

AGREEMENT
BY AND BETWEEN ROCKLIN UNIFIED SCHOOL DISTRICT AND
ROCKLIN EDUCATIONAL EXCELLENCE FOUNDATION

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

RECITALS

WHEREAS, REEF was founded in 2008 as a 501(c)(3) tax exempt nonprofit corporation dedicated to student enrichment within the District;

WHEREAS, the District and REEF have been in negotiations for REEF to provide before and after school programs for District students;

WHEREAS, the City of Rocklin plans to transfer to REEF ownership of a total of thirteen (13) portable classroom buildings on eleven (11) school sites, one or more at each District elementary school site;

WHEREAS, REEF intends to enter into a separate agreement with an Operator as defined below, for the operation of before and after school programs, and REEF shall ensure that its agreement with the Operator is consistent with the terms and conditions of this Agreement; and

WHEREAS, REEF and the District wish to memorialize their understanding of REEF's obligations in providing before and after school programs by entering into this Agreement.

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

AGREEMENT

1. **DEFINITIONS.**

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

B. "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.

C. "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.

D. "Operator" means the third party entity that will contract with REEF to operate the Program.

E. "Premises" means any facility used by REEF to provide before or after school services, including, but not limited to, the thirteen (13) portables on eleven (11) school sites, to be transferred to REEF to provide such services.

F. "Program" means the before and after school services to be provided to District students.

G. "REEF" means the Rocklin Educational Excellence Foundation.

2. COMPLIANCE WITH LAW. REEF 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 REEF 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. Further, REEF shall ensure that any contractual obligations between REEF and any Operator for the Program shall comply with all applicable laws, ordinances, regulations or rules relating to the operation of the Program within the District.

REEF'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. REEF shall not use hazardous materials on, under or about the Portable Classrooms; provided, however, that REEF 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, REEF shall not, nor shall REEF 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 REEF or its Operator. Nevertheless, REEF 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. MAINTENANCE AND ALTERATIONS/MODIFICATIONS. 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. All regular maintenance/repairs shall be performed upon prior approval by REEF. All costs will be invoiced based on time and material. REEF shall reimburse the District for its expenses in providing such maintenance services within thirty (30) days of presentation of an appropriate invoice by the District. If REEF fails to pay for such services within thirty (30) days of presentation of appropriate invoices, the District may charge interest on any overdue amount at a rate equal to five (5) percent per annum. Expenses will be billed quarterly and begin upon occupancy.

4. CUSTODIAL SERVICES. District shall be responsible for providing custodial services necessary to maintain the Premises at the same level and to the same standards as District maintains its classrooms. REEF shall reimburse the District for its reasonable expenses in providing such custodial services within thirty (30) days of presentation of an appropriate invoice by the District. If REEF fails to pay for such services within thirty (30) days of presentation of appropriate invoices, the District may charge interest on any overdue amount at a rate equal to five (5) percent per annum. Expenses will be billed quarterly and begin upon occupancy.

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

6. AGREEMENT WITH OPERATOR. The parties to this Agreement acknowledge that REEF shall separately enter into one or more operational agreements with the Operator. REEF shall ensure that all such operational agreements are consistent in all respects with the terms and conditions of this Agreement, including, but not limited to, Sections 8 and 9 hereto. In any event, except as otherwise provided herein, REEF shall be responsible for paying all charges, fees, and expenses arising from the operation of the Program.

7. UTILITIES. The District shall provide necessary utility services. Such utility services will include electricity, gas, water, and sewer services. REEF shall reimburse the District for its expenses in providing such utility services within thirty (30) days of presentation of appropriate invoices by the District. If REEF fails to pay for such services within thirty (30) days of presentation of appropriate invoices, the District may charge interest on any overdue amount at a rate equal to five (5) percent per annum. REEF shall be responsible for contacting the telephone companies and data providers and contracting directly with the telephone and data providers for service to the facilities at each site. Expenses will be billed quarterly and begin upon occupancy.

8. INDEMNIFICATION. REEF 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 REEF's use, or REEF's Operator'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 REEF, or its Operator, 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.

REEF 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 REEF's part, or on the part of REEF's Operator to be performed relating to its before and after school programs, or arising from any act, omission or negligence of REEF, or any officer, agent, employee, guest, or invitee of REEF, or arising from any act, omission or negligence of REEF's Operator, or any officer, agent, employee, guest, or invitee of REEF's Operator, 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), REEF upon notice from District shall defend the same at REEF's expense. REEF shall give prompt written notice to the District in case of casualty or accidents in or on the Premises.

9. INSURANCE. REEF shall, at its sole cost and expense, pay for and keep in full force and effect insurance as outlined in this section.

A. Workers' compensation insurance with limits of \$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 Rocklin Educational Excellence Foundation 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 or Comprehensive General Liability insurance covering bodily injury and property damage utilizing an occurrence policy form, in an amount no less than \$2,000,000.00 combined single limit for each occurrence. Said insurance shall include, but not be limited to: Premises and operations liability, independent contractors liability, and personal injury liability.

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

D. 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 Rocklin Unified School District stating date of cancellation or reduction. Date of cancellation or reduction may not be less than thirty (30) calendar days after date of mailing notice;"

(2) 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;

(3) 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.)

(4) 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.

(5) 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.

(6) 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.

(7) Policy Obligations

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

10. DISPUTE RESOLUTION. The District and REEF 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 REEF 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 REEF 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 REEF 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. REEF 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.

11. 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.

12. TERM AND TERMINATION. This Agreement shall take effect immediately upon its full adoption by REEF's governing board and the District's governing board. This Agreement shall remain in effect for 10 years from the date of its adoption as provided for above and may be renewed with the mutual consent of both the District and REEF for three subsequent 10 year terms.

This Agreement may be terminated by the District or REEF at any time upon ninety (90) days written notice. Upon termination, REEF 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 REEF during the term of this Agreement.

Any failure by REEF to fully maintain insurance as required by Section 9 above shall constitute a material breach of the Agreement and the District shall be entitled to immediately terminate the Agreement.

13. PORTABLE CLASSROOMS. The District and REEF acknowledge that REEF seeks to obtain title to thirteen (13) Portable Classrooms on eleven (11) school sites from the City of Rocklin as referred to above. During the term of this Agreement, REEF shall be permitted to maintain such Portable Classrooms at the various District sites upon which they are presently located. Custodial services, maintenance and utilities for such Portable Classrooms shall be as provided for at Sections 3, 4 and 7 above.

District and REEF have signed this Agreement on the dates set forth below:

District:

REEF:

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

Rocklin Educational Excellence Foundation,
a 501(c)(3) nonprofit corporation, organized and
existing under the laws of the State of California

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____