

**STATE OF OREGON
GRANT AWARD AND AGREEMENT**

Grant No. [GrantNumber]

AWARD

The State of Oregon, acting by and through its Early Learning Division of the Department of Education (“Agency”) has determined to award:

[EntityName],

(“Grantee”), [GrantAmount] in grant funds for Emergency Child Care Operating Costs.

Grantee agrees to accept the funds indicated above (the “Grant Funds”) and use them for the purposes, and subject to the terms and conditions, described in the following Grant Agreement (the “Agreement”). Grantee represents that it has never been in violation of any federal criminal law involving fraud, bribery or gratuity violations that could potentially affect the grant award.

AGREEMENT

1. EFFECTIVE DATE AND DURATION. This Grant Agreement shall be effective on the date it is fully executed. Unless otherwise terminated or extended, this Grant Agreement expires on the earlier of December 30, 2020 or the date of the last disbursement of Grant Funds. The “Performance Period” is from April 1, 2020 through December 30, 2020 and is the period during which costs funded with this Grant must occur.

2. GRANT MANAGER. Agency’s Grant Manager is:

Dawn Baker, Grant Specialist
Early Learning Division
700 Summer Street NE, Suite 350
Salem, OR 97301
Office: 503-207-3067
dawn.baker@ode.state.or.us

3. PROGRAM ACTIVITIES. Grantee must use the Grant Funds as set forth in Exhibit A (the “Program”) for the Performance Period.

4. DISBURSEMENT. Agency will disburse the amount of Grant Funds set forth above to Grantee, subject to Agency having 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 funding source for this Agreement.

5. RECORDS MAINTENANCE AND ACCESS. Grantee must maintain all records relating to this Grant in accordance with applicable generally accepted accounting principles and in such a manner as to clearly document Grantee’s performance for a minimum of six (6) years, or such longer period as may be required by applicable law, or until the conclusion of any audit, controversy or litigation arising out of or related to this Grant, whichever date is later. Grantee shall permit Agency at any time to inspect the records and premises of Grantee for the purpose of verifying Grantee’s

compliance with the terms of this Agreement, including the use of Grant Funds solely for the purposes allowed under this Agreement. If Grantee is a non-profit or governmental entity that receives federal funds in excess of \$750,000 in a fiscal year, Grantee must conduct an audit in accord with the requirements of 2 CFR Part 200, Subpart F. Copies of all audits must be submitted to Agency within 30 days of completion.

6. GOVERNING LAW, JURISDICTION.

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. GRANTEE, BY EXECUTION OF THIS GRANT, HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF SUCH COURT.

7. DEFAULT.

A. Grantee. Grantee will be in default under this Grant if: (i) 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 obligations under this Agreement; (ii) Any representation, warranty or statement made by Grantee in this Agreement, its application or any other documents submitted to Agency, including any documents relied upon by Agency to measure Grantee's use of Grant Funds, is untrue in any material respect when made; (iii) Grantee fails to obtain and maintain any licenses, permits or other approvals necessary to operate a childcare facility for the duration of the Performance Period or (iii) 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.

B. Agency. Agency will be in default under this Grant if Agency fails to perform its obligations under this Agreement; 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 funding source for this Agreement.

8. REMEDIES.

A. Agency Remedies. If Grantee is in default, Agency may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including without limitation, specific performance, setoff or declaring Grantee ineligible for the receipt of future awards from Agency.

B. Grantee Remedies. If Agency is in default, Grantee's sole remedy will be, within any limits set forth in this Grant, disbursement for allowable Program costs incurred, less any claims Agency has against Grantee.

9. 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, any

Grant Funds paid to Grantee that exceed the amount to which Grantee is entitled or any Grant Funds determined by Agency to be spent for purposes other than allowable Program costs.

10. TERMINATION.

A. By Agency. Agency may terminate this Agreement: (i) at Agency's discretion upon 30 days written notice, (ii) 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, (iii) if federal or state laws, regulations or guidelines are modified or interpreted in such a way that Agency's performance under this Grant is prohibited or (iv) if Grantee is in default.

B. By Grantee. Grantee may terminate this Agreement if Agency is in default.

11. MISCELLANEOUS

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

B. Notice. Any notice to be given under this Grant must be given in writing by email, personal delivery, or by mail and is effective, as applicable: five (5) days after mailing, when actually personally delivered or upon the sender's receipt of confirmation generated by the recipient's email system of receipt by the recipient's email system.

C. Survival. All rights and obligations of the parties under this Agreement will cease upon termination of this Agreement, other than the rights and obligations that by their express terms survive termination of this Agreement, including without limitation records retention requirements, governing law, and remedies.

D. Severability. The parties agree if any provision of this Agreement 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.

E. Counterparts. This Agreement 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 Agreement so executed constitutes an original.

F. No Intended Beneficiaries. Agency and Grantee are the only parties to this Agreement and are the only parties entitled to enforce its terms.

G. Assignment. Grantee may not assign or transfer its interest in this Grant without the prior written consent of Agency.

H. Merger. This Agreement and any exhibits 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 Agreement.

EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. The parties agree that by the exchange of this Agreement electronically, each has

ELD GRANT #[GrantNumber]-COVID19 Childcare Grants, supplemental opportunity zone

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: _____
Name, Title Date

[EntityName]

By: _____
Authorized Signature Date

Printed Name

Approved for Legal Sufficiency in accordance with ORS 291.047

By: Cynthia Byrnes, Senior Assistant Attorney General Date 9/2/2020 by email

EXHIBIT A

These Grant Funds may be used to pay, or to reimburse Grantee, for lease or mortgage costs, utilities, insurance, food and supplies, staff compensation and benefits (including paid leave), extra duty pay and overtime, and other reasonable operating costs incurred during the Performance Period.

Funds may not be used for expenses that have been or will be reimbursed under any federal program or unemployment assistance program, other bonuses, severance pay or legal settlements.

Grant Funds will be disbursed as soon as practicable after execution of this Agreement.

Grantees will be required to report to the Early Learning Division on the uses of Grant Funds to inform future grant opportunities to support child care businesses.

Grantees must agree to remain open and serving children through the Performance Period. Limited, temporary closures are permitted to meet routine business needs and due to illness. ELD reserves the right to reduce the amount of Grant Funds disbursed if Grantee is closed for more than a limited, temporary closure during the Performance Period.