to reimburse Child Care Provider for authorized expenditures subject to receipt of funds from State. This includes the use of reserve funds for net reimbursable expenses that exceed service earnings at the end of the fiscal year (if available).

6.4 District shall compensate Child Care Provider for travel and per diem expenses necessitated by this Agreement. Such travel and per diem expenses will be reimbursed only at rates not exceeding those amounts paid to the majority of the State Department of Education's represented employees computed in accordance with Department of Personnel Administration Regulations, Title 2 California Code of Regulations, Subchapter 1.

6.5 District agrees that it is solely responsible to the State for fulfillment of its contracts with the State and for compliance with all terms and conditions contained within, or attached to, the contracts for the current fiscal year.

FINGERPRINTING

Morgan Hill Unified School District shall require **PROVIDER** (and their staff) to submit fingerprints consistent with California Education Code Section 44237. **PROVIDER** shall comply with the requirements of Education Code Section 45125.1 including, but not limited to: obtaining California Department of Justice (CDOJ) clearance for **PROVIDER'S** employees; prohibiting its employees from coming in contact with students until CDOJ clearance is ascertained and certifying in writing and providing such certification to **Morgan Hill Unified School District** that none of its employees who may come in contact with students have been convicted of a violent or serious felony. Nor will any person

employed who has been convicted of or entered a plea of nolo contendere to charges of any sex offense as defined in Education Code §44011.

INDEMNIFICATION

7.1 Child Care Provider shall indemnify, defend, and save harmless the State of California, its officers, agents, and employees from any and all claims and losses occurring or resulting to any and all contractors, subcontractors, suppliers, laborers, or any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses occurring or resulting to any person, firm, or corporation that may be injured or damaged by the Child Care provider in the performance of this Agreement.

7.2 Child Care Provider shall agree to indemnify, defend, and save harmless the District, its officers, agents, and employees from any and all claims and losses occurring or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of the subcontract, and from any and all claims and losses occurring or resulting to any person, firm, or corporation that may be injured or damaged by Child Care Provider in the performance of this Agreement.

7.3 Child Care provider will hold District harmless for any contract obligations entered into that cannot be met due to the non-receipt of funds.

INSURANCE

8.1 Child Care Provider shall provide and maintain fidelity bond coverage as evidenced by a certificate of insurance as described under section 4.4.

8.2 Child Care Provider shall provide and shall maintain in force during the term of this contract, comprehensive bodily injury and property damage liability insurance with a combined single limit of \$1,000,000. Child Care Provider's policy or policies of liability insurance obtained pursuant to this Agreement shall name District and State as additional insureds under the terms of such policy or policies. No such policy may be canceled without 30 days prior written notice to the District.

8.3 Child Care Provider shall provide workers' compensation insurance, unemployment insurance, and disability insurance for all of its employees, as required by law.

8.4 Certificates for all types of insurance required under this Agreement shall be furnished to District within two weeks of the commencement date of this Agreement. All certificates provided pursuant to this section shall indicate the name of the carrier, the policy number, and the expiration date.

TERMINATION

9.1 District may terminate this Agreement and be relieved of the payment of any consideration to the Child Care Provider upon failure by Child Care Provider to perform any of the terms of this Agreement including, but not limited to:

- a. Failure, for any reason, of Child Care Provider to fulfill in a timely and proper manner its obligations under this contract, including compliance with the approved program and attached conditions, and such statutes, executive orders, and State directives as may become generally applicable at any time;

b. Submission by Child Care Provider to District of reports, accountings, records, or audits which are incorrect or incomplete in any material respect;

c. Ineffective or improper use of funds provided under this contract.

9.2 In the event that this Agreement is terminated in whole or in part by District for any reason pursuant to section 9.1, 30 days written notice shall be provided to Child Care Provider.

9.3 Notwithstanding any other provision of this Agreement, District shall be authorized to terminate this Agreement without prior notice, written or oral, should the California Department of Education terminate its contract with the District or District, in its discretion, determines that an emergency condition exists.

9.4 Child Care Provider may terminate this Agreement by giving 90 days prior written notice to District, signifying the effective date thereof.

9.5 In the event that District is required to assign or transfer this contract pursuant to any section of this Agreement, District may require Child Care provider to insure that adequate arrangements have been made for the transfer of the delegated activities to another contractor or to District.

9.6 In the event of any termination, all property and finished or unfinished documents, data, studies, and reports purchased or prepared by Child Care Provider under this contract shall be disposed of according to District and State directives.

9.7 In the event of termination pursuant to the terms of this Agreement, Child Care Provider shall be entitled to compensation for any unreimbursed expenses reasonably and necessarily incurred in satisfactory performance of this Agreement.

9.8 Notwithstanding section 9.7 above, Child Care Provider shall not be relieved of liability to the District for damages sustained by District by virtue of any breach of the contract by Child Care Provider, and District may withhold any such reimbursement to Child Care Provider for the purpose of offset until such time as the exact amount of damages due to District from Child Care Provider is agreed upon or otherwise determined.

9.9 Upon termination of this Agreement for any reason, consideration paid to Child Care Provider, as provided in this Agreement, shall be full compensation for all of Child Care Provider's expenses incurred in the performance of this agreement.

NONDISCRIMINATION

10.1 During the performance of this Agreement, the District, Child Care Provider, 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.

10.2 Child Care Provider and District shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), the regulations promulgated thereunder (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.

10.3 Child Care Provider or District shall permit access by representatives of the Department of Fair Employment and Housing and the awarding State agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours notice, to such of its books, records, accounts, other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause.

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

10.5 Child Care Provider shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

GENERAL CONDITIONS

11.1 Child Care Provider, and the agents and employees of Child Care Provider, in the performance of this Agreement, are acting in an independent capacity and not as officers, employees, or agents of the State of California.

11.2 Child Care Provider, its agents and employees, in the performance of this Agreement, are acting in an independent capacity and not as agents or employees of District.

11.3 Child Care Provider, 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 Child Care Provider within the last two years because of failure to comply with an order of the National Labor Relations Board.

11.4 Pursuant to sections 11.1 and 11.2, the status of the Child Care Provider under this Agreement shall be, at all times during the term of this Agreement, that of an independent contractor and at no time shall Child Care Provider (or agents and/or employees of Child Care Provider) represent itself to be, officers, employees, or agents of the District or of the State of California.

11.5 No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by Child Care Provider and District excepting a change in reimbursement rate due to a COLA. No oral understanding or agreement not incorporated into this Agreement shall be binding on either party. Amendments to this Agreement may be subject to the approval of the State Department of Education.

11.6 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.

11.7 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.

11.8 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.

11.9 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.

11.10 This Agreement is not assignable by Child Care Provider, either in whole or in part, without prior written consent of the District and the State.

11.11 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.

11.12 Time is the essence of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

DISTRICT:

Signature: _____

Name: _____

Title: _____

Continuing Development Inc.:

Signature:  _____

Name: Susan Dumars _____

Title: President _____

MORGAN HILL UNIFIED SCHOOL DISTRICT - CSPP AGREEMENT

Name of Program	Term	*ELCD Contract and Project Number	**MRA	Days of Operation	Max Rate per ***CDE	***CDE Minimum Goal	Notes
California State Preschool Program	7/1/2019 to 6/30/2020	CSPP-9570 43-6958-00-9	\$285,461	180	\$48.28	5,913	ICR: 5.24% Indirect: \$14,213.38 ✓ Net: \$271,247.62 ✓

Any and all contracts or grants that are ancillary to the above contract for services (e.g., Instructional Materials, Program Resources, etc.), will be considered part of this Agreement and subject to its terms and conditions. Any and all amendments from CDE to the contract referenced above are considered part of this agreement.

- * ELCD - California Department of Education, Early Learning and Care Division
- ** MRA - Maximum Reimbursable Amount
- *** CDE - Child Days of Enrollment (Adjusted for Full Time Equivalent)