

STUDENT INVESTMENT ACCOUNT CONTRACT BETWEEN DISTRICT AND CHARTER SCHOOL

SECTION 1: AUTHORITY

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

SECTION 2: PURPOSE

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

SECTION 3: EFFECTIVE DATE AND DURATION

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

SECTION 4: GRANT MANAGERS

4.1 District’s Grant Manager is:

Joel Hoff, Director of Student Improvement
Crook County School District
471 NE Ochoco Plaza Dr
Prineville, OR 97754
(541) 447-5664
joel.hoff@crookcounty.k12.or.us

4.2 Grantee’s Grant Manager is:

Jenn Berry-O’Shea, Administrator
Powell Butte Community Charter School
13650 SW Hwy 126
Powell Butte, OR 97753
(541) 548-1166
jberry-oshea@powellbuttecharterschool.org

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

SECTION 5: PROJECT ACTIVITIES

5.1 Grantee shall perform the project activities set forth in Exhibit A (the "Project"), attached hereto and incorporated herein by this reference for the period beginning on the Effective Date and ending on the Expiration Date (the "Performance Period").

SECTION 6: GRANT FUNDS AND EXCHANGE OF SERVICES

6.1 **Grantee Allocation.** In accordance with the terms and conditions of this Grant, the District shall provide Grantee 100% of the SIA Allocation amount generated by the ADMw attributed to the Grantee and published by ODE in the quarterly SIA Allocations report for the purposes described in Section 2 and Project described in Exhibit A. District shall pay the Grantee from monies available through its District SIA Grant Allocation (the "Funding Source"). Funds received by the Grantee under this Agreement (the "Grant Funds") may be used only for eligible expenditures authorized by this Grant and incurred during the Performance Period.

6.1.1 **Indirect Rate.** Indirect costs shall not exceed 5 percent (5%) of the total District's Allocation and expenditures or \$500,000, whichever is less. District will retain zero percent (0%) of the Grantee's allocation for indirect costs for the first year of the grant. The District will review this section for potential modification for future renewals of this agreement.

6.1.2 The Grantee must establish a separate account for all funds received as part of the Grant.

SECTION 7: DISBURSEMENT GENERALLY

7.1 Disbursement.

7.1.1 District shall disburse Grant Funds by Electronic Funds Transfer within ten (10) business days of District receiving the SIA allocation from ODE.

7.1.2 If District determines that any completed Project activities or documentation are not acceptable and that any deficiencies are the responsibility of Grantee, District shall prepare a detailed written description of the deficiencies and will deliver such notice to Grantee. Grantee shall correct any deficiencies at no cost to District.

7.1.3 All expenses must adhere strictly to ODE guidance and rules adopted by the State Board of Education regarding the allowable uses of SIA grant funds.

7.2 **Conditions Precedent to Disbursement.** District'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 District has received sufficient funding to allow District, in the exercise of its reasonable

administrative discretion, to make the disbursement.

7.2.2 No default as described in Section 12 has occurred.

7.2.3 Grantee's representations and warranties set forth in Section 8 are true and correct on the date of disbursement(s) with the same effect as though made on the date of disbursement.

7.3 Recovery of Grant Funds. Any Grant Funds disbursed to Grantee under this Grant that are expended in violation or contravention of one or more of the provisions of this Grant ("Misexpended Funds") or that remain unexpended on the earlier of termination or expiration of this Grant ("Unexpended Funds") must be returned to District. Grantee shall return all Misexpended Funds and Unexpended Funds to District promptly after District's written demand but in any event no later than 30 calendar days after the District's written demand.

7.4 Duplicate Payment. Grantee shall not be compensated for, or receive any other form of duplicate, overlapping or multiple payments for the same costs financed by or costs and expenses paid for by Grant Funds from any agency of the State of Oregon or the United States of America or any other party, organization or individual.

SECTION 8: REPRESENTATIONS AND WARRANTIES

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

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

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

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

8.1.4 Grantee is, and throughout the Performance Period will be, in compliance with its charter agreement and all Oregon laws applicable to charter schools operating in the State of Oregon including, without limitation, ORS 338.035;

8.1.5 The representations and warranties set forth in this section are in addition to, and not in lieu of,

any other representations or warranties provided by Grantee.

SECTION 9: GOVERNING LAW, CONSENT TO JURISDICTION

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

SECTION 10: PERFORMANCE TARGETS

- 10.1 Grantee will identify longitudinal performance growth targets (the “Targets”) in accordance to the guidance published by the Department. Targets will be included with the Grantee’s Project in Exhibit A and identified for each year of the Performance Period. Targets must minimally include the Targets included in Section 12, subparagraph 3 of the Act for which the Grantee serves students. Targets must be disaggregated according to Section 12, subparagraph 1 of the Act.
- 10.2 Grantee shall use the same Targets as the District’s Targets in each Target for which the Grantee serves students and has accountability data. In addition to those Targets required by the Act, Grantee may identify local Targets.
- 10.3 Grantee will report to District each year on its progress toward meeting Targets in the Grantee’s annual report as per ORS 338.095 or as mutually agreed upon by both Parties.

SECTION 11: INDEMNIFICATION

- 11.1 Grantee shall defend, save, hold harmless, and indemnify the District and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever, including attorney’s fees, resulting from, arising out of, or relating to the activities of Grantee or its officers, employees, subcontractors, or agents under this Grant (each of the foregoing individually or collectively a “Claim” for purposes of this section).
- 11.2 **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 12: DEFAULT

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

12.1.1 Grantee fails to perform, observe or discharge any of its financial accounting or reporting requirements under this Grant.

12.1.2 Grantee uses or expends Grant Funds for any purpose other than that defined in this Grant.

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

SECTION 13: REMEDIES

13.1 **District Remedies.** In the event Grantee is in default under Section 12, District may, at its option, pursue any or all of the remedies available to it under this Grant and at law or in equity, including, but not limited to (a) termination of this Grant under Section 16, (b) reducing or withholding payment for Project activities that Grantee has failed to complete according to the Act, (c) requiring Grantee to complete, at Grantee's expense, additional activities necessary to satisfy its obligations or meet performance standards under this Grant, (d) withholding payment of State School Funds, (e) exercise of its right of recovery of overpayments under Section 14 of this Grant or setoff, or both, or (g) pursue termination of the charter contract as per ORS 338.105. These remedies are cumulative to the extent the remedies are not inconsistent, and District may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

13.2 **Grantee Remedies.** In the event District is in default under Section 12 and whether or not Grantee elects to exercise its right to terminate this Grant under Section 16.3.3, or in the event District terminates this Grant under Sections 16.2.1, 16.2.2, 16.2.3, or 16.2.5, Grantee's remedy may be exercised through any dispute provisions in this agreement or in the current executed charter contract. If previous amounts paid to Grantee exceed the amount due to Grantee under this Section 13.2, Grantee shall promptly pay any excess to District.

SECTION 14: RECOVERY OF OVERPAYMENTS

If payments to Grantee under this Grant, or any other agreement between District and Grantee, exceed the amount to which Grantee is entitled, District may, after notifying Grantee in writing, withhold from payments due Grantee under this Grant, such amounts, over such periods of times, as are necessary to recover the amount of the overpayment.

SECTION 15: LIMITATION OF LIABILITY

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

SECTION 16: TERMINATION

- 16.1 **Mutual.** This Grant may be terminated at any time by mutual written consent of the Parties.
- 16.2 **By District.** District may terminate this Grant as follows:
- 16.2.1 Upon 30 days advance written notice to Grantee;
 - 16.2.2 Immediately upon written notice to Grantee, if District fails to receive funding, or allocations, limitations or other expenditure authority at levels sufficient in District's reasonable administrative discretion, to perform its obligations under this Grant;
 - 16.2.3 Immediately upon written notice to Grantee, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the District's performance under this Grant is prohibited or District is prohibited from paying for such performance from the planned funding source;
 - 16.2.4 Immediately upon written notice to Grantee, if Grantee is in default under this Grant and such default remains uncured 30 days after written notice thereof to Grantee; or
 - 16.2.5 As otherwise expressly provided in this Grant.
- 16.3 **By Grantee.** Grantee may terminate this Grant as follows:
- 16.3.1 Upon 30 days advance written notice to District;
 - 16.3.2 Immediately upon written notice to District, if District is in default under this Grant and such default remains uncured 30 days after written notice thereof to District; or
 - 16.3.3 As otherwise expressly provided in this Grant.
- 16.4 **Cease Activities.** Upon receiving a notice of termination of this Grant, Grantee will immediately cease all activities under this Grant, unless District expressly directs otherwise in such notice. Upon termination, Grantee will deliver to District all documents, information, and reports related to the Grant.

SECTION 17: INSURANCE

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

SECTION 18: NONAPPROPRIATION

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

SECTION 19: AMENDMENTS

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

SECTION 20: NOTICE

Except as otherwise expressly provided in this Grant, any notices to be given relating to this Grant must be given in writing by facsimile, email, personal delivery, or postage prepaid mail, to a Party's Grant Manager at the physical address, fax number or email address set forth in this Grant, or to such other addresses as either Party may indicate pursuant to this Section 20. 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. Any notice given by facsimile becomes effective upon electronic confirmation of successful transmission to the designated fax number.

SECTION 21: SEVERABILITY

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

SECTION 22: COUNTERPARTS

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

SECTION 23: COMPLIANCE WITH LAW

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

SECTION 24: INTENDED BENEFICIARIES

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

SECTION 25: TIME IS OF THE ESSENCE

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

SECTION 26: MERGER, WAIVER

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

SECTION 27: RECORDS MAINTENANCE, MUNICIPAL AUDIT, AND ACCESS

Grantee shall maintain all financial records relating to this Grant in accordance with generally accepted accounting principles. In addition, Grantee shall maintain any other records, books, documents, papers, plans, records of shipments and payments, and writings of Grantee, whether in paper, electronic or other form, that are pertinent to this Grant in such a manner as to clearly document Grantee performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments, and writings of Grantee, whether in paper, electronic or other form, that are pertinent to this Grant, are collectively referred to as "Records." Grantee acknowledges and agrees that District and the Oregon Secretary of State's Office and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. All Funds received by Grantee as part of the Grant shall be accounted for separately and included in the Grantee's municipal audit according to ORS 338.095 and reported to District annually. Grantee shall retain and keep accessible all Records for a minimum of five (5) years, or such longer period as may be required by applicable law, following termination of this Grant, or until the conclusion of any audit, controversy or litigation arising out of or related to this Grant, whichever date is later.

SECTION 28: 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.

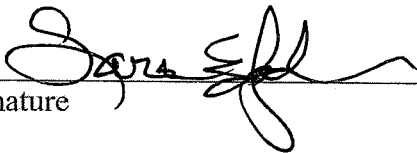
SECTION 29: GRANT DOCUMENTS

This Grant consists of the following documents, which are listed in descending order of precedence: this Grant less all exhibit Exhibit A (the "Project").

SECTION 30: SIGNATURES

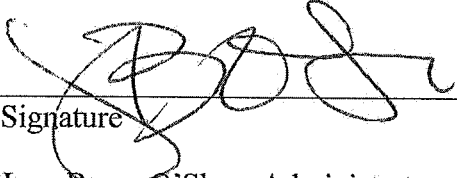
IN WITNESS WHEREOF, the Parties have executed this Grant as of the dates set forth below.

Crook County School District

By: 
Signature
Sara Johnson, Superintendent

6.1.21
Date

Powell Butte Community Charter School

By: 
Signature
Jenn Berry-O'Shea, Administrator

6/1/21
Date

**EXHIBIT A
THE PROJECT**

SECTION I – CHARTER SCHOOL SIA PLAN

the Grantee will develop a three-year (3 year) plan to implement grant activities aligned to the purpose and allowed uses of funds. The three-year plan must include a budget, strategies, activities, and longitudinal performance growth targets.

SECTION II – DISTRICT APPROVAL

The Project must include a budget and a description of activities for the Performance Period of the Grant. Budget will be based on SIA Allocation/Disbursement Reports published by the Department. Grantee will submit the Project to District at least thirty (30) days before the District's SIA application is scheduled to be approved by the District school board and shall be included with the District's SIA application to the Department.

The District will review and approve the Grantee's Project within fifteen (15) days of receipt. If the District determines Grantee budget does not align to the allowed uses of Funds according to Section 10, subparagraph 4 of the Act, District may provide detailed written notice to the Grantee and require Grantee revise Project within fifteen (15) days.

District school board approval does not necessarily indicate endorsement or agreement with the Grantee's Project.

SECTION III – BUDGET AND ACTIVITIES

The Grantee shall develop a budget for the Project aligned to the allowed uses in Section 9, subparagraph 3 of the Act. Grantee will identify at least one strategy and supporting activities with appropriate budget resources.

SECTION IV – UPDATES AND REVISIONS

If there are changes to the Grantee Project, the Grantee shall submit an updated or revised Project with budget to District at least thirty (30) days prior to the Department's next disbursement of SIA Funds to the District. The District may review the Project to ensure alignment to the allowed uses in Section 9, subparagraph 3 of the Act.

SECTION V – ACCOUNTABILITY

The Grantee shall report annually on the longitudinal performance growth targets in the charter school annual report to the school district superintendent.

SECTION VI – FINANCIAL REPORTING

The Grantee shall report all expenses paid with Grant Funds to District within 180 days of disbursement. The report shall include accounting and evidence of alignment to the allowed uses in Section 9, subparagraph 3 of the Act. At the District's request, the Grantee shall provide District expense report within fifteen (15) days at any time during the Performance Period.