

OSBORN SCHOOL DISTRICT NO. 8
GOVERNING BOARD MEETING
June 1, 2023

Special Meeting

Special Meeting – 5:00 P.M.

CONSISTENT WITH THE REQUIREMENT OF A.R.S. §38-431.02, NOTICE OF THIS MEETING HAS BEEN POSTED. LOCATION OF THE MEETING IS:

*Members of the public may attend by calling the following number [1 567-316-0650](tel:15673160650)
PIN: 678 713 615# or viewing in a Google Meets meet.google.com/wgg-fsjx-xpc if you have an Osborn Google account.*

AGENDA

Agendas are available at least 24 hours prior to each meeting in the District Office at 1226 West Osborn Road, Monday through Friday between the hours of 7:30 a.m. and 4:30 p.m. One or more Board members may attend telephonically. Board members attending telephonically will be announced at the meeting. The board may vote to recess into an executive session for the purpose of obtaining legal advice from the board's attorney on any matter listed on the agenda pursuant to A.R.S. §38-431.03(A)(3). Accommodations for individuals with disabilities, including alternative format materials, sign language interpretation, assistive listening devices, or assistance with Calls to the Public are available upon 72 hours' advance notice through the Office of the Superintendent 602-707-2002. To the extent possible, additional reasonable accommodations will be made available within the time constraints of the request.

I. Call to Order

II. Action Items

A. Approval of MOU with National Institute for Excellence in Teaching

III. Adjournment

OSBORN SCHOOL DISTRICT NO. 8

June 1, 2023

Board Meeting

**Children want knowledge, challenge and recognition.
Parents want independent, passionate learners in a safe environment.
This is our mission.**

Agenda Item Number – I

Agenda Item

Call to Order

For Board: Action Discussion Information

Background –

Legal

Financial

Governing Board Goals

- Community Connectedness and Increased Enrollment
- Maximize Student Learning & Achievement from PreK to High School
- Stewardship and Boardmanship
- Equity & Excellence for Opportunity and Outcomes

Recommendation

Information Only

Moved _____ Seconded _____ P/F

OSBORN SCHOOL DISTRICT NO. 8

June 1, 2023

Board Meeting

**Children want knowledge, challenge and recognition.
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This is our mission.**

Agenda Item Number – II-A

Agenda Item

Approval of MOU with National Institute for Excellence in Teaching

For Board: Action Discussion Information

Background –

Administration is seeking Governing Board approval to enter into the grant writing process on a US Department of Education Teacher and Student Leader (TSL) Incentive Fund program grant.

Legal

Financial

Governing Board Goals

- Community Connectedness and Increased Enrollment
- Maximize Student Learning & Achievement from PreK to High School
- Stewardship and Boardmanship
- Equity & Excellence for Opportunity and Outcomes

Recommendation

Moved _____ Seconded _____ P/F

**Memorandum of Understanding between the National Institute for Excellence in Teaching and
Osborn Elementary School District #8**

This memorandum of understanding (this “*MOU*”), dated as of June 1, 2023 is made between the National Institute for Excellence in Teaching, a public benefit corporation (“*NIET*”), and Osborn School District #8 (“*Partner*” or “*District*”). *NIET* and *Partner* shall sometimes individually be referred to herein as a “*Party*,” and together shall sometimes collectively be referred to herein as the “*Parties*.”

I. RECITALS

WHEREAS, *NIET* is developing an application to The United States Department of Education in response to Funding Opportunity titled Teacher and School Leader Incentive Program (TSL).

WHEREAS, the intention of this *MOU* is to enable the *Parties* to collaborate in application planning, which includes but is not limited to cooperation in information gathering and sharing, discussions to develop technical approach, budget requirements, as well as envisioning project implementation activities and responsibilities.

NOW, THEREFORE, in consideration of the mutual promises and subject to the terms and conditions set forth herein, the parties hereto agree as follows:

II. AGREEMENT

A. *NIET* agrees to provide the following services:

- i. Be primarily responsible for final preparation and submission of grant application.
- ii. Engage with *Partner* as outlined in the grant application if awarded.

B. *Partner* agrees to provide the following services:

- i. Support *NIET* during the proposal development process through application submission, including completing the fiscal questionnaire by the deadline provided and providing information requested by *NIET* throughout the application process in a timely manner.

III. ADDITIONAL TERMS.

1. *Term of MOU*. This *MOU* shall be effective on June 1, 2023 and terminate, except as provided herein, on September 30, 2024 (the “*Term*”), unless renewed in writing for a subsequent period. *NIET* or *PARTNER* may terminate this *MOU* during the *Term* by written notice delivered to the addresses set forth beside each *Party*’s signature below 30 days in advance of such early termination. The General Terms and Conditions attached hereto shall survive termination or expiration of this *MOU*.

2. *Sovereign Immunity*. Nothing in this *MOU* shall be deemed to waive the sovereign immunity of the staff and employees of *PARTNER* and *NIET*.

3. *General Terms and Conditions*. The General Terms and Conditions, attached hereto and initialed by *PARTNER* are, by reference hereof, made part of this *MOU* and all references herein to “this *MOU*” shall be deemed to refer to this *MOU* and the General Terms and Conditions together.

4. *Entire Agreement.* This MOU and the General Terms and Conditions contain all of the agreement between the Parties with respect to the matters contained herein and no prior agreement or understanding pertaining to any such matters shall be effective for any purpose.

5. *Amendments.* This MOU may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by an instrument in writing and signed by each of the Parties.

6. *Counterparts.* This MOU may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. Electronic signatures, including electronic counterparts, shall be recognized and deemed as an original signature to this MOU.

7. *Notices.* The contact persons for notices shall be:

National Institute for Excellence in Teaching

Joshua H. Barnett, Ph.D.
Chief Executive Officer
jbarnett@niet.org
(480) 219-5384

Osborn School District #8

Michael Robert, Ed.D.
Superintendent
mrobert@osbornsd.org
(602) 707-2000

IN WITNESS WHEREOF, for adequate consideration and intending to be legally bound, the Parties hereto have caused this MOU to be executed by their duly authorized representatives

FOR AND ON BEHALF OF NIET

FOR AND ON BEHALF OF PARTNER

Joshua H. Barnett, Ph.D.
Chief Executive Officer

Name
Title

Date

Date

GENERAL TERMS AND CONDITIONS

These General Terms and Conditions (“General Terms and Conditions”) are applicable to any Services (as defined below) provided by the National Institute for Excellence in Teaching, a nonprofit, public benefit corporation (“NIET”) as retained and subscribed pursuant to the “Memorandum of Understanding” (“MOU”, and together with these General Terms and Conditions, the “Agreement”) therein as the Partner.

1. THE SERVICES

- a. Provision of the Services. Pursuant to the Statement of Work, NIET has agreed to provide Partner with services as described in the MOU (the “Services”). The Services may be provided to Partner in person or virtually by NIET personnel, by granting access to NIET’s Data Management System (the “Portal”), or as more fully set forth in the MOU. All references herein to “Partner” shall refer to Partner and its affiliates that are receiving the Services pursuant hereto.
- b. Performance Standard. NIET will perform the Services in a professional manner, using personnel having a level of skill in the area commensurate with the requirements of the Services to be performed. NIET shall use commercially reasonable efforts to maintain the timeliness of the delivery of the Services.
- c. Use of Services. Partner agrees that (i) it will not knowingly use the Services in contravention of any laws or regulations, (ii) it will use the Services in accordance with the instructions and reasonable policies established by NIET from time to time and communicated to Partner and (iii) it will use the Services only for internal purposes. Partner will not provide, directly or indirectly, any of the Services or any portion thereof to any third-party.
- d. Partner Responsible for Compliance with Laws. Partner (and not NIET) will be responsible (i) for compliance by Partner with all laws and governmental regulations affecting its employees (including labor regulations (e.g., time and attendance) and collective bargaining agreements, and (ii) for any use Partner may make of the Services to assist in complying with laws and governmental regulations, including qualifying for and obtaining grants or complying with any related audits.
- e. Web-Based Services. Partner understands that a portion of the Services supplied by NIET hereunder are delivered over the Internet and the reliability of the Internet is beyond the reasonable control of NIET. Therefore, although NIET makes reasonable efforts to ensure the accuracy and reliability of such Services, neither NIET nor any third party supplier guarantees such accuracy or reliability, and Partner acknowledges that NIET, its employees, agents, contractors, sub-contractors and other third party suppliers will not be held liable for any damages suffered or incurred by Partner or any other person or entity arising out of (a) any fault, interruption or delay in any service supplied to Partner, (b) out of any inaccuracy, error or omission in any Service supplied to Partner, (c) any loss of data, or (d) any reliance upon any Service supplied to Partner however such faults, interruptions, delays, inaccuracies, errors or omissions arise, unless due to NIET’s gross negligence or willful misconduct.

2. INTELLECTUAL PROPERTY

- a. Ownership of Proprietary Rights. All rubrics, trainings, support materials, software applications, manuals, reports, studies, and related documentation made available, directly or indirectly, by NIET to Partner, including without limitation the Portal and all manuals, reports, studies and similar material created by NIET, as part of the Services (collectively, the “NIET Products”) are the exclusive property of NIET or the third parties from whom NIET has secured the rights to such NIET Product. All rights, title and interest in or to any copyright, trademark, service mark and other proprietary right relating to the NIET Products and the related logos, product names, etc. are reserved. The use of any software included in, or supplied by NIET for use with, the NIET Products, shall be governed by the license agreement delivered with such software. Neither Partner nor any recipient shall: (i) alter or remove from any NIET Product or associated documentation any proprietary, copyright, trademark or trade secret legend, or (ii) attempt to decompile, disassemble or reverse engineer the NIET Product or other confidential and proprietary information.
- b. NIET Infringement Indemnity. NIET will defend Partner in any suit or cause of action alleging that the NIET Products, as provided by NIET and used in accordance with the terms of this Agreement, infringe upon any United States copyright, trade secret, or other proprietary right of a third party. NIET will pay damages assessed, including reasonable attorneys’ fees, against Partner in any such suit or cause of action, provided that, (i) NIET is promptly notified in writing of such a suit or cause of action, (ii) NIET controls any negotiations or defense and Partner assists NIET as reasonably required by NIET, and (iii) Partner takes all reasonable steps to mitigate any potential damages that may result. The foregoing infringement indemnity will not apply and NIET will not be liable for any damages assessed in any suit or cause of action whereby Partner is required to indemnify NIET pursuant to Section 3.c. below. If any NIET Product is held or believed to infringe on any third-party’s intellectual property rights, NIET may, in its sole discretion, (a) modify the NIET Product to be non-infringing, (b) obtain for Partner a license to continue using such NIET Product, or (c) if neither (a) nor (b) are practical, terminate this Agreement as to the infringing NIET Product and return to Partner any unearned fees paid by Partner to NIET in advance. This Section 2.b. states NIET’s entire liability and Partner’s exclusive remedies for infringement of intellectual property rights of any kind.
- c. Partner Infringement Indemnity. To the extent permitted by State law, Partner will defend NIET against, and pay damages assessed in, any suit or cause of action alleging that the NIET Products infringe upon any United States copyright, trade secret, or other proprietary right of a third party, to the extent that any such suit or cause of action results from (i) any alteration, change, modification and /or enhancement of the NIET Products made by Partner or any third party on behalf of Partner without NIET’s express permission; (ii) Partner’s use of the NIET Products in combination with any hardware, software or other materials not expressly authorized by NIET, or use of other than the most current release of the NIET Products that results in a claim or action for infringement that could have been avoided by use of the current release, (iii) use of the NIET Products after Partner has been notified that the NIET Products infringe

upon the intellectual property rights of a third party, or (iv) use by Partner of unmodified NIET Products after Partner has been informed of modifications that would avoid claims of infringement.

3. GENERAL PROVISIONS

- a. Protection of Partner Files. NIET will take reasonable precautions to prevent the loss of or alteration to Partner's data files in NIET's possession, but NIET does not undertake to guarantee against any such loss or alteration. NIET will maintain a record retention policy and may from time to time, in its sole discretion, modify or amend such policy. However, NIET is not and will not be, Partner's official record keeper. Accordingly, Partner will, to the extent it deems necessary, keep copies of all source documents of the information delivered to NIET.
- b. Confidential Information. All Confidential Information disclosed hereunder will remain the exclusive and confidential property of the disclosing party. The receiving party will not disclose the confidential information of the disclosing party and will use at least the same degree of care, discretion and diligence in protecting the Confidential Information of the disclosing party as it uses with respect to its own confidential information. The receiving party will limit access to Confidential Information to its employees and authorized agents with a need to know and will instruct such persons to keep such information confidential. Notwithstanding the foregoing, (i) NIET may use information collected in the Portal for its noncommercial research purposes and (ii) the receiving party may disclose Confidential Information to the extent necessary to comply with any law, rule, regulation or ruling applicable to it and to the extent necessary to enforce its rights under this Agreement.

4. LIMITATION OF LIABILITY

This Section 5 sets forth the full extent of NIET's liability for damages resulting from this Agreement or the Services rendered or to be rendered hereunder, regardless of the form in which such liability or claim for damages may be asserted, and sets forth the full extent of Partner's remedies. NIET and Partner acknowledge that the fees for the Services to be provided hereunder reflect the allocation of risk set forth in this Section 5.

- a. Partner Responsibility. Partner will be responsible for (i) the consequences of any instructions Partner may give to NIET, (ii) Partner's failure to use the Services in the manner prescribed by NIET, and (iii) Partner's failure to supply accurate and timely information.
- b. Errors and Omissions. NIET's sole liability to Partner or any third party for claims of any type or character arising from errors or omissions in the Services that are caused by NIET shall be to correct the affected Partner training, product, study, report or material, as the case may be. Upon the request of Partner, NIET will correct any error or omission made by NIET in connection with the Services at no additional charge to Partner.
- c. No Consequential Damages. NEITHER NIET NOR PARTNER WILL BE RESPONSIBLE FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR OTHER SIMILAR DAMAGES THAT THE OTHER PARTY MAY INCUR OR EXPERIENCE IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES, HOWEVER CAUSED AND UNDER WHATEVER THEORY OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

5. TERM AND TERMINATION

- a. Term. NIET or Partner may terminate the MOU as provided therein. The Terms of this General Terms and Conditions shall survive the termination of the MOU, as applicable.
- b. Post-Termination Services. If the parties agree to any post termination services, such as transition services, the Agreement shall continue to with respect to such Services to the extent not expressly contradicted by any such post-termination agreement.
- c. Post-Termination Data. If requested by Partner within 6 months of the termination of the MOU, NIET shall deliver Portal reports to Partner in, at NIET's election, an Excel or PDF format. Partner may request within 6 months of the termination of the MOU Portal reports in another format, or raw data, and NIET will attempt to accommodate Partner at a fee to be mutually agreed upon by the parties.

6. DISCLAIMER OF WARRANTIES

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NIET EXPRESSLY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, ACCURACY, INTEGRATION OR FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, NON-INTERRUPTION OF USE, AND FREEDOM FROM PROGRAM ERRORS WITH RESPECT TO THE SERVICES, THE NIET PRODUCTS, ANY CUSTOM PROGRAMS CREATED BY NIET OR ANY THIRD-PARTY SOFTWARE DELIVERED BY NIET.

7. GENERAL

- a. Assignment. Neither party may assign this Agreement without the prior written consent of the other.
- b. Inducement. Partner has not been induced to enter into this Agreement by any representation or warranty not set forth in this Agreement. This Agreement contains the entire agreement of the parties with respect to its subject matter. This Agreement shall not be modified except in writing and signed by NIET and Partner.
- c. Independent Contractor Status. Each party and its employees are independent contractors in relation to the other party with respect to all matters arising under this Agreement. Nothing herein shall be deemed to establish a partnership, joint venture, association, or employment relationship between the parties.
- d. Third Party Beneficiaries. Nothing in this Agreement creates, or will be deemed to create, third party beneficiaries of or under this Agreement. NIET has no obligation to any third party by virtue of this Agreement.
- e. Force Majeure. Any party hereto will be excused from performance under this Agreement for any period of time that the party is prevented from performing its obligations hereunder as a result of an act of God, war, earthquake, civil disobedience, pandemic, court

order, labor dispute, or other cause beyond the party's reasonable control.

- f. Notices. Notices sent to either party shall be effective when delivered in person, by mail, or by email to the address or email address, as the case may be, set forth in the MOU. For mail, notice shall be effective one (1) day after being sent by overnight courier, or two (2) days after being sent by first class mail postage prepaid. For email, notice shall be effective upon receipt acknowledgement from the recipient.
- g. Cancellation. This Agreement may be cancelled by either party for conflict of interest pursuant to Ariz. Rev. Stat. § 38-511, as amended.
- h. E-verify, Records and Audits. To the extent applicable under Ariz. Rev. Stat. § 41-4401, NIET warrants compliance with all federal immigration laws and regulations that relate to its employees and compliance with the E-verify requirements under Ariz. Rev. Stat. § 23-214(A).
- i. Non-appropriation. NIET acknowledges that the District is a government entity, and the contract validity is based upon the availability of public funding under its authority. In the event that public funds are unavailable and not appropriated for the performance of either's obligations under this contract, then this contract shall automatically expire without penalty to either party after written notice to of the unavailability and non-appropriation of public funds. It is expressly agreed that the District shall activate this non-appropriation provision for its convenience or to circumvent the requirements of this contact, but only as an emergency fiscal measure.
- j. Non-Discrimination. NIET agrees to comply with all provisions of applicable federal, state and local laws relating to non-discrimination, equal employment opportunity, the Americans with Disabilities Act, and Arizona Governor's Executive Order 2009-09 (superseding Executive Order 99-4) (dated January 29, 1999), as may be amended from time to time.
- k. No Israel Boycott. To the extent applicable, NIET agrees that it is not currently engaged in, and agrees that for the duration of the Agreement it will not engage in, a boycott of Israel, as that term is defined in A.R.S. §35-393.
- l. No Forced Labor of Ethnic Uyghurs. To the extent A.R.S. § 35-394 is applicable, NIET hereby certifies it does not currently, and for the duration of this Contract shall not use: (A) the forced labor of ethnic Uyghurs in the People's Republic of China, (B) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China, and (C) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

Executed in conjunction with, and hereby made part of, that certain MOU.

Partner Initial _____

Dated _____