

STATE OF OREGON GRANT AGREEMENT

Grant No.

This Grant Agreement (“Grant” or “Grant Agreement”) is between the State of Oregon acting by and through its Early Learning Division, Department of Education (“Agency”) and (“Grantee”), each a “Party” and, together, the “Parties.”

SECTION 1: AUTHORITY

Pursuant to Oregon Revised Statute 329.175, Agency is authorized to enter into a grant agreement and provide funding for the purposes described in this Grant.

SECTION 2: GRANT DOCUMENTS

This Grant consists of the following documents, which are incorporated by this reference and listed in descending order of precedence:

- This Grant less all exhibits
- Exhibit A (Project Description and Budget)
- Exhibit B (Insurance)
- Exhibit C (Equity Goals and Objectives)
- Exhibit D (Application, incorporated by reference)

SECTION 3: EFFECTIVE DATE AND DURATION

This Grant shall become effective on the earlier of July 1, 2020 or the date when this Grant Agreement is fully executed. Unless otherwise terminated or extended, this Grant Agreement expires on the earlier of September 30, 2021 or after all deliverables have been submitted by Grantee and approved by the Agency and final payment is made. The “Performance Period” is from July 1, 2020 through June 30, 2021 and is the period during which services under this grant must be performed. Services performed outside of the “Performance Period” are not eligible for disbursement.

SECTION 4: GRANT MANAGERS

4.1 Agency’s Grant Manager is:

Teresa Waite, Grant Manager
Early Learning Division
700 Summer Street NE, Suite 350
Salem, OR 97301
Phone: 503-934-1891 | Cell: 503-798-7698 | Email: opk@state.or.us

4.2 Grantee's Grant Manager is:

[name and title]
[organization legal name]
[organization address]
[organization city, state, zip]
[phone (xxx)-xxx-xxxx]
[email address]

4.3 A Party may designate a new Grant Manager by written notice to the other Party.

SECTION 5: PROJECT ACTIVITIES

Grantee must perform the project activities set forth in Exhibit A (the "Project"), attached hereto and incorporated in this Grant by this reference, for the "Performance Period".

SECTION 6: GRANT FUNDS

In accordance with the terms and conditions of this Grant, Agency will provide Grantee up to \$ _____ ("Grant Funds") for the Project. Agency will pay the Grant Funds from monies available through its State of Oregon General Fund and Fund for Student Success appropriations (the "Funds").

Agency may by written notice to Grantee, temporarily cease funding and require Grantee to stop all, or any part, of the Project dependent upon Grant Funds for a period of up to 180 days after the date of the notice, if Agency has or reasonably projects that the Funds will be insufficient to disburse the full amount of the Grant Funds. Upon receipt of the notice, Grantee must immediately cease all Project activities dependent on Grant Funds, or if that is impossible, must take all necessary steps to minimize the Project activities allocable to Grant Funds. If Agency subsequently projects that it will have sufficient Funds, Agency will notify Grantee that it may resume activities. If sufficient Funds do not become available, Grantee and Agency will work together to amend this Grant to revise the amount of Grant Funds and Project activities to reflect the available Funds. If sufficient Funds do not become available or an amendment is not agreed to within a period of 180 days after issuance of the notice, Agency will either (i) cancel or modify the Project cessation order by a supplemental written notice or (ii) terminate this Agreement as permitted by either the termination at Agency's discretion or for cause provisions of this Agreement.

SECTION 7: DISBURSEMENT GENERALLY

7.1 Disbursement.

7.1.1 Subject to the availability of sufficient Funds, Agency will disburse Grant Funds to Grantee for the allowable Project activities described in Exhibit A that are undertaken during the Performance Period.

7.1.2 Upon execution of this Grant, Agency may disburse the amount of Grant Funds

requested by Grantee using Agency's Electronic Grants Management System ("EGMS"). Agency will not disburse the entire amount of Grant Funds in one disbursement.

- 7.1.3** Grantee may request disbursement of Grant Funds prior to incurring expenditures that will be paid with Grant Funds for the first quarter of the Performance Period (July through September) and monthly thereafter. Grantee may expend Grant Funds only for costs that are reasonable, necessary and directly related to the Project ("Allowable Costs"). By submitting a claim, Grantee attests that the costs for which it requests disbursement are Allowable Costs.
- 7.1.4** After each disbursement of Grant Funds, Agency will make subsequent disbursements to Grantee only after Grantee has submitted the reports required under Exhibit A, Section IV. Grantee must accurately and completely account for and document its expenditures in sufficient detail to permit Agency to verify that Grantee spent its Grant Funds only on Allowable Costs.
- 7.1.5** If applicable, Agency may withhold disbursements of Grant Funds if Grantee reports "Under-enrollment" or "Un-opened Classrooms" in the reports required under Exhibit A, Section IV. The amount withheld due to Grantee's Under-enrollment or Un-opened Classrooms may increase based on the length of time and degree of Grantee's Under-enrollment or Un-opened Classrooms. The process for managing Under-enrollment and Un-opened Classrooms is described in Agency's Pre-Kindergarten Program Grant Manual for Program year 2020-21 Version 0.1 (July 2020) (together with any later version of the "Program Manual").
- 7.1.6** For purposes of this Grant, "Under-enrollment" means the percentage by which the number of children and families actually served by Grantee in a reporting period is less than the number of children and families set forth in Exhibit A, Section III – budget table, as the Target Number of Children/Slots.
- 7.1.7** For purposes of this Grant, "Un-opened Classrooms" means the number of planned classrooms compared to the number of opened classrooms reported by Grantee through the scheduled monthly Site and Service Workbook report.
- 7.1.8** Grantee must repay to Agency any overpayment of Grant Funds in excess of Allowable Costs for the Project as provided in Section 17 of this Grant Agreement.

7.2 Conditions Precedent to Disbursement. Agency's obligation to disburse Grant Funds to Grantee under this Grant is subject to satisfaction of each of the following conditions precedent:

- 7.2.1** Agency has received sufficient funding, appropriations, expenditure limitation, allotments or other necessary expenditure authorizations to allow Agency, in the exercise of its reasonable administrative discretion, to make the disbursement from the Funds (nothing in this Grant may be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law limiting the activities, liabilities or monetary obligations of Agency);
- 7.2.2** No default as described in Section 15 has occurred;

7.2.3 Grantee's representations and warranties set forth in Section 8 are true and correct on the date of each disbursement with the same effect as though made on the date of this Grant Agreement; and

7.2.4 Grantee is in compliance with the reporting requirements identified in Exhibit A of this Grant Agreement.

7.3 No Duplicate Payment. Grantee may use other moneys in addition to the Grant Funds to carry out the Project; provided, however, the Grantee may not credit or pay any Grant Funds for Project costs that are paid for with other moneys and would result in duplicate funding. Grantee must assure that Grant Funds are used to supplement and not supplant public moneys received from any other source.

SECTION 8: REPRESENTATIONS, WARRANTIES AND COVENANTS

8.1 Organization/Authority. Grantee represents and warrants to Agency that:

8.1.1 Grantee is duly organized and validly existing and has all necessary rights, powers and authority under any organizational documents and under Oregon law to (a) execute this Grant, (b) incur and perform its obligations under this Grant, and (c) receive financing, including the Grant Funds, for the Project.

8.1.2 Grantee will comply with all applicable federal, state and local laws pertaining to this Grant, including without limitation the State of Oregon, Office of Child Care requirements set forth in ORS chapter 329A, the fingerprinting requirements of the State set forth in ORS 181A.200, any administrative rules promulgated to carry out those statutes, and any applicable guidance published by Agency, the Oregon Health Authority or another state agency pursuant to Executive Orders issued by the Governor to address the COVID-19 State of Emergency.

8.1.3 Before performing any Project activities, any employee or subcontractor of Grantee who has or is expected to have direct unsupervised contact with children while performing Project activities must be enrolled in the Office of Child Care, Central Background Registry pursuant to OAR 414-061-0000 through 0120, available at <https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=1901>.

8.1.4 Grantee has all necessary licenses, certificates or other authorizations from regulatory authorities necessary to perform its obligations under this Grant. Grantee will notify the Agency within five (5) business days of receiving any licensing, regulatory or compliance violations.

SECTION 9: CONFIDENTIAL INFORMATION

9.1 Maintain confidentiality. Grantee acknowledges it and its employees or agents may, in the course of performing its responsibilities, be exposed to or acquire information that is: (i) confidential to Agency or Project participants or (ii) the disclosure of which is restricted under federal or state law, including without limitation: (a) personal information, as that term is used in ORS 646A.602(12) and (b) social security numbers

(“Confidential Information”). Grantee agrees to hold Confidential Information as required by any applicable law and in all cases in strict confidence, using at least the same degree of care Grantee uses in maintaining the confidentiality of its own confidential information.

- 9.2 Subgrants/Contracts.** Grantee must require any subgrantees, contractors or subcontractors under this Grant who are exposed to or acquire Confidential Information to treat and maintain such information in the same manner as is required of Grantee under subsections 9.1 of this Section.

SECTION 10: INDEMNITY/LIABILITY

- 10.1 Indemnity.** Grantee must defend, hold harmless, and indemnify the State of Oregon and Agency and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever, including attorneys’ fees, resulting from, arising out of, or relating to the activities of Grantee or its officers, employees, subgrantees, contractors, subcontractors, or agents under this Grant (each of the foregoing individually or collectively a “Claim” for purposes of this Section). If legal limitations apply to Grantee’s authority to indemnify, this indemnification must be for the maximum amount of funds available for expenditure, including any available contingency funds, insurance, funds available under ORS 30.260 to 30.300 or other available non-appropriated funds.
- 10.2 Defense.** Grantee may have control of the defense and settlement of any Claim subject to this Section. But neither Grantee nor any attorney engaged by Grantee may defend the Claim in the name of the State of Oregon, nor purport to act as legal representative of or counsel for the State of Oregon or any of its agencies, without first receiving consent from the Oregon Attorney General; or may Grantee settle any Claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement.
- 10.3 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.

SECTION 11: INSURANCE

- 11.1 Private Insurance.** If Grantee is a private entity, or if any contractors, subcontractors, or subgrantees used to carry out the Project are private entities, Grantee and any private contractors, subcontractors or subgrantees must obtain and maintain insurance in the types and amounts indicated in Exhibit B.
- 11.2 Public Body Insurance.** If Grantee is a “public body” as defined in ORS 30.260, Grantee agrees to insure any obligations that may arise for Grantee under this Grant, including any indemnity obligations, through (i) the purchase of insurance as indicated in Exhibit B or (ii) the use of self-insurance or assessments paid under ORS 30.282 that is substantially similar to the types and amounts of insurance coverage indicated on

Exhibit B, or (iii) a combination of any or all of the foregoing.

- 11.3 Real Property.** If the Project includes the remodel or repair of real property or improvements to real property, Grantee must insure the real property and improvements against liability and risk of direct physical loss, damage or destruction at least to the extent that similar insurance is customarily carried by entities constructing, operating and maintaining similar property or facilities.

SECTION 12: GRANTEE SUBAGREEMENTS AND PROCUREMENTS

- 12.1** Grantee may enter into agreements with contractors or subcontractors (collectively, "subagreements") for performance of specific services for the Project only after approval by the Agency's Grant Manager.
- 12.1.1** Grantee may not subcontract for the delivery of the Project in its entirety, but may subcontract for specific services consistent with the program structure described in the Head Start Program Performance Standards at <https://eclkc.ohs.acf.hhs.gov/policy/45-cfr-chap-xiii/1302-20-determining-program-structure>.
- 12.1.2** All subagreements must be in writing executed by Grantee and must incorporate and pass through all of the applicable requirements of this Grant Agreement to the contractor or subcontractor. Use of a subagreement does not relieve Grantee of its responsibilities under this Grant Agreement.
- 12.1.3** Grantee agrees to provide Agency with a copy of any signed subagreement upon request by Agency. Any substantial breach of a term or condition of a subagreement relating to Grant Funds must be reported by Grantee to Agency within ten (10) days of its discovery by Grantee.
- 12.1.4** Grantee must purchase any equipment, materials, or services for the Project under procedures that comply with Oregon law, including any applicable provisions of the Oregon Public Contracting Code and its implementing rules.
- 12.1.5** Grantee shall not award, enter into, or otherwise participate in any subagreement if a conflict of interest, real or apparent, would arise. Such a conflict arises when any of the following would be a party to the subagreement:
- 12.1.5.1** An employee, officer, or agent of the Grantee ("Related Person");
 - 12.1.5.2** A Related Person's spouse, domestic partner, parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law;
 - 12.1.5.3** The parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the spouse or domestic partner of a Related Person;
 - 12.1.5.4** Any individual for whom a Related Person has a legal support obligation; or

- 12.1.5.5 An organization in which any of the individuals identified above is a partner, member, or employee or from which the individual otherwise receives a financial benefit.

SECTION 13: RECORDS MAINTENANCE AND ACCESS

- 13.1 Grantee must maintain all financial records relating to this Grant in accordance with generally accepted accounting principles. In addition, Grantee must maintain any other records, whether in paper, electronic or other form, pertinent to this Grant in such a manner as to clearly document Grantee’s performance. All financial records and other records, whether in paper, electronic or other form, that are pertinent to this Grant, are collectively referred to as “Records.” Grantee acknowledges and agrees that Agency and the Oregon Secretary of State’s Office and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. Grantee must retain and keep accessible all Records for a minimum of six (6) 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.

SECTION 14: GOVERNING LAW, JURISDICTION

- 14.1 This Grant is 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 Agency or any other agency or department of the State of Oregon, or both, and Grantee that arises from or relates to this Grant must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it will be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event may 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 PERSONAL JURISDICTION OF SUCH COURTS.

INSRERT 14.2 FOR TRIBES ONLY – DELETE OTHERWISE

- 14.2 Grantee hereby agrees to a limited waiver of its sovereign immunity solely with respect to the enforcement of this Grant and its provisions. The waiver shall be effective only during the term of this Grant, provided that the waiver shall remain in force for such time after termination of this Grant as may be necessary to resolve the rights and obligations of the Parties arising out of the Grant. Grantee further waives and agrees not to assert any doctrine requiring exhaustion of Tribal Court or administrative remedies prior to proceeding with any court proceeding. As soon as practicable after execution of this Grant, Grantee shall provide a resolution of its governing body certifying the waiver of this Section is

authorized and has been made in accordance with Grantee's governing laws and, if applicable, by-laws.

SECTION 15: DEFAULT

- 15.1 Grantee.** Grantee will be in default under this Grant upon the occurrence of any of the following events:
- 15.1.1** Grantee fails to use the Grant Funds for the intended purpose described in Exhibit A or otherwise fails to perform, observe or discharge any of its covenants, agreements or obligations under this Grant;
 - 15.1.2** Any representation, warranty or statement made by Grantee in this Grant or in any documents or reports relied upon by Agency to measure the Project, the expenditure of Grant Funds or the performance by Grantee is untrue in any material respect when made;
 - 15.1.3** A petition, proceeding or case is filed by or against Grantee under any federal or state bankruptcy, insolvency, receivership or other law relating to reorganization, liquidation, dissolution, winding-up or adjustment of debts; in the case of a petition filed against Grantee, Grantee acquiesces to such petition or such petition is not dismissed within 20 calendar days after such filing, or such dismissal is not final or is subject to appeal; or Grantee becomes insolvent or admits its inability to pay its debts as they become due, or Grantee makes an assignment for the benefit of its creditors.
- 15.2 Agency.** Agency will be in default under this Grant if, after 15 days written notice specifying the nature of the default, Agency fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Grant; provided, however, Agency will not be in default if Agency fails to disburse Grant funds because there is insufficient expenditure authority for, or moneys available from, the Funds.

SECTION 16: REMEDIES

- 16.1 Agency Remedies.** In the event Grantee is in default under Section 15.1, Agency 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 or materials that are deficient or Grantee has failed to complete by any scheduled deadlines in accord with Section 17, (c) requiring Grantee to complete, at Grantee's expense, additional activities necessary to satisfy its obligations or meet performance standards under this Grant, (d) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, (e) exercise of its right of recovery of overpayments under Section 17 of this Grant or setoff, or both, or (f) declaring Grantee ineligible for the receipt of future awards from Agency. These remedies are cumulative to the extent the remedies are not inconsistent, and

Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

- 16.2 Grantee Remedies.** In the event Agency is in default under Section 15.2 and whether or not Grantee elects to terminate this Grant, Grantee's sole monetary remedy will be, within any limits set forth in this Grant, disbursement for Project activities and authorized expenses incurred, less any claims Agency has against Grantee. In no event will Agency be liable to Grantee for any expenses related to termination of this Grant or for anticipated profits.

SECTION 17: WITHHOLDING FUNDS, RECOVERY

Agency may withhold from disbursements of Grant Funds due to Grantee, or Grantee must return to Agency within 30 days of Agency's written demand:

- 17.1** Any amount due to Agency for Under-enrollment by Grantee;
- 17.2** Any Grant Funds paid to Grantee under this Grant, or payments made under any other agreement between Agency and Grantee, that exceed the amount to which Grantee is entitled;
- 17.3** Any Grant Funds received by Grantee that remain unexpended or contractually committed for payment of the Project at the end of the Performance Period;
- 17.4** Any Grant Funds determined by Agency to be spent for purposes other than Allowable Costs; or
- 17.5** Any Grant Funds requested by Grantee as payment for deficient activities or materials.

SECTION 18: TERMINATION

- 18.1 Mutual.** This Grant may be terminated at any time by mutual written consent of the Parties.
- 18.2 By Agency.** Agency may terminate this Grant as follows:
- 18.2.1** At Agency's discretion, upon 30 days advance written notice to Grantee;
- 18.2.2** Immediately upon written notice to Grantee, if Agency fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in Agency's reasonable administrative discretion, to perform its obligations under this Grant;
- 18.2.3** Immediately upon written notice to Grantee, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Agency's performance under this Grant is prohibited or Agency is prohibited from funding the Grant from the Funds; or
- 18.2.4** Immediately upon written notice to Grantee, if Grantee is in default under this

Grant and such default remains uncured 15 days after written notice thereof to Grantee.

18.3 By Grantee. Grantee may terminate this Grant as follows:

18.3.1 If Grantee is a governmental entity, immediately upon written notice to Agency, if Grantee fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to perform its obligations under this Grant.

18.3.2 If Grantee is a governmental entity, immediately upon written notice to Agency, if applicable laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project activities contemplated under this Grant are prohibited by law or Grantee is prohibited from paying for the Project from the Grant Funds or other planned Project funding; or

18.3.3 Immediately upon written notice to Agency, if Agency is in default under this Grant and such default remains uncured 15 days after written notice thereof to Agency.

18.4 Cease Activities. Upon receiving a notice of termination of this Grant, Grantee must immediately cease all activities under this Grant, unless Agency expressly directs otherwise in such notice. Upon termination, Grantee must deliver to Agency all materials or other property that are or would be required to be provided to Agency under this Grant or that are needed to complete the Project activities that would have been performed by Grantee.

SECTION 19: MISCELLANEOUS

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

19.2 Notice. Except as otherwise expressly provided in this Grant, any notices to be given under this Grant must be given in writing by email, personal delivery, or by mail, to a Party's Grant Manager at the physical address or email address set forth in this Grant, or to such other addresses as either Party may indicate pursuant to this Section. Any notice so addressed and mailed becomes effective five (5) 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.

19.3 Survival. All rights and obligations of the Parties under this Grant will cease upon termination of this Grant, other than the rights and obligations that by their express terms survive termination of this Grant, including without limitation records retention, confidentiality restrictions, indemnities, governing law, and remedies. Termination of this Grant will not prejudice any rights or obligations accrued to the Parties under this Grant prior to termination.

- 19.4 Severability.** The Parties agree if any 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 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 provision held to be invalid.
- 19.5 Counterparts.** This Grant may be executed in several counterparts, all of which when taken together constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Grant so executed constitutes an original.
- 19.6 No Intended Beneficiaries.** Agency and Grantee are the only parties to this Grant and are the only parties entitled to enforce its terms. There are no other parties that are intended beneficiaries of this Grant.
- 19.7 Assignment and Successors.** Grantee may not assign or transfer its interest in this Grant without the prior written consent of Agency and any attempt by Grantee to assign or transfer its interest in this Grant without such consent will be void and of no force or effect. Agency's consent to Grantee's assignment or transfer of its interest in this Grant will not relieve Grantee of any of its duties or obligations under this Grant. The provisions of this Grant will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.
- 19.8 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.
- 19.9 Merger, Waiver.** This Grant and all exhibits and attachments 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.

SECTION 20: SIGNATURES

EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES IT HAS READ THIS GRANT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

IN WITNESS WHEREOF, the Parties have executed this Grant as of the dates set forth below. The Parties agree that by the exchange of this Agreement electronically, each has agreed to the use of electronic means. By inserting an electronic signature below, each authorized representative acknowledges that it is their signature, that each intends to execute this Agreement and that their electronic signature should be given full force and effect to create a valid and legally binding contract.

STATE OF OREGON acting by and through its Department of Education

By:

By:

Printed Name, Title

Printed Name, Title

Date:

Date:

Approved for Legal Sufficiency in accordance with ORS 291.047

By: Cynthia Byrnes, via email

8-19-2020

Cynthia Byrnes, Assistant Attorney General

Date:

**EXHIBIT A
PROJECT DESCRIPTION AND BUDGET**

SECTION I – BACKGROUND

The Oregon Prekindergarten Program (OPK) serves children prenatal to five years old who are not yet eligible for kindergarten or whose family circumstances qualify them for the federal Head Start program. The OPK provides all program components as specified in the federal Head Start Program Performance Standards (45 CFR Chapter XIII).

SECTION II – DEFINITIONS

Capitalized terms used in this Agreement shall have the meanings given in OAR 414-460-0000 unless another meaning is specifically provided in this Agreement.

“Early Intervention/Early Childhood Special Education (EI/ECSE)” means: EI - Individually designed services for children birth to three and support for parents to enhance children's physical, cognitive, communication, social emotional and/or adaptive development; and ECSE - Specially designed instruction for children ages 3 to the age of public school eligibility in the areas of communication, cognitive, social/emotional, adaptive and others.

“Early Learning Hub or ELH” means the local coordinating entity designated by and contracted to the Division for early learning system programs and services.

“Extended Duration” means lengthening the hours of services that a grantee offers individual children and their families, with the goal of increasing children's learning and developmental outcomes by providing more hours of high-quality learning experiences, including providing at least 1,020 hours of planned class operations over the course of a minimum of eight months per year, or providing fewer hours to align with local public schools schedules where such alignment is necessary for partnerships in service delivery.

“Service Area” means the geographic area identified in an approved request for grant funds within which a grantee provides Head Start services.

“Service Area Coordination Agreement” means the required assurance between Grantee and others showing partnerships or coordination with other early childhood and education programs and confirming the requested funding will not supplant, duplicate or overlap existing services.

“Slots” means the number of children Grantee is funded to serve at any one time. One child equals one slot.

SECTION III –PROJECT ACTIVITIES AND BUDGET

A. Grantee must comply with all applicable program requirements pursuant to OAR 414-460-0005 through OAR 414-460-0075 and the Program Manual available at <https://oregonearlylearning.com/head-start-opk> and adhere to all federal, state and local laws, ordinances, rules and regulations, including Federal Head Start program guidelines relating to provision of OPK services throughout the Performance Period consistent with the Service Area Coordination Agreement.

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- B. Grantee may serve only eligible children and must provide all program components as specified in Federal Head Start program guidelines.
- C. Grantee shall ensure that staff qualifications and training, facilities and equipment, transportation and fiscal management meet all federal and state requirements, including the program requirements set forth in the Program Manual.
- D. Grantee shall coordinate with other OPK program providers and with federal Head Start programs to ensure efficient delivery of services and prevent overlap.
- E. Grantee shall provide developmentally appropriate educational services which are consistent with the unique physical, social, emotional, and cognitive needs of young children.
- F. Grantee shall ensure that its program provides comprehensive services to participating children, including, without limitation, educational services, health services (including medical, dental, nutrition, and mental health), parent involvement, and social services to families. Parents shall be given the opportunity to be involved in every aspect of the planning and implementation of services.
- G. Grantee may use the Grant Funds only for Allowable Costs in amounts not to exceed the cost limits set forth in the designated budgets below.
- H. Grantee must ensure that all staff providing services to children and families under this Grant Agreement complete equity training provided by the Agency by May 31, 2021.
- I. Grantee must plan, coordinate and collaborate with local Early Learning Hub(s) for:
 - 1. Developmental screening of children;
 - 2. Providing services to children living in poverty;
 - 3. Outreach to underserved populations;
 - 4. Planning and implementing a coordinated enrollment process; and
 - 5. Developing a system for referrals and shared service delivery.
- J. Grantee must maintain a governing board and policy council with structure and powers consistent with Federal Head Start Program Guidelines.
- K. Grantee must comply with the state monitoring process and allow Agency access to and review of records, including, but not limited to CLASS™ observations. This includes providing information to the Agency, as requested, and ensuring staff are available to meet with and respond to monitors' requests.
- L. Grantee will implement Teaching Strategies (TS) GOLD™ formative assessment and use CLASS™ for program improvement as outlined in Agency's program guidance.

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- M. Grantees must follow salary guidelines established by the Early Learning Council; specific requirements are contained in Agency’s program guidance.
- N. Grantee will maintain a current memorandum of understanding (MOU) or agreement with the local Early Intervention/Early Childhood Special Education (EI/ECSE) sub-grantee with procedures for:
 1. Referrals for evaluations, Individual Family Service Plan (IFSP) meetings, and placement decisions.
 2. Initiating changes in a child’s IFSP, placement, program or services;
 3. Implementing EI/ECSE services as described in each child’s IFSP; and,
 4. Notifying any sub-grantees of any written complaint concerning EI/ECSE programs and services provided by the sub-grantee or contractor.
- O. Grantee will maintain current Service Area Coordination Agreements, signed by each existing Head Start grant recipient for each county funded by this Grant. Service Areas are to be clearly defined by geographic boundaries.
- P. If Grantee implements Extended Duration, Grantee must provide 1,020 hours of planned class operations over the course of a minimum of eight months per year. However, Grantee may provide fewer hours if necessary to align with the schedules of local public schools who are part of a partnership in delivering program services.
- Q. Grantee must request Agency’s and if joint-funded, the Federal Office of Head Start’s, approval prior to making any changes to Grantee’s OPK program services or budget.

Budget

Service Model	Prenatal to Three		Total Prenatal to Three
	Target # of Children/Slots	Amount Per Slot	
Home Based			
Center Based			
Family Child Care			
Locally Designed Option			
Grand Total			

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Service Model	Three to Five Part Day Duration		Three to Five Extended Duration		Enhancement Amount Per Slot	Total Three to Five
	Target # of Children/ Slots	Base Amount Per Slot	Target # of Children/ Slots	Base Amount Per Slot		
Center Based						
Family Child Care						
Locally Designed Option						
Grand Total						

Startup	Total
Grand Total	

- R. Grantee must submit a detailed budget to the Agency using the Agency-provided template within 60 days of executing the Grant and report its budgeted expenditures to ELD quarterly (Quarterly Status Report) as set forth in the table below.
- S. Grantee’s approved budget may be revised up to 10 percent of a budget category or \$25,000, whichever is less, without the prior approval by the Agency, but in no case may a budget category adjustment result in an increase of the total amount of Grant Funds set forth in Section 6 of this Grant Agreement. All budget modifications exceeding 10 percent or \$25,000 per budget category must have a prior written approval by the Agency.
- T. Grantees budget must limit administrative costs to 15 percent of the total budget and include Professional Development and Training at a minimum of 2.5 percent of the total budget.

SECTION IV – REPORTING REQUIREMENTS

Grantee must submit the reports referenced in the table below to Agency using the tool(s) provided by the Agency.

Reporting Requirements	Reporting Period	Due Date
Monthly progress report (number of classrooms/children and families served)	Monthly (for the preceding month)	By the 15 th of each month
Quarterly status report (expenditures and outcomes)	July – September October – December January – March April – June	November 15, 2020 February 15, 2021 May 15, 2021 August 15, 2021

The Agency reserves the right to request additional information as may be necessary to comply with federal or state reporting requirements, including, but not limited to the following:

1. Results, findings and any related follow-up from Grantee’s annual audit;
2. New or revised Federal Notice of Awards (joint-funded programs only);
3. Any federal monitoring reports along with Grantee responses and actions (joint-funded programs only).

**EXHIBIT B
INSURANCE**

INSURANCE REQUIREMENTS

Grantee shall obtain at Grantee's expense the insurance specified in this exhibit and shall maintain it in full force and at its own expense throughout the duration of this Grant Agreement, as required by any extended reporting period or tail coverage requirements, and all warranty periods that apply. Grantee shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Agency. Coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers' Compensation. Grantee shall pay for all deductibles, self-insured retention and self-insurance, if any.

WORKERS' COMPENSATION & EMPLOYERS' LIABILITY

Required

All employers, including Grantee, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Grantee shall require and ensure that each of its subcontractors complies with these requirements. If Grantee is a subject employer, as defined in ORS 656.023, Grantee shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If Grantee is an employer subject to any other state's workers' compensation law, Grantee shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

COMMERCIAL GENERAL LIABILITY

Required

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this Grant Agreement, and have no limitation of coverage to designated premises, project or operation Coverage must be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit may not be less than \$2,000,000.

AUTOMOBILE LIABILITY INSURANCE

Grantee shall require and ensure that each of its subcontractors complies with the Automobile Liability Insurance requirements as applicable.

Required

Non-transporting programs:

Automobile liability insurance covering Grantee's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage. This coverage may be written in combination with the commercial general liability insurance (with separate limits for commercial general liability and automobile liability). Use of personal automobile liability insurance coverage may be acceptable provided that the policy includes a business use endorsement. Use of commercial general liability with non-owned auto endorsement may be acceptable in lieu of non-owned or hired vehicles coverage.

Programs transporting 1 to 9 children

Automobile liability insurance covering Grantee's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$2,000,000 for bodily injury and property damage. This coverage may be written in combination with the commercial general liability insurance (with separate limits for commercial general liability and automobile liability). Use of personal automobile liability insurance coverage may be acceptable provided that the policy includes a business use endorsement.

Programs transporting 10 or more children

Automobile liability insurance covering Grantee's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$5,000,000 for bodily injury and property damage. This coverage may be written in combination with the commercial general liability insurance (with separate limits for commercial general liability and automobile liability). Use of personal automobile liability insurance coverage may be acceptable provided that the policy includes a business use endorsement.

PROFESSIONAL LIABILITY

Required (if Grantee, a contractor or subcontractor has licensed professionals as employees)

Professional liability insurance covering any damages caused by an error, omission or any negligent acts related to the activities performed under this Grant Agreement by the Grantee and Grantee's contractors, subgrantees, agents, officers or employees in an amount not less than \$1,000,000 per claim. Annual aggregate limit may not be less than \$2,000,000. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months must be included in the professional liability insurance coverage, or the Grantee must provide tail coverage as stated below.

PHYSICAL ABUSE AND MOLESTATION INSURANCE COVERAGE:

Required (if Grantee, a contractor or subcontractor has any kind of custodial care over children)

Abuse and molestation insurance in a form and with coverage satisfactory to the State covering damages arising out of actual or threatened physical abuse, mental injury, sexual molestation, negligent: hiring, employment, supervision, investigation, reporting to proper authorities, and retention of any person for whom the Grantee, its contractors, subcontractors or subgrantees ("Covered Entity") is responsible including but not limited to any Covered Entity's employees and volunteers. Policy endorsement's definition of an insured must include the Covered Entity and its employees and volunteers. Coverage must be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Any annual aggregate limit may not be less than \$2,000,000. Coverage can be provided by a separate policy or as an endorsement to the commercial general

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liability or professional liability policies. The limits must be exclusive to this required coverage. Incidents related to or arising out of physical abuse, mental injury, or sexual molestation, whether committed by one or more individuals, and irrespective of the number of incidents or injuries or the time period or area over which the incidents or injuries occur, must be treated as a separate occurrence for each victim. Coverage must include the cost of defense and the cost of defense must be provided outside the coverage limit.

EXCESS/UMBRELLA INSURANCE

A combination of primary and excess/ umbrella insurance may be used to meet the required limits of insurance.

ADDITIONAL INSURED

All liability insurance, except for workers' compensation, professional liability, network security and privacy liability, and automobile liability for non-transporting programs (if applicable), required under this Grant Agreement must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to Grantee's activities to be performed under this Grant Agreement. Coverage must be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of Grantee's ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 04 13 or equivalent.

WAIVER OF SUBROGATION

Grantee shall waive rights of subrogation which Grantee or any insurer of Grantee may acquire against the Agency or State of Oregon by virtue of the payment of any loss. Grantee will obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Agency has received a waiver of subrogation endorsement from the Grantee or the Grantee's insurer(s).

TAIL COVERAGE

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Grantee must maintain, and require its first tier contractors or subgrantees, if any, maintain, either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the Effective Date of this Grant Agreement, for a minimum of 24 months following the later of (i) Grantee's completion and Agency's acceptance of all Project activities required under this Grant Agreement, or, (ii) Agency or Grantee termination of Grant Agreement, or, iii) the expiration of all warranty periods provided under this Grant Agreement.

CERTIFICATE(S) AND PROOF OF INSURANCE

Grantee must provide to Agency's Grant Manager upon request Certificate(s) of Insurance for all required insurance for any Project activities required under this Grant Agreement. The Certificate(s) must list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) must include all required endorsements or copies of

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the applicable policy language effecting coverage required by this Grant. If excess/ umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/ umbrella insurance. As proof of insurance, Agency has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Grant Agreement.

NOTICE OF CHANGE OR CANCELLATION

Grantee or its insurer must provide at least 30 days' written notice to Agency before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

SAMPLE

INSERT INSTEAD OF EXHIBIT B (ABOVE) FOR SEVEN PUBLIC UNIVERSITIES ONLY

SEE LINK <https://www.oregonlaws.org/ors/352.002>

EXHIBIT B
INSURANCE

University is self-insured under ORS Chapter 352, with adequate levels of excess general liability and commercial auto liability insurance, and maintains workers' compensation insurance for its employees in conformance with ORS 656.017.

SAMPLE

EXHIBIT C

AGENCY'S EQUITY GOALS AND OBJECTIVES

EQUITY GOALS

All of Agency's work is in service to children, families and communities to support all of Oregon's young children and families to learn and thrive.

Agency knows that communities represent Oregon's best opportunity to improve educational outcomes. Strength-based approaches and Asset-based Mindsets will support Agency's efforts to operationalize equity. Agency recognizes that in order for each and every child and family to learn and thrive, they must be provided with differentiated, person-centered resources and support.

Agency supports culturally responsive services that are respectful of, and relevant to, the beliefs, practices, culture, and linguistic needs of diverse consumer and client populations and communities. Cultural responsiveness refers to the capacity to respond to the issues of diverse communities. It thus requires knowledge and capacity at different levels of intervention: systemic, organizational, professional and individual.

Grantee must carry out the following equity objectives when performing Project activities in furtherance of Agency equity goals.

EQUITY OBJECTIVES

1. Grantee's entire organization will work to build a climate that promotes acceptance, inclusion and respect of all individuals;
2. Grantee's staff must understand the communities they serve, in a non-static manner, including the communities' culture, values, norms, history, customs, and particularly types of discrimination, marginalization and exclusion they face in this country. Grantee must apply that knowledge to services it provides under this Grant in a responsive, non-limiting and non-stereotyping manner;
3. Whenever possible, Grantee must interact with program participants according to their preferred cultural norms including social greetings, family conventions, dietary preferences, welcoming culture, healing beliefs and spiritual needs;
4. Grantee's staff will engage in continuous learning about their own biases, assumptions and stereotypes that limit their ability to be culturally responsive, and to understand how these biases affect their work with program participants; and
5. Grantee will use data concerning needs, demographics and risks of the community in the determination of which populations to target and prioritize for program participation.
6. Grantee must require in any subcontract, purchase, or other agreement used to carry out the Project that the performing entity shall not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, marital status, national origin, political affiliation, or the presence of any sensory, mental, or physical disability.

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7. Grantee must take affirmative action to ensure that applicants and employees are treated without discrimination because of their race, color, religion, age, sex, political affiliation, disability, or national origin. Such action shall include, but not be limited to, employment upgrading, demotion or transfer, recruitment and recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and training.

EQUITY DEFINITIONS

Asset-based mindset: A mindset that focuses on seeing potential rather than deficits and draws upon the strengths of children, families, and communities to develop and enhance Grantee's services.

Strength-based approach: Policies, practice methods, and strategies that identify and draw upon the strengths of children, families, and communities to develop and enhance Grantee's services.

Historically Underserved Communities: Refers to communities that the Early Learning Council Equity Implementation Committee identified as African American, Asian and Pacific Islander, English Language Learners, Geographically Isolated, Immigrants and Refugees, Latino, Tribal Communities, and Children with Disabilities, Economic Disparities, or of Incarcerated Parents/Parental Figures.

SAMPLE

EXHIBIT D

APPLICATION, INCORPORATED BY REFERENCE

SAMPLE