

# COMMUNITY SCHOOL CLASSROOM FACILITIES GRANT AGREEMENT

[Insert Project Name]

This Agreement is entered into by and between Governing Authority on behalf of the [Insert Community School Name] (Community School), and the State of Ohio (State), acting by and through the Ohio Facilities Construction Commission (Commission), a state agency organized and operating under Ohio Revised Code (ORC) Chapter 123 (the Commission and the Community School, collectively, the Parties). This Agreement becomes effective upon the date it is signed by all of the Parties (Effective Date).

## RECITALS

1. The Commission is a body corporate and politic, an agency of state government and an instrumentality of the State, performing essential governmental functions of the State, duly created, existing and operating under and by virtue of ORC Chapter 3318.
2. In accordance with ORC Section 3318.31, the Commission may make and enter into all contracts, commitments and agreements, and execute all instruments necessary or incidental to the performance of its duties.
3. The General Assembly of the State of Ohio in Amended Substitute House Bill 64 (HB 64) appropriated \$25,000,000 to the OFCC to finance all or a portion of the capital facilities costs associated with Community School Classroom Facilities Projects.
4. The Community School has submitted an application requesting funds for a project for the purchase, construction, reconstruction, renovation, remodeling, or addition to classroom facilities.
5. The Commission and the Superintendent of Public Instruction of the Department of Education have determined that the Community School Classroom Facility project identified in Section 2.2 (Project) below meets all requirements of HB 64 and the Commission's Guidelines, and subject to the fulfillment of certain conditions, has approved the expenditure for the Project.

In consideration of the mutual promises and covenants set forth in the Agreement, the Parties agree as follows:

### 1. Identification

#### 1.1 Community School Classroom Facilities Project Community School Information

Community School Name  
Community School Address  
City, State, Zip Code  
Contact Name

Contact Title  
Contact Address (if different than above)  
Contact E-mail  
Contact Phone |

The Community School identified above represents and warrants that it is and will continue to be a public school created under ORC Chapter 3314, independent of any school district and part of the State's program of education. |

The Governing Authority represents and warrants that it has authority to enter into and sign this Agreement.

### 1.2 Notices for Official Correspondence

All communications required or permitted to be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been properly given if hand delivered or sent by U.S. registered or certified mail, postage prepaid.

(a) with respect to the Commission:

Ohio Facilities Construction Commission  
30 West Spring Street, 4<sup>th</sup> Floor  
Columbus, Ohio 43215  
Attention: Executive Director

(b) with respect to the Community School:

Community School Name  
Community School Address  
Community School City, Community School State Community School Zip Code  
Attention: Title, not name of person |

The Parties may modify the designation and notice address upon giving reasonable prior written notice to the other party listed above.

## **2. Project Information**

### 2.1 Project Location

|Insert location of facility to be renovated/constructed| (the Facility)

### 2.2 Project Description

|The Community School plans to use the grant [Insert project name and description of construction project to be completed].

## **3. Financial Considerations**

### 3.1 Grant Amount

The Commission agrees to provide a grant of |insert Grant Amount| (Grant Amount) to

the Community School. The Grant Amount represents the State's total obligation to the Project. The Community School is responsible for all funding necessary for the Project in excess of the Grant Amount.

### 3.2 Appropriation Intent

The funds under this Agreement shall be used by the Community School for capital improvements that meet the requirements, intent and purpose of the fund appropriation.

### 3.3 Fiscal Management of Project

The Community School is responsible for the financial management of the Project. The Community School will comply with, or cause compliance with, all appropriate accounting and budgeting procedures in accordance with generally accepted accounting principles, consistently applied.

### 3.4 Project Budget

The total cost of the Project is estimated to be [Insert total cost of project] (Project Budget)

### 3.5 Local Match

The Community School must demonstrate to the satisfaction of the Commission that it has local contributions amounting to not less than 50 percent of the Project Budget. (Local Match).

### 3.6 Full Funding

The Community School acknowledges that full funding occurs when it can demonstrate, to the satisfaction of the Commission, that funds have been raised to cover the Project Budget set forth in Section 3.4 of this Agreement (Full Funding).

### 3.7 Disbursement of Grant Funds

The Community School expressly acknowledges that no payment of State appropriation funds shall be made until such funds are released by the State Controlling Board.

The Commission's disbursement of the Grant Amount is on a reimbursement basis. The Community School shall submit invoices for reimbursement to the Commission no less frequently than quarterly, and in compliance with Exhibit A to this Agreement.

### 3.8 Tax Obligations

The Community School is solely responsible for and shall pay all applicable federal, state, and local tax obligations.

## **4. Real Estate and Construction**

### 4.1 Project Start Date

By [Insert Project Start Date] (Start Date), the Community School shall commence or cause commencement of construction of the Project. Failure to start construction by the Project Start Date is an event of default (see section 9.1) and may serve as cause

for the State's termination of the Grant Appropriation.

The Community School is responsible for all construction services for the Project, including construction administration.

#### 4.2 Contracts and Permits

The Community School represents and warrants that it has the full authority to contract with appropriate persons for the design and construction of the Project. The Community School shall secure all necessary permits and/or licenses related to the Project.

#### 4.3 Completion Date

The Community School represents and warrants that it will cause the Project to be constructed with reasonable speed and dispatch and reasonably adhere to the submitted project schedule. The expected completion date of the Project is Insert Completion Date (Completion Date).

#### 4.4 Restrictions of Record on Property

Unless otherwise permitted by the Commission and modified by supplemental conditions to the Agreement, the Community School represents and warrants that there are not now, and there will not be, any restrictions of record with respect to the Facility or the Project, including without limitation, any encumbrances, liens or other matters, which would interfere with or otherwise impair the use of the Facility or the rights and obligations granted by the Community School to the Commission in this Agreement.

The Community School represents and warrants that it is the [Insert either fee simple owner] or [owner of a leasehold interest] of the premises on which the Facility is located, as described in Section 2.1 of this Agreement.

#### 4.5 Use of Facility

The Community School shall cause the property owner to execute a restrictive covenant in a form acceptable to the Commission. The restrictive covenant shall be filed with the county recorder, as required by O.R.C. 5301.25, and shall require that a facility purchased, constructed, or modified by the grant funds shall be used for educational purposes for a minimum of ten years from the date of final disbursement of the Grant Amount.

### **5. Operations and Maintenance**

#### 5.1 Operations and Maintenance

The Community School is solely responsible for and shall pay, or cause to be paid, all operating and maintenance costs of the Facility over the term of the Agreement.

The Community School is solely responsible for any enforcement of warranties or guarantees related to the Project over the term of the Agreement.

The Community School shall maintain and keep the Facility in good order and repair, and shall use the Facility for educational purposes.

## 5.2 Ownership

The Community School shall own or have the right or option to use and occupy any facility that is purchased, constructed, or modified by grant funds received for the Project for a minimum of ten years from the date of final disbursement of the Grant Amount.

## 5.3 Conveyance of Right to Use and Occupy

As security for the performance of the Community School's obligations under this Agreement, the Community School conveys to the State the right to use and occupy the Facility upon an Event of Default, as described in Section 9.1 of this Agreement. The Commission acknowledges that, absent an Event of Default, it has no right to use or occupy the Facility.

# 6. Risk Management

## 6.1 Indemnification

To the extent allowed under applicable law, the Community School shall hold harmless and indemnify the Commission and the State from any and all obligations, costs, fees, penalties, expenses (including attorney fees), damages, liabilities, claims, actions or causes of action arising from the Project or out of the use, operation, repair and maintenance of the Facility.

The Community School shall immediately notify the Commission in writing of Community School's receipt of notification of a claim by any third party which would be subject to indemnification hereunder and shall cooperate with the Commission and/or its legal representative in defending such claim.

Notwithstanding any other provision of this Agreement to the contrary, the terms of this Section 6.1 shall survive the expiration or earlier termination of this Agreement.

## 6.2 Property and Liability Insurance

Unless otherwise stated, the Community School shall maintain, or cause to be maintained, at no cost to the Commission and the State, commercial general liability insurance, builders risk insurance, and property insurance to insure the Commission and the State in an amount and type determined by a qualified risk assessor to be sufficient to cover the full replacement costs of improvements funded, in whole or in

part, by the State, and the bodily injury, property damage, personal injury, advertising injury and employer's liability exposures of the Community School. Unless otherwise stated, such insurance shall remain in force at all times from the Effective Date of the Agreement through the term of this Agreement.

# 7. Term

## 7.1 Term

This Agreement commences on the Effective Date and, unless otherwise terminated as provided in this Agreement, expires ten (10) years from the date of the final disbursement of the Grant Amount (the Term).

## **8. Legal Compliance**

### **8.1 General**

This Agreement or any actions taken under it are not subject to Chapter 153 of the ORC, except for any listed below.

The Community School affirmatively represents and warrants that it shall comply with this Agreement and with all applicable federal, state, and local laws and regulations, including, but not limited to:

- (a) Worker's Compensation laws
- (b) Equal Opportunity laws
- (c) ORC Section 153.011 (domestic steel)
- (d) The Americans with Disabilities Act
- (e) Environmental laws and regulations
- (f) Drug-free Safety Program
- (g) ORC Section 9.24 (findings for recovery)
- (h) ORC Chapters 102 and 2921 (Ohio Ethics laws)
- (i) ORC Chapter 3314 (Community Schools)
- (j) ORC Section 3517.13 (Failure to File Statements)
- (k) Executive Order 2011-12K, Governing the Expenditure of Public Funds for Offshore Services

### **8.2 Negative Pledge; Prohibition Against Disposition**

Unless otherwise permitted by the Commission and modified by supplemental conditions to the Agreement, the Community School shall not assign, transfer, pledge or otherwise encumber all or any part of the Facility, including the Project, with any mortgage, security interest, or lien, nor shall the Community School dispose of any part of the Facility, including the Project, without replacement or substitution with improvements substantially similar to those of the Project provided for under the Agreement, without the prior written consent of the Commission, which consent shall not be unreasonably withheld.

### **8.3 Reports and Records**

The Community School shall maintain and make all reports and records associated with the Project available to the Commission over the Term of this Agreement upon request.

### **8.4 Reviews and Inspections**

The Commission may conduct reviews or inspections of the Project to determine whether the uses made are consistent with this Agreement.

## **9. Default and Termination**

### **9.1 Events of Default**

Each of the following is considered an Event of Default and the Commission may, upon ten (10) days' prior written notice to the Community School, terminate this Agreement:

(a) the Community School fails to maintain its status as a public school created under Chapter 3314 of the Revised Code, independent of any school district and part of the State's program of education;

(b) the Community School fails to start construction by the Project Start Date, fails to complete the Project by the completion date, or abandons the Project or Facility;

(c) the Community School becomes insolvent, makes a general assignment for the benefit of creditors, is generally unable to pay its debts when they are due, or is a debtor in any receivership proceeding or any other proceeding brought under the federal bankruptcy laws and not cause such proceeding to be terminated within thirty (30) days following the commencement of such proceedings;

(d) the Community School is found to be in default under any other agreement or commitment secured by an interest in the real or personal property comprising the Project or Facility and fails to cure such default within any cure period provided for in such agreement or commitment;

(e) there is any change in use of the Facility that significantly reduces or eliminates the educational purpose;

(f) the Community School fails to remedy any covenant, condition or agreement, except as provided in subsections (a) – (e), within a period of thirty (30) days after receipt of written notice that the Community School is not in compliance.

## 9.2 Remedies Upon Default

Whenever an Event of Default has occurred, the Commission may:

(a) terminate this Agreement upon no less than ten (10) days' prior written notice; or

(b) take whatever action at law or in equity appears necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of the Community School, including but not limited to enforcing the terms of the restrictive covenant filed with county recorder under Section 4.5 of this agreement against the owner of the facility.

Upon termination of this Agreement after completion of the Project, for any reason other than at the stated expiration of its term, the Community School or guarantor, if applicable, shall repay the Commission the percentage of the Grant Amount described in Section 3.1 of this Agreement equal to the ratio of (x) the number of months from the Event of Default to the end of the term divided by 120 (the Repayment Amount). The Repayment Amount shall be calculated by the OFCC.

Notwithstanding the foregoing, if this Agreement is terminated prior to the Completion Date of the Project, the Community School shall immediately repay to the Commission the amount of State funds used to pay costs of the Project.

The requirements to make payment to the Commission as provided in this Section 9.2

and the restrictive covenant referenced in Section 4.5 shall survive the termination of this Agreement.

## **10. Interpretative Provisions**

### **10.1 Binding Effect**

All of the covenants, conditions and obligations contained in this Agreement shall be binding upon and inure to the benefit of the respective permitted successors and assigns of the Commission and the Community School to the same extent as if each such successor and assign were named as a party to this Agreement. This Agreement may not be changed or discharged except by written Agreement signed by the Parties. Amendments to the Agreement shall require the approval of the Commission.

### **10.2 Governing Law**

This Agreement shall be governed by and interpreted under the laws of the State, and any action or proceeding arising from this Agreement shall be commenced in a court of competent jurisdiction located in Franklin County, Ohio.

### **10.3 Severability**

Each provision of the Agreement shall be separate and independent and the breach of any provision by either party shall not discharge or relieve the other party from its obligations to perform each and every covenant to be performed by it under the Agreement. If any provisions shall be deemed invalid or unenforceable by any court of competent jurisdiction, the remaining provisions of this Agreement shall not be affected, and said provisions shall be valid and enforceable to the fullest extent permitted by law.

### **10.4 Waiver**

The waiver by any party of, or the failure of such party to take action with respect to, any breach of any term, covenant or condition contained in the Agreement shall not be deemed to be a waiver of any other term, covenant or condition contained in the Agreement, or subsequent breach of the same, or any other term, covenant or condition of the Agreement.

### **10.5 Time is of the Essence**

Time is of the essence in this Agreement and all provisions relating to time shall be strictly construed.

## **11. Enumeration of Documents**

This Agreement includes the following documents:

11.1 Exhibit A Additional Requirements for Reimbursement of Costs Related to Community School Classroom Facilities Project

11.2 Exhibit B Summary Sheet

11.3 Exhibit C Governing Authority's signed resolution supporting the project

11.4 Exhibit D Supplemental Conditions for the Community School Classroom Facilities Grant Agreement (optional)



11.5 Other Exhibits as necessary

## 12. Signatures

The Commission and the Community School have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

«COMMUNITY SCHOOL NAME»

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Governing Authority (Board) President  
Title

\_\_\_\_\_  
Fiscal Officer  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

### STATE OF OHIO, ACTING BY AND THROUGH THE OHIO FACILITIES CONSTRUCTION COMMISSION

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Executive Director  
Title

\_\_\_\_\_  
Date

## EXHIBIT A

### ADDITIONAL REQUIREMENTS FOR REIMBURSEMENT OF COSTS RELATED TO COMMUNITY SCHOOL CLASSROOM FACILITIES PROJECT

The Community School shall submit invoices to the Commission no less frequently than quarterly. The invoices shall identify the total amount then due and payable, the State's share of the total amount due and payable, the Application and Certificate for Payment (AIA Document G702) or similar Commission approved form, and any appropriate back- up documentation requested by the Commission staff.

Upon receipt of invoices and all appropriate supporting information in the form acceptable to the Commission, the Commission shall use its best efforts to pay the Community School within thirty (30) days. If the invoice(s) submitted by the Community School fail to meet all of the requirements set forth in this exhibit, then the Commission shall have the right to withhold disbursement of funds for such invoice(s) until the Community School has complied with all such requirements.

State Appropriations to the credit of the Community School Classroom Facilities Project shall be held in the Commission's Community School Classroom Facilities Building Fund and shall accrue interest in accordance with State law. Interest in the Community School Classroom facilities Building Fund shall accrue to the credit of the Commission.

1. Payment by the Commission to the Community School shall be on a pro rata basis (in amount equal to a fraction of the invoice, with the numerator being the Grant Amount and the denominator being the Project Budget) over the length of the construction of the Community School Classroom Facilities Project unless otherwise approved by the Commission staff.
2. Invoices containing charges for work that is more than one (1) year old at the time the invoice is received by the Commission will not be accepted or approved, unless otherwise approved by the Commission staff.
3. Invoices will be organized in the following manner:
  - (a) A summary sheet, in the form of Exhibit B, shall be included with each invoice submittal. The summary sheet will include the following information for each contract: the contractor name, the type of work or bid package, the initial contract amount, the total change orders, the total contract amount, the total work completed to date, and the amount to be paid on the invoice.
  - (b) Supporting documents will accompany all invoices. These documents include:
    - (i) copies of complete contractor pay requests including:

- cost breakdown including unit/unit cost, amount per unit and total cost;
      - approval by the Community School or Community School Classroom Facilities Project representative authorized by the Governing Authority for payment;
      - approval by the architect or construction manager, if applicable;
      - current date;
      - invoice number; and
      - date of service.
    - (ii) copies of all approved change orders. Field work orders, construction change directives, or similar charges, shall not be paid until change orders are finalized and approved.
  - (c) When construction is complete, the following documentation shall be submitted along with the summary sheet and supporting documentation:
    - (i) A cover letter signed and dated by an appropriate representative of the Community School with his or her name and title printed, containing the following language:

“By signing below, I certify that the charges invoiced are for actual work completed on the [Facility Name] Project, and the charges are true, accurate and appropriate, and that no liens have been filed on the Community School Classroom Facilities Project or the Facility. I further certify that all work has been done in compliance with all applicable laws.”
    - (ii) A copy of the Certificate of Occupancy (if available) and/or photographs of the completed project.
4. Appropriations made for buildings and structures, including remodeling and renovations, are limited to the following:
- (a) acquisition of real property or interest in real property;
  - (b) buildings and structures, which includes construction, demolition, complete heating and cooling, lighting, and lighting fixtures, and all necessary utilities, ventilating, plumbing, sprinkling, water and sewer systems, when such systems are authorized or necessary;
  - (c) architectural, engineering, and professional services expenses directly related to the project;
  - (d) machinery that is a part of the structures at the time of initial acquisition or construction;
  - (e) acquisition, development, and deployment of new computer systems, including the redevelopment or integration of existing and new computer systems, but excluding regular or ongoing maintenance or support agreements; and

- (f) equipment that meets all the following criteria:
- (i) the equipment is essential in bringing the facility up to its intended use;
  - (ii) the unit cost of the equipment, and not the individual parts of a unit, is about \$100 or more;
  - (iii) the equipment has a useful life of five (5) years or more; and
  - (iv) the equipment is necessary for the functioning of the particular facility or project.

No equipment shall be paid for from these appropriations that is not an integral part of or directly related to the basic purpose or function of a facility or project for which moneys are appropriated. This does not apply to line items appropriated specifically for equipment.

An inventory list shall be kept of all fixtures, furniture and equipment where the cost was reimbursed by the Commission. Items listed on the inventory shall be kept, and shall remain in good repair, for the Term of this Agreement. If an item cannot be repaired, it shall be replaced in kind.

## EXHIBIT B: SUMMARY SHEET

Community School: \_\_\_\_\_

Date: \_\_\_\_\_

Drawdown Number: \_\_\_\_\_

Work Category	Contractor Name	Initial Contract Amount	Change Orders	Total Contract Amount	Total Work Completed to Date	Amount Paid This Month
General						
General Conditions						
Demolition						
Site Work						
Structural Steel						
Roofing						
Masonry						
Misc. Metals						
Glass						
Plaster/Drywall						
Plumbing						
HVAC						
Electrical						
Fire Protection						
<b>TOTAL</b>						
<b>Initial Project cost per state approval</b>						
<b>Initial contingency per state approval</b>						
<b>Contingency less current Change Orders to date</b>						
<b>Total Invoice Amount</b>						
<b>Total Construction Cost</b>						
<b>Total State Appropriation</b>						
<b>Percent of Invoice to be Reimbursed = Total State Appropriation/Total Construction Cost</b>						
<b>Total Amount to be Reimbursed</b>						