

Restatement and Amendment No. 1 to Child Care Stabilization Grant

This document is an amended restatement of Grant No. _____ (the "Grant"), as described below. When this Restatement and Amendment is signed by both parties, it updates and replaces the original Grant.

I. Recitals

The funding formula used to determine the Grant amount assumed a higher level of child care participation. ELD awarded fewer child care stabilization grants than anticipated. ELD has determined the best way to support and stabilize Oregon child cares is to allocate remaining funds to existing grantees and to extend these grants to ensure child cares remain open for a longer period of time.

As a result, the parties to this Grant wish to amend and restate the original Grant, as set forth below, in order to, among other things, extend the performance period and increase the Grant amount, while updating the name and contact information of the Grantee's primary contact.

II. Amended and Restated Grant

AWARD

The State of Oregon, acting by and through its Early Learning Division ("ELD") of the Department of Education ("Agency") awards:

Grantee: _____

Original Grant Funds: \$ _____

Additional Grant Funds: \$ _____

Total Grant Funds: \$ _____

Grantee agrees to accept these funds (the "Grant Funds") and use them for child care costs described in this Grant Agreement (the "Grant").

AGREEMENT

1. **EFFECTIVE DATE AND DURATION.** When all parties have executed this Grant ("Executed Date"), this Grant is effective and has a Grant funding start date as of _____ ("Effective Date"), and unless extended or terminated earlier in accordance with its terms, will expire on _____ ("Expiration Date").

2. GRANT MANAGERS.

Agency's Grant Manager is:

Dawn Taylor, Grant Manager
700 Summer Street NE, Suite 350
Salem, OR 97301
ECCgrants@ode.state.or.us
971-707-2029

Grantee's Grant Manager is:

- For licensed child care, the individual who is registered or certified by ELD's Office of Child Care (OCC).
- For license-exempt child care, the individual who is listed and approved by the Oregon Department of Human Services (ODHS).

- 3. PROGRAM ACTIVITIES.** Grantee must use the Grant Funds as set forth in Exhibit A (the "Program").
- 4. DISBURSEMENT.** Agency will disburse the Grant Funds to Grantee, subject to Agency having sufficient funding, appropriations, expenditure limitation, allotments, and other necessary expenditure authorizations to allow Agency, in the exercise of its reasonable administrative discretion, to disburse the Grant Funds from funding provided to Agency under the American Rescue Plan Act. Nothing in this Grant authorizes a violation of Article XI, section 7 of the Oregon Constitution or any other state or federal law limiting the activities, liabilities, or monetary obligations of the Agency.
- 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 Grant, including the use of Grant Funds. If Grantee is a non-federal entity that expends \$750,000 or more during the non-federal entity's fiscal year in federal awards, Grantee must conduct a single or program-specific audit for that year in accordance with the requirements of 45 CFR Part 75 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. If, however, a Claim must be brought in a federal forum, then it must be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. This section is not a waiver by the State of Oregon of any form of defense or immunity to or from any Claim or the jurisdiction of any court. GRANTEE, BY EXECUTION OF THIS GRANT, HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF SUCH COURTS.
- 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 Grant; (ii) any representation, warranty, or statement made by Grantee in the original Grant, this amended restatement of the original Grant, the Grant Application, or any documents relied upon by Agency to measure Grantee's use of Grant Funds is untrue in any material respect when made; 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 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 funding source for this Grant.

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 Grant 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 the limits set forth in this Grant, disbursement for Allowable Expenses incurred during the term of the Grant, 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 Expenses.

10. TERMINATION.

- A. **By Agency.** Agency may terminate this Grant: (i) at Agency's discretion upon 30 days written notice, (ii) immediately upon written notice to Grantee, if Agency fails to receive funding, 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 Grant if Agency is in default.

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

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, to Agency's Grant Manager at the physical address or email address set forth in Section 2 of this amended and restated Grant and, for the Grantee, at the physical address or email address that is contained in, as applicable, OCC registration or certification records or ODHS listed and approved records, 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 Grant will cease upon termination of this Grant, other than the rights and obligations that by their nature or express terms survive termination of this Grant, including without limitation records retention requirements, governing law, and remedies.

- D. 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.
- E. 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.
- F. Intended Beneficiaries.** Agency and Grantee are the only parties to this Grant 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 Grant 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 Grant.
- I. Debarred or Suspended.** Grantee may not participate in this Grant in any capacity, or be a recipient of Grant Funds, if Grantee has been debarred or suspended or otherwise found to be ineligible for participation in federal assistance programs or activities.
- J. Compliance with Law.** In connection with their activities under this Grant, the parties must comply with all applicable federal, state, and local laws.

12. 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 B (Federal Terms and Conditions)
- Exhibit A (the "Program")
- Exhibit C (Federal Award Identification)

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EXHIBIT A THE PROGRAM

REQUIREMENTS

Grantee must:

1. Remain open to provide child care services from the Grant's Effective Date to the Expiration Date. Limited, temporary closures to meet regular business schedules or due to public health, financial hardship, and other reasons relating to the COVID-19 are permitted. If Grantee is temporarily closed on the date the original Grant is signed by all parties, Grantee must open within 30 days of that date.
2. Immediately notify ELD in writing of any temporary or permanent closure, except for planned closures to meet regular business schedules.
3. Immediately notify ELD in writing of any change to address, ownership, license type, or capacity, or of changes to any other information submitted in the Grant Application.
4. Implement applicable health and safety requirements and guidelines, including guidance, laws, rules and orders issued from state, local, and Tribal authorities and, to the greatest extent possible, guidance issued by the U.S Centers for Disease Control and Prevention (CDC). Grantee must remain aware of changing requirements and guidance issued by these entities, including any modifications or updates.
5. Pay all employees (including lead teachers, aides, and any other staff who are employed by, or who contract with, the child care to work in transportation, food preparation, or other service) full compensation (e.g. weekly wages) and maintain the same benefits (e.g. health insurance and retirement) for the duration of the Grant. Grantee must not take action that reduces compensation, including involuntary furloughing employees, from the date of application through the duration of the Grant.
6. Use at least 20% of the total Grant Funds on increasing compensation of the child care staff.
7. Provide relief from copayments and tuition payments for enrolled families, to the extent possible, and prioritize such relief for families who are struggling to pay either of these fees.
8. Maintain an active license status with ELD or remain listed and approved to receive child care subsidy with ODHS.
9. Maintain records that document compliance with the requirements of this Grant, including accurate records in sufficient detail to permit ELD to verify that Grant Funds were used only for Allowable Expenses. Grantee is subject to audit by ELD and must, upon request, provide any information and supporting documentation requested by ELD, provide access to the child care facility for which this application is submitted, and allow child care staff to be interviewed in connection with this Grant and the use of funds received.
10. Ensure Grant Funds are used to supplement and not supplant other public funds to provide child care services. Grant Funds may not be used to pay for expenses that have been or will be reimbursed by public funds from any other source.

ALLOWABLE EXPENSES

Grant Funds may only be used for the following costs related to COVID-19, if the costs were incurred on or after January 31, 2020 and before the Grant's Expiration Date (the "Allowable Expenses"):

1. Personnel costs, including payroll and salaries or similar compensation for an employee (including any sole proprietor or independent contractor), and benefits;
2. Rent/lease/mortgage, utilities, facility maintenance and improvements, and insurance. Allowable facility maintenance and improvements may include, but are not limited to: building or upgrading playgrounds; renovating bathrooms; improvements to meet licensing requirements; installing railing, ramps, or automatic doors to make the facility more accessible; or removing non-load bearing walls to create additional space for social distancing;

3. Personal protective equipment, cleaning and sanitization supplies and services, and training and professional development related to health and safety practices;
4. Purchases or updates to equipment and supplies to respond to COVID-19;
5. Goods and services necessary to maintain or resume child care services including, but not limited to, child care management services, food services, and transportation; and
6. Mental health supports for children and employees.

Grant Funds may not be used for the purchase of land, construction of new facilities, or major renovations to any building or facility.

DISBURSEMENTS

The Original Grant Funds will be disbursed in two equal payments. Payment 1 – 50% of the Original Grant Funds in the first month of the Grant and Payment 2 – 50% of the Original Grant Funds no later than the end of the fourth month of the Grant.

Additional Grant Funds: In addition to Payments 1 and 2 described above, the Additional Grant Funds resulting from the execution of this Restatement and Amendment will be disbursed no later than the seventh month of the Grant.

Agency reserves the right to reduce the amount of Grant Funds, including if Grantee's license capacity is modified during the term of the Grant. If applicable, Agency will direct Grantee on how to return Grant Funds.

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**EXHIBIT B
FEDERAL TERMS AND CONDITIONS**

1. FEDERAL FUNDS

1.1. If specified below, Agency's payments to Grantee under this Grant will be paid in whole or in part by funds received by Agency from the United States Federal Government. If so specified then Grantee, by signing this Grant, certifies neither it nor its employees, contractors, subcontractors or subgrantees who will perform the Project activities are currently employed by an agency or department of the federal government.

Payments will will not be made in whole or in part with federal funds.

1.2. In accordance with the State Controller's Oregon Accounting Manual, policy 30.40.00.104, Agency has determined:

Grantee is a subrecipient Grantee is a contractor Not applicable

1.3. Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Grant: 93.575

2. FEDERAL PROVISIONS

- 2.1. The use of all federal funds paid under this Grant are subject to all applicable federal regulations, including the provisions described below.
- 2.2. Grantee must ensure that any further distribution or payment of the federal funds paid under this Grant by means of any contract, subgrant, or other agreement between Grantee and another party for the performance of any of the activities of this Grant, includes the requirement that such funds may be used solely in a manner that complies with the provisions of this Grant.
- 2.3. Grantee must include and incorporate the provisions described below in all contracts and subgrants that may use, in whole or in part, the funds provided by this Grant.
- 2.4. Grantee must comply, and ensure the compliance by subcontractors or subgrantees, with 41 U.S.C. 4712, Program for Enhancement of Employee Whistleblower Protection. Grantee must inform subrecipients, contractors and employees, in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 USC § 4712.

In accordance with Agency's Child Care and Development Fund Grants federal award, Grantee is subject to the following provisions, as applicable.

For purposes of these provisions, the following definitions apply:

"Contract" means this Grant or any contract or subgrant funded by this Grant.

"Contractor" and **"Subrecipient"** and **"Non-Federal entity"** mean Grantee or Grantee's contractors or subgrantees, if any.

Department of Health and Human Services, Administration for Children and Families terms and conditions as applicable, found here:

<https://www.acf.hhs.gov/sites/default/files/documents/Mandatory%20GENERAL%20TERMS%20and%20CONDITIONS%20-%202021%20Update.pdf>.

Smoking Prohibitions. In accordance with Title XII of Public Law 103-227, the “PRO-KIDS Act of 1994,” smoking may not be permitted in any portion of any indoor facility owned or regularly used for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs whether directly or through State, Territories, local and Tribal governments. Federal programs include grants, cooperative agreements, loans and loan guarantees, subawards, and contracts. The law does not apply to children’s services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions or facilities and used for inpatient drug and alcohol treatment.

SAMPLE

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EXHIBIT C
FEDERAL AWARD IDENTIFICATION
(Required by 2 CFR 200.332(a)(1))

(i) Grantee name: <i>(must match name associated with UEI)</i>	See page 1 of the Grant
(ii) Grantee's Unique Entity Identifier (UEI):	DUNS: N/A SAM: N/A
(iii) Federal Award Identification Number (FAIN):	2101ORCSC6
(iv) Federal award date: <i>(date of award to state by federal agency)</i>	4/14/2021
(v) Grant period of performance start and end dates:	See page 1 of the Grant
(vi) Grant budget period start and end dates:	See page 1 of the Grant
(vii) Amount of federal funds obligated by this Grant:	See page 1 of the Grant
(viii) Total* amount of federal funds obligated to Grantee by pass-through entity**, including this Grant:	unavailable
(ix) Total* amount of the federal award committed to Grantee by pass-through entity: <i>(amount of federal funds from this FAIN committed to Grantee)</i>	unavailable
(x) Federal award project description:	ARP Act Child Care Stabilization Funds
(xi) a. Federal awarding agency:	Department of Health and Human Services, Administration for Children and Families
b. Name of pass-through entity:	Oregon Department of Education
c. Contact information for awarding official of pass-through entity:	Name: <u>Crystal O'Grady</u> Email: crystal.ogrady@ode.oregon.gov
(xii) Assistance listings number, title, and amount:	Number: 93.575 Title: Child Care and Development Block Grant Amount: \$248,908,466.00
(xiii) Is federal award research and development:	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
(xiv) a. Indirect cost rate for the federal award:	N/A
b. Is the de minimis rate being used per §200.414?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

*The total amount is limited to the current state fiscal year (July 1 to June 30).

**The term "pass-through entity" refers to the State of Oregon, acting through its Department of Education.

III. Certification

Grantee certifies that the representations, warranties and certifications contained in the original Grant, the Grant Application and any documents relied upon by Agency to measure Grantee’s use of Grant Funds are true and correct and with the same effect as though made at the time this Restatement and Amendment is executed.

EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES IT HAS READ THIS RESTATEMENT AND AMENDMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. The parties further agree that by the exchange of this Restatement and Amendment electronically, each has agreed to the use of electronic means, if applicable, instead of the exchange of physical documents and manual signatures. By inserting an electronic or manual signature below, each authorized representative acknowledges that it is their signature, that each intends to execute this Restatement and Amendment, and that their electronic or manual signature should be given full force and effect to create a valid and legally binding agreement.

IN WITNESS WHEREOF, the parties have executed this Restatement and Amendment as of the dates set forth below.

STATE OF OREGON acting by and through its Department of Education

By: _____
Holley Oglesby, Contracting Officer

Date

By: _____
Authorized Signature

Date

Printed Name

Approved for Legal Sufficiency in accordance with ORS 291.047

By: Joshua Nasbe via email _____

2/24/2022 _____
Date