



STUDENT INVESTMENT ACCOUNT AGREEMENT

NORTH CLACKAMAS SCHOOL DISTRICT

MILWAUKIE ACADEMY OF THE ARTS

AUTHORITY

Pursuant to the “Student Success Act”, codified at 2019 Oregon Laws Chapter 122 and as amended from time to time (the “Act”). North Clackamas School District (the “District”) is authorized to distribute funding from District’s allocation of the Student Investment Account as described in Section 10, subsection 4 of the Act.

PURPOSE

The purpose of the programs under which this Grant is issued is to Milwaukie Academy of the Arts (the “Grantee”) funding to meet students’ mental or behavioral health needs and increase academic achievement for students, including reducing academic disparities for students that are economically disadvantaged; from racial or ethnic groups that have historically experienced academic disparities; with disabilities; who are English language learners; who are foster children; who are homeless; and any others as determined by the State Board of Education.

EFFECTIVE DATE AND DURATION

When all Parties have executed this Grant, and all necessary approvals have been obtained (the “Executed Date”), this Grant shall be effective and have a Grant funding start date that is the same as the District’s effective date with the Oregon Department of Education (the “Effective Date”), and, unless terminated earlier in accordance with its terms, shall expire on the same date as the District’s agreement with the Oregon Department of Education (the “Expiration Date”).

GRANT EXCHANGE OF SERVICES

Exchange of Services.

- District will retain all Student Investment Account funds generated by students enrolled at Milwaukie Academy of the Arts.
- District will provide access for students, families and staff associated with Milwaukie Academy of the Arts to all activities and services supported financially by Student Investment Account Funds in accordance with what is provided for students, families and staff at Milwaukie High School.
- District will complete all applications for funds, financial accounting of funds and



reporting required by the Oregon Department of Education related to Student Investment Account funds on behalf of Milwaukie Academy of the Arts.

REPRESENTATIONS AND WARRANTIES

Organization/Authority. Grantee represents and warrants to District that:

Grantee is an Oregon Nonprofit Corporation duly organized and validly existing under the laws of the State of Oregon, is eligible to receive the Grant Funds and has full power, authority and legal right to make this Grant and to incur and perform its obligations hereunder;

The making and performance by Grantee of this Grant (a) have been duly authorized by Grantee, (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Grantee's Articles of Incorporation or Bylaws; and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Grantee is a party or by which Grantee or any of its properties may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Grantee of this Grant, other than those that have already been obtained;

This Grant has been duly executed and delivered by Grantee and constitutes a legal, valid and binding obligation of Grantee enforceable in accordance with its terms;

Grantee is, and throughout the Performance Period will be, in compliance with its charter agreement and all Oregon laws applicable to charter schools operating in the State of Oregon including, without limitation, ORS 338.035; The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations or warranties provided by Grantee.

GOVERNING LAW, CONSENT TO JURISDICTION

This Grant shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between District or any other agency or department of the State of Oregon, or both, and Grantee that arises from or relates to this Grant shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court. Grantee, BY EXECUTION OF THIS GRANT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

PERFORMANCE TARGETS

Grantee will identify longitudinal performance growth targets (the “Targets”) in accordance to the guidance published by the Oregon Department of Education. Grantee shall use the same Targets as the District’s Targets in each Target for which students receive services from the District and has accountability data. In addition to those Targets required by the Act, Grantee may identify local Targets.

INDEMNIFICATION

Grantee shall defend, save, hold harmless, and indemnify the District and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever, including attorney’s fees, resulting from, arising out of, or relating to the activities of Grantee or its officers, employees, subcontractors, or agents under this Grant (each of the foregoing individually or collectively a “Claim” for purposes of this section).

Limitation. Except as provided in this Section, neither Party will be liable for incidental, consequential, or other direct damages arising out of or related to this Grant, regardless of whether the damages or other liability is based in contract, tort (including negligence), strict liability, product liability or otherwise. Neither party will be liable for any damages of any sort arising solely from the termination of this Grant in accordance with its terms.

DEFAULT

Grantee. Grantee will be in default under this Grant upon the occurrence of any of the following events:

- Grantee fails to perform, observe or discharge any of its financial accounting or reporting requirements under this Grant.
- Grantee uses or expends Grant Funds for any purpose other than that defined in this Grant.

District. District will be in default under this Grant if District fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Grant.

REMEDIES

District Remedies. In the event Grantee is in default, District may, at its option, pursue any or all of the remedies available to it under this Grant and at law or in equity, including, but not limited to (a) termination of this Grant, (b) reducing or withholding payment for Project activities that Grantee has failed to complete according to the Act, (c) requiring Grantee to complete, at Grantee’s expense, additional activities necessary to satisfy its obligations or meet performance standards under this Grant, (d) withholding payment of State School Funds, (e) exercise of its right of recovery of overpayments under this agreement or setoff, or both, or (g)



pursue termination of the charter contract as per ORS 338.105. These remedies are cumulative to the extent the remedies are not inconsistent, and District may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

Grantee Remedies. In the event District is in default and whether or not Grantee elects to exercise its right to terminate this Grant, or in the event District terminates this Grant, Grantee's remedy may be exercised through any dispute provisions in this agreement or in the current executed charter contract. If previous amounts paid to Grantee exceed the amount due to Grantee, Grantee shall promptly pay any excess to District.

LIMITATION OF LIABILITY

EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTION 11, NEITHER PARTY WILL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS GRANT, REGARDLESS OF WHETHER THE LIABILITY CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE. NEITHER PARTY WILL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS GRANT IN ACCORDANCE WITH ITS TERMS.

TERMINATION

Mutual. This Grant may be terminated at any time by mutual written consent of the Parties.

By District. District may terminate this Grant as follows:

- Upon 30 calendar days advance written notice to Grantee;
- Immediately upon written notice to Grantee, if District fails to receive funding, or allocations, limitations or other expenditure authority at levels sufficient in District's reasonable administrative discretion, to perform its obligations under this Grant;
- Immediately upon written notice to Grantee, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the District's performance under this Grant is prohibited or District is prohibited from paying for such performance from the planned funding source;
- Immediately upon written notice to Grantee, if Grantee is in default under this Grant and such default remains uncured 30 calendar days after written notice thereof to Grantee; or
- As otherwise expressly provided in this Grant.

By Grantee. Grantee may terminate this Grant as follows:

- Upon 30 calendar days advance written notice to District;
- Immediately upon written notice to District, if District is in default under this Grant and such default remains uncured 30 calendar days after written notice thereof to District; or
- As otherwise expressly provided in this Grant.



Cease Activities. Upon receiving a notice of termination of this Grant, Grantee will immediately cease all activities under this Grant, unless District expressly directs otherwise in such notice. Upon termination, Grantee will deliver to District all documents, information, and reports related to the Grant.

INSURANCE

Grantee shall maintain insurance set forth in the charter contract and any necessary insurance to cover activities related to the Project.

NONAPPROPRIATION

District's obligation to pay any amounts and otherwise perform its duties under this Grant is conditioned upon District receiving funding, appropriations, limitations, allocations, or other expenditure authority sufficient to allow District, in the exercise of its reasonable administrative discretion, to meet its obligations under this Grant.

AMENDMENTS

The terms of this Grant may not be altered, modified, supplemented or otherwise amended, except by written agreement of the Parties.

NOTICE

Except as otherwise expressly provided in this Grant, any notices to be given relating to this Grant must be given in writing by facsimile, email, personal delivery, or postage prepaid mail, to the school district's superintendent or charter school's lead administrator. Any notice so addressed and mailed becomes effective five (5) calendar days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system. Any notice given by facsimile becomes effective upon electronic confirmation of successful transmission to the designated fax number.

SEVERABILITY

The Parties agree that if any term or provision of this Grant is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Grant did not contain the particular term or provision held to be invalid.

COUNTERPARTS



This Grant may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Grant so executed constitutes an original.

COMPLIANCE WITH LAW

In connection with their activities under this Grant, the Parties shall comply with all applicable federal, state and local law.

INTENDED BENEFICIARIES

District and Grantee are the only parties to this Grant and are the only parties entitled to enforce its terms. Nothing in this Grant provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third parties unless such third parties are individually identified by name herein and expressly described as intended beneficiaries of this Grant.

TIME IS OF THE ESSENCE

Time is of the essence in Grantee's performance of the Project activities under this Grant.

MERGER, WAIVER

This Grant and all exhibits and attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Grant. No waiver or consent under this Grant binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given. EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS GRANT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

RECORDS MAINTENANCE, MUNICIPAL AUDIT, AND ACCESS

District shall maintain all financial records relating to this Grant in accordance with generally accepted accounting principles. In addition, District shall maintain any other records, books, documents, papers, plans, records of shipments and payments, and writings of District, whether in paper, electronic or other form, that are pertinent to this Grant in such a manner as to clearly document grant performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments, and writings of District, whether in paper, electronic or other form, that are pertinent to this Grant, are collectively referred to as "Records." District acknowledges and agrees that the Oregon Secretary of State's Office and their duly authorized representatives will have access to all Records to perform examinations and audits and make



excerpts and transcripts. All Funds received by District on behalf of Grantee as part of the Grant shall be accounted for separately. District shall retain and keep accessible all Records for a minimum of five (5) years, or such longer period as may be required by applicable law, following termination of this Grant, or until the conclusion of any audit, controversy or litigation arising out of or related to this Grant, whichever date is later.

HEADINGS

The headings and captions to sections of this Grant have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this Grant.

SIGNATURES

IN WITNESS WHEREOF, the Parties have executed this Grant as of the dates set forth below.

NORTH CLACKAMAS SCHOOL DISTRICT

By: Matthew Hitterback 2-4-2020
School District Representative Date

MATTHEW HITTERBACK, SUPERINTENDENT NORTH CLACKAMAS SCHOOLS
Printed Name, Title

MILWAUKIE ACADEMY OF THE ARTS

By: K Weather 2-3-20
Charter School Representative Date

Kristi Weathers, Milwaukie Academy of the Arts, Director.
Printed Name, Title

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