

**AFTER SCHOOL PROGRAM AGREEMENT FOR 2023-2024
BETWEEN
CITY OF MISSOULA PARKS & RECREATION
AND
MISSOULA COUNTY PUBLIC SCHOOLS**

THIS AGREEMENT is effective the 1st day of July, 2023, by and between the City of Missoula Parks & Recreation, 600 Cregg Ln, Missoula, Montana 59801, hereinafter referred to as "Service Provider" or "After School Program" and Missoula County Public Schools, 909 South Avenue West, Missoula, Montana 59801, hereinafter referred to as "MCPS".

WHEREAS, MCPS recognizes that the After School Program is a community-based program that delivers skill-building activities to support academic and social learning for students who attend Franklin and CS Porter schools. The After School Program will provide site coordinators, based at the school, whose job it is to arrange, schedule, recruit and oversee activities after school at the school site in accordance with the 21st Century Community Learning Center (21stCCLC) grant.

WHEREAS, the Service Provider site coordinators can provide mutually beneficial assistance with interventions and other activities to engage students after school and assistance with school personnel in organizing school-wide outreach activities.

WHEREAS, the After School Program at Franklin and CS Porter is funded by the MCPS 21stCCLC grant.

WHEREAS, MCPS wishes to retain Service Provider to perform after school-based services to students enrolled in Franklin and CS Porter schools and support MCPS personnel in implementing programming after school consistent with the mutual objectives described herein;

NOW THEREFORE, in consideration of the covenants, conditions, agreements, and stipulations hereinafter expressed, the parties to this agreement do hereby agree to the following:

1. STAFFING: Service Provider hereby agrees to provide two (2) site coordinators and six (6) programming staff at no more than 15:1 student to staff ratio or a minimum of 8 after school staff to support at least 13 Porter students and 40 Franklin students on a daily basis. The 21stCCLC budget allocates \$139,125 for staffing during the 2023-24 school year.

2. SERVICES: Service Provider hereby agrees to provide a school site coordinator at Franklin and CS Porter during the school year to assist school personnel in providing services which may include the following categories:

- A. Recruit youth and volunteers;
- B. Work with school staff to identify and recruit students for 21stCCLC afterschool programming;
- C. Provide oversight for partnership activities with the Missoula Food Bank, the Missoula Art Museum, the University of Montana and other community partners;
- D. Collect grant data including daily attendance using the state Cayen system;
- E. Work with school staff to provide a supported transition for kids from school day to after school;
- F. Collaborate with school personnel in implementing afterschool interventions and behavioral supports for students;

- G. Participate, when appropriate, in school staff meetings;
- H. Participate, when appropriate and requested, in MBI and/or intervention meetings;
- I. Participate in required 21stCCLC training;
- J. Collaborate with school teachers, administrators, and counselors in developing appropriate skill-building activities to support academic and social learning in the classroom;
- K. Provide academic and behavior interventions tied to students' daily afterschool learning;
- L. Managing afterschool classroom behavior;
- M. Develop and implement daily afterschool lesson plans for students;
- N. Oversee volunteers;
- O. Communicate and collaborate with families.

Service Provider hereby agrees to provide school site After School Program Teachers and Co-Facilitators at Franklin and CS Porter, 21stCCLC grant sites, to provide educational and related activities that complement and enhance academic performance, achievement and positive youth development.

3. SERVICE PROVIDER RESPONSIBILITIES: Service Provider agrees to:

- A. Ensure that Service Provider's staff act in accordance with federal and state laws and MCPS policies, procedures and guidelines.
- B. Provide annual certification to MCPS that it has obtained criminal background checks for its employees, volunteers, representatives, and agents performing services under this Agreement and that none of these employees, representatives, or agents have been convicted for crimes against children or crimes involving violence. Service Provider is not required to obtain annual criminal background checks provided that Service Provider has previously obtained a criminal background check for the employee, representative, or agent that Service Provider's certification required herein included the employee, presentative, and agent.
- C. Not remove any student from school premises without the permission of a school administrator and the student's parent/guardian.
- D. Abide by MCPS policies and procedures in the performance of duties pursuant to this agreement.

4. MCPS RESPONSIBILITIES: MCPS agrees to:

- A. Provide access to four classrooms, outdoor space and other appropriate school space to the Service Provider to facilitate the performance of after school services contemplated herein up to 6:30 pm each school day at Franklin. Provide at least one classroom or meeting space to the Service Provider up to 6:30 each school day at CS Porter and gym usage at least one night per week.

- B. Provide Service Provider with network access.
- C. At the direction of MCPS, MCPS may include Service Provider staff in school-based staff meetings, parent advisory group meetings, fall open houses and other school meetings as appropriate.
- D. Principal or designee will be point of contact and will provide communication to Service Provider.
- E. MCPS will provide oversight ensuring compliance with 21st CLCC data collection, training, and budget requirements.
- F. MCPS agrees to comply with City of Missoula's Non-Discrimination and Affirmative Action Policy stipulated in Addendum A.

5. **TERM:** This contract shall be effective on the 1st day of July, 2023, and shall terminate on the 30th day of June, 2024. This agreement may be modified during its term by the written consent of both parties. Additionally, the contract may be terminated by either party upon thirty (30) days written notice.

6. **TERMS OF COOPERATION:** A School District administrator or designee and Service Provider's program supervisor shall meet at least every 120 days to assess the program's effectiveness.

7. **COMPENSATION:**

- A. Pursuant to the 21stCCLC grant in support of Franklin Elementary School and CS Porter Middle School, MCPS shall pay Service Provider for actual staff time up to a total sum of One Hundred Thirty-Nine Thousand One Hundred Twenty-Five Dollars (\$139,125.00), \$1,200 for enrichment and \$1,200 for supplies, inclusive of all charges, as follows:
 - i. Service Provider shall cover all costs of providing services, including the cost of services rendered by Missoula Food Bank, Missoula Art Museum, and the University of Montana as contemplated by the terms of the grant.
 - ii. Service Provider shall be paid on a monthly basis.
 - iii. Service Provider shall bill MCPS monthly specifying the services performed, and detailing the costs incurred.
 - iv. Notwithstanding the foregoing, in the event no or insufficient 21st CCLC grant funds are appropriated and available for payments due by MCPS under this Agreement, MCPS will immediately notify Service Provider, and Service Provider shall suspend any services being provided under this Agreement. If funds subsequently become available, MCPS will notify Service Provider that funds are available, and Service Provider shall continue to provide services as soon as reasonably possible.

8. **NO EMPLOYMENT RELATIONSHIP:** This Agreement shall not constitute, create, or otherwise imply an employment, joint venture, partnership, agency or similar arrangement. Each party to this Agreement shall act as an independent agency, and neither party shall have the power to act for or bind the other party except as expressly provided for herein. Service Provider agrees that as

the employer it is responsible for all final employment decisions regarding its employees.

- A. Ineligible for Employee Benefits. Service Provider and its employees shall not be eligible for any benefit available to employees of MCPS, including, but not limited to, workers' compensation insurance, state disability insurance, unemployment insurance, group health and life insurance, vacation pay, sick pay, severance pay, bonus plans, savings plans and the like.
- B. Payroll Taxes. No income, social security, state disability or other federal or state payroll tax will be deducted from payments made to Service Provider under this Agreement. Service Provider agrees to pay all state and federal taxes and other levies and charges as they become due on account of monies paid to Service Provider hereunder, and to defend, indemnify and hold MCPS harmless from and against any and all liability resulting from any failure to do so.

9. TERMINATION:

Either party shall have the right to terminate this Agreement if the other party is in default of any obligation hereunder and such default is not cured within thirty (30) days of receipt of a notice from the non-defaulting party specifying such default.

In addition, either party may voluntarily terminate this Agreement without cause by providing the other party with 60 days advance notice of such intended termination.

In the event that the building principal or other authorized School District administrator reasonably believes the conduct of a site coordinator is a risk to the safety or welfare of students in their building, MCPS reserves the right to deny continued access to or use of the building to the individual. In the event MCPS denies access to an individual under the terms of the Agreement, Service Provider agrees that it is obligated to provide continuity in service while seeking a suitable replacement.

10. STANDARD OF PERFORMANCE:

Service Provider warrants and represents that it possesses the special skill and professional competence, expertise and experience to undertake the obligations imposed by this Agreement. Service Provider agrees to perform in a diligent, efficient, competent and skillful manner and to devote such time as is necessary to perform the services required under this Agreement. Service Provider agrees that it shall furnish qualified and competent employees to perform the services provided for under this Agreement.

11. TRAINING AND PROFESSIONAL DEVELOPMENT: MCPS and Service Provider will collaboratively identify and develop annual training that includes, but is not limited to training regarding school procedures, protocol and culture, intervention strategies and protocols, and confidentiality requirements.

12. CONFIDENTIALITY:

- A. Each party agrees to maintain the confidentiality requirements of FERPA and the Health Information Technology for Economic and Clinical Health Act (HITECH). Both parties agree to neither use nor disclose, and to prevent disclosure to third parties of confidential or proprietary information it has received from the other. No disclosure of such information shall be made without the express written consent of that other party or unless under a Court Order for disclosure. This agreement shall not apply to information that is in the public domain. The parties agree to act in good faith to preserve the confidentiality contemplated hereunder.

- B. The parties agree they shall in good faith maintain as confidential, all other proprietary and other information disclosed orally which is normally of a confidential or proprietary nature.
- C. As part of this obligation of confidentiality, each party shall restrict the dissemination and availability of the information provided by the other to those employees and agents having a need to know for purposes of the contemplated matter.
- D. MCPS shall consider the site coordinators assigned by Service Provider to perform services contemplated hereunder as "school officials" within the meaning of FERPA and MCPS's own policies adopted pursuant to the Act. Site coordinators assigned by Service Provider to perform services contemplated hereunder may be deemed at MCPS's discretion to have a "legitimate educational interest" in personal information contained within education records of students to whom they provide services under this Agreement. Accordingly, MCPS may provide site coordinators assigned by Service Provider to perform services contemplated hereunder with those portions of any such student's educational records pertaining to that student, including but not limited to grades, attendance, behavior reports, IEPs and behavior intervention plans, which may in any way relate to the provision of services required under this agreement. Service Provider and site coordinators assigned to provide services contemplated hereunder shall not disclose the any information from a student's education records to any other individual or party. If Service Provider receives a request for any information contained within a student's education record, Service Provider shall notify MCPS of such request. Service Provider shall not use information contained within a student's education records for any other purposes than providing services under this agreement. Neither Service Provider nor site coordinators shall disclose personally identifiable student information obtained pursuant to this agreement to any other representative or volunteer of Service Provider not otherwise authorized to receive such information unless parental consent has been obtained in accordance with FERPA. Service Provider acknowledges that MCPS has informed it that the disclosure of any information from a student's education record is subject to the disclosure limitations of 34 C.F.R. 99.33(a).

13. INDEMNIFICATION:

To the extent permitted by law, Service Provider agrees to defend, indemnify and hold MCPS harmless from and against any and all claims, losses, liabilities or expenses (including without limitation attorneys' fees) which may arise, in whole or in part, out of:

- A. Acts or omissions of Service Provider, its volunteers, its employees or agents; and
- B. The negligence or willful misconduct of Service Provider, its volunteers, its employees or agents,
- C. Claims by current or former employees or volunteers of Service Provider relating to their employment and/or provision of services, including but not limited to injuries, accidents or occupational diseases sustained while performing duties on behalf of Service Provider under this Agreement except when such claims wholly arise out of the acts or omissions of MCPS, its employees, or agents;

D. A breach by Service Provider of its obligations under this Agreement.

The indemnity required herein shall not be limited by reason of the specification of any particular insurance coverage.

To the extent permitted by law, MCPS agrees to defend, indemnify and hold Service Provider harmless from any and all claims, losses, liabilities or expenses (including without limitation attorneys' fees) which may arise, in whole or in part, out of:

- A. Acts or omissions of MCPS, its employees or agents;
- B. The negligence or willful misconduct of MCPS, its employees or agents; and/or
- C. A breach by MCPS of its obligations under this Agreement.

The indemnity required herein shall not be limited by reason of the specification of any particular insurance coverage.

14. INSURANCE: Service Provider agrees to carry, for the term of this Agreement, the following insurance in the amounts indicated with insurance carriers that are licenses in the state(s) where the services will be performed and that have an A.N. Best rating of at least A-VII, a Standard & Poor's rating of at least AA, or a Moody's rating of at least AA2:

- A. Commercial General Liability insurance for Bodily Injury and Property Damage for limits not less than \$1,000,000 per claim (\$2,000,000 aggregate) including coverage for Subcontractor's obligations, operations, promises, independent contractors, personal injury and advertising injury.
- B. Business Automobile Liability insurance with a combined single limit of not less than \$1,000,000 for Bodily Injury and Property Damage for all owned, non-owned and hired vehicles.
- C. Worker's Compensation and Employers' Liability insurance in the state(s) where the work will be performed whether or not required by law with statutory, limits for workman's compensation and limits not less than \$1,000,000 each accident; \$1,000,000 each employee; \$1,000,000 each disease including occupational disease. Service Provider's worker's compensation and employers' liability coverage shall include coverage for volunteers and other agents performing services on its behalf.

A combination of primary and UMBRELLA/EXCESS liability policies will be acceptable in order to meet the required limits. Upon the request of MCPS, Service Provider will submit a standard ACORD Certificate of Insurance for the required liability insurance and documentation/certification of the required coverage for worker's compensation insurance signed by an authorized agent or representative of the insurance companies evidencing that the above required policies and limits are in effect. No reduction in coverage or cancellation of policies shall be affected without first giving MCPS 30 days written notice. The policies (except workers' compensation) shall name MCPS as an additional insured.

15. COMPLIANCE: Service Provider represents that it is not presently suspended or debarred or proposed for suspension or debarment by any government agency or regulatory agency. Service Provider agrees to comply with all federal, state and local statutes, regulations, ordinances and rules

as well as any and all MCPS policies and procedures relating, directly or indirectly, to the Service Provider's performance hereunder, including but not limited to all applicable laws pertaining to equal employment opportunity and procurement integrity. Service Provider shall notify MCPS within three (3) business days of knowledge or notification of any claim, complaint, or investigation lodged with or initiated by any state or federal governmental agency or any administrative action or litigation initiated against the Service Provider relating to the programs and services contemplated herein.

16. **ASSIGNMENT:** Service Provider shall not to assign this agreement or license or permit any other person to participate in this agreement without the prior written consent of MCPS.

17. **WAIVER OF TERMS AND CONDITIONS:** The failure of either party in any one or more instances to enforce one or more of the terms and conditions of this agreement or to exercise any of its rights or privileges, or the waiver of any breach of such terms or conditions, shall not be construed as thereafter waiving any such terms, conditions, rights or privileges, and the same shall continue and remain in force and effect as if no waiver had occurred.

18. **RECORDS:** Service Provider shall maintain records regarding the provision of programs and services under this Agreement. Service Provider agrees to maintain the confidentiality of any personally identifiable information provided to Service Provider as provided herein. Service Provider agrees to provide MCPS a summary of project goals, personnel, progress, and accounting for those programs funded by the 21stCCLC grant.

19. **EXTENSION AND MODIFICATION:** The parties hereto may extend or otherwise modify the terms of this agreement in whole or in part as circumstances may justify by mutual written agreement. Such modifications may be made in letter form and shall have the same force and effect as a formal addendum or amendment if executed by duly authorized representatives of the parties.

20. **SEVERABILITY:** In the event any provision of this agreement is declared or determined to be unlawful, invalid or unconstitutional, such declaration shall not affect, in any manner, the legality of the remaining provisions of this agreement. Each provision of this agreement will be and is deemed to be separate and severable from each other provision.

21. **ATTORNEY'S FEES:** If case suit should be brought for any sum due hereunder, or because of any act which may arise out of this agreement, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee.

22. **VENUE:** This agreement shall be governed by the laws of the State of Montana. The parties agree that any litigation concerning this agreement will be brought in the Judicial District where MCPS is located.

23. **NOTICES:** Notices required by this Agreement shall be made to:

MCPS: Barbara Frank
Director of Academic & Community Services
909 South Ave W
Missoula, MT 59801
bfrank@mcpsmt.org

Meg Whicher
City of Missoula Parks & Recreation
600 Cregg Ln
Missoula, Montana 59801
whicherm@ci.missoula.mt.us

Addendum A

NON-DISCRIMINATION. All hiring shall be on the basis of merit and qualification and there shall be no discrimination in employment on the basis of race, ancestry, color, physical or mental disability, religion, national origin, sex, age, marital or familial status, creed, ex-offender status, physical condition, political belief, public assistance status, sexual orientation, or gender identity/expression, except where these criteria are reasonable bona fide occupational qualifications.

AFFIRMATIVE ACTION POLICY. Contractors, subcontractors, sub grantees, and other firms doing business with the City of Missoula must be in compliance with the City of Missoula's Affirmative Action Plan, and Title 49 Montana Codes Annotated, entitled "Human Rights" or forfeit the right to continue such business dealings.

The City's Affirmative Action Policy Statement is:

The Mayor of the City of Missoula or the Mayor's designee may adopt an affirmative action plan to provide all persons equal opportunity for employment without regard to race, ancestry, color, physical or mental disability, religion, national origin, sex, age, marital or familial status, creed, ex-offender status, physical condition, political belief, public assistance status or sexual orientation, gender identity or expression. In keeping with this commitment, we are assigning to all department heads and their staff the responsibility to actively facilitate equal employment opportunity for all present employees, applicants, and trainees. This responsibility shall include assurance that employment decisions are based on furthering the principle of equal employment opportunity by imposing only valid requirements for employment and assuring that all human resource actions are administered based on job necessity. Specific responsibility for developing, implementing, monitoring and reporting are assigned to the City Personnel staff under the supervision and direction of the Chief Administrative Officer and the Mayor.

It is the policy of the City of Missoula to eliminate any practice or procedure that discriminates illegally or has an adverse impact on an "affected" class. Equal opportunity shall be provided for all City employees during their terms of employment. All applicants for City employment shall be employed on the basis of their qualifications and abilities.

The City of Missoula, where practical, shall utilize minority owned enterprises and shall ensure that subcontractors and vendors comply with this policy. Failure of subcontractors and vendors to comply with this policy statement shall jeopardize initial, continued, or renewed funds.

Our commitment is intended to promote equal opportunity in all employment practices and provide a positive program of affirmative action for the City of Missoula, its employees, program participants, trainees, and applicants.