

**Memorandum of Understanding  
Between  
Portland Public Schools  
And  
The Foundation for Portland Public Schools**

**PARTIES**

This agreement is made between Portland Public Schools ("PPS" or "District") and The Foundation for Portland Public Schools ("FPPS" or "Foundation").

**RECITALS**

WHEREAS, PPS is a public school system established under the laws of the State of Maine; and

WHEREAS, the Foundation for Portland Public Schools is a private non-profit corporation organized under Maine's non-profit corporation statute for the express purpose of raising community and philanthropic support for educational purposes; and

WHEREAS, FPPS is to be recognized by the Internal Revenue Service as having tax exempt status under Section 501(c)(3) of the United States Internal Revenue Code; and

WHEREAS, PPS and the FPPS have formalized the relationship between PPS and the FPPS by setting forth the manner in which PPS is to provide support to the FPPS and which the FPPS is to provide support for PPS; and

NOW THEREFORE, in consideration of the mutual covenants, promises and commitments herein, and parties agree as follows:

**TERMS**

**1.0 Relationship between Portland Public Schools and the Foundation for Portland Public Schools**

1. The Foundation for Portland Public Schools, although affiliated with the Portland Public Schools by its purpose, is an independent corporate entity.
2. The Executive Director of the FPPS shall be responsible for managing the day-to-day operations of the Foundation, and will report to the Foundation Board that includes the District Superintendent as an ex officio, voting member. The Executive Director will maintain records, correspondence and action items for the FPPS Board's review and approval. The Executive Director shall be responsible for ensuring that all Foundation procedures are maintained, that all expenditures are proper and that funds appropriated by the Foundation are transferred on a timely basis. The Executive Director shall be employed and compensated by the District under such terms and conditions as are agreed upon by the FPPS Board and the District Superintendent. The Executive Director shall be selected by the FPPS Board, subject to approval by the District Superintendent, and shall work under the supervision, control and direction of the FPPS Board. The FPPS Board shall have the power to remove the Executive Director subject to the approval of the District Superintendent. The Superintendent shall also have the power to remove the Executive Director, after consultation with the FPPS Board, for bona fide economic reasons or for other reasons he/she deems to be in the best interest of the District.

3. The Foundation Board and staff agree to work with the District Superintendent and staff in support of District policies, priorities and Strategic Plan.
4. The District agrees to encourage and maintain the independence of the Foundation and, at the same time, foster the cooperative relationship between District and Foundation.
5. The Foundation agrees to cooperate with the District Superintendent and/or designee to allow the District to monitor the relationship between the District and the Foundation.
6. The Foundation may, in connection with its lawful business and activities, use the name of the District as well as the District's logo, informal seal, and other symbols and marks of the District consistent with District policy. The Foundation shall not delegate the authority to use the District name or symbols to any person or entity without the written approval of the Superintendent.
7. The Superintendent shall be an ex officio voting member of the Foundation's governing board.
8. Funds or gifts to the Foundation shall be owned by the Foundation and shall be maintained and/or distributed for the District's benefit as determined by the Foundation Board. All funds received by the Foundation for Foundation purposes shall be maintained in accounts that are separate from District accounts, and Foundation and District funds shall in no event be intermingled. The Executive Director shall be responsible for complete and accurate record-keeping regarding all Foundation receipts and expenditures, and such records shall at all times be available for review by the District Superintendent or his/her designee.
9. The District shall typically accept grants from state or federal agencies intended for District use. The Foundation shall typically accept private philanthropic financial donations, restricted or unrestricted gifts intended for endowment or capital use, gifts in kind, and gifts of real estate or other property for distribution, that benefit the District.
10. The District and Foundation agree that, as separate corporate entities, each is responsible for any liabilities and costs arising from its own action(s) and/or inaction(s), and for procuring its own insurance(s) for such liabilities and costs in policy amounts as each deems prudent.

## **2.0 Foundation for Portland Public Schools Support of and Obligations to Portland Public Schools**

1. The Foundation exists to raise significant community and philanthropic support for Portland Public Schools, to support the vision, mission, core values and strategic priorities of Portland Public Schools, to enhance educational opportunities for all students, and to enrich teaching and learning. In accordance with the Foundation's governing documents, that support includes, but is not limited to:
  - a. Raising, receiving, investing, and administering private philanthropic funds for the District to use for educational purposes;
  - b. Assisting the District's fund raising activities and development programs with individuals, corporations, foundations, and other organizations.
2. The Foundation shall annually provide the Superintendent and Board of Public Education with the Form 990 as filed with the Internal Revenue Service.

3. The Foundation agrees to seek approved types of gifts that can benefit the District, and closely coordinate with District staff regarding funding goals, programs or campaigns.
4. The Foundation agrees, before accepting gifts with any restrictive terms and conditions or gifts of real estate or equipment, to confer with the Superintendent, and Foundation and District both agree to advise donors that a restricted gift for the benefit of the District may not be accepted without District and Foundation approvals.
5. The Foundation agrees in the exercise of all its functions and activities to act consistently with all pertinent District policies.
6. The Foundation agrees not to independently initiate or pursue any legislative strategy or issue without formal permission from, and agreement of the Superintendent with written communication to the Portland Board of Public Education.
7. The Foundation agrees to maintain adequate insurance for any liabilities that may arise in connection with its operations.
8. The Foundation's spending policy will be established subject to the approval of the Foundation's Board of Directors.

### **3.0 Portland Public Schools Support of the Foundation for Portland Public Schools**

1. For the term of this agreement (two years from the date signing this agreement, renewable for additional two year terms by mutual written agreement of the Parties, and requiring formal action by both the Foundation Board and Portland Board of Public Education) the District agrees to provide the following:
  - a. PPS staff will support the Foundation for Portland Public Schools by including the FPPS as the primary option for individual, foundation and corporate gifts to the District;
  - b. Provide at no cost, office space, utilities (including technology) and infrastructural support, and auxiliary services (printing, telephone service, audio visual, duplicating, events scheduling and related facilities) adequate for the performance of the services of the Foundation;
  - c. The District may provide other limited and reasonable administrative support to the Foundation; and
  - d. Any additional staff resources needed for the Foundation that is funded by the District would be subject to approval by the Board of Public Education.

### **4.0 Coordination of Fundraising**

1. The Foundation shall coordinate with the District in the development of its fundraising programs, including providing information, sharing plans, and coordinating requests. In addition, the Foundation will through its Executive Director:
  - a. Focus on major gifts, deferred gifts and special projects; and
  - b. Coordinate all special fundraising projects with the District; and
  - c. Be responsible for acknowledging all gifts with appropriate language that involves the specific nature of any goods or services received; and

- d. Provide reports to donors of endowed funds and capital projects that have been received through the Foundation. The Foundation will receive assistance from the District as needed to provide donors with a comprehensive report; and
- e. Maintain a well-coordinated donor relations program in an effort to maximize annual and long term fund raising.

### **5.0 Gift Funds Management**

During the term of this Understanding the Foundation shall be responsible for overseeing the management of funds that originate with its activities or are entrusted to it by its donors. The Foundation fund management services shall include the following:

- 1. Gifts:
  - a. The Foundation is entitled to "capture" a certain percentage of the gifts as an offset to its annual operating expenses.
- 2. Restricted Gifts:
  - a. The Foundation is authorized to accept restricted gifts that are designed to benefit the District. The Foundation will not intentionally solicit or accept gifts for any use specified by a donor that is known to be inconsistent with the District's vision, mission, strategic priorities, goals, policies or procedures.
  - b. Distribution of restricted current use funds will be made at the discretion of the Foundation Board.
- 3. Unrestricted Gifts:
  - a. The Foundation shall maintain a separate accounting for unrestricted funds received and gains, profits and losses resulting from said investments.

### **6.0 Foundation Filing, Audits and Reporting**

- 1. The Foundation will file all reports and other documents required by law in a timely and comprehensive manner, including but not limited to those required by the Maine Non-Profit Corporations Act, Maine Charitable Solicitations Act and the United States Internal Revenue Code.
- 2. The Foundation will supply the District with an annual set of financial statements for the most recently ended fiscal year, submitted to the District Executive Director of Budget & Finance, no later than the last business day in August. The City or the District may also contact the Foundation's statement preparer or auditor directly to obtain additional information or clarify information about those statements.
- 3. The Foundation agrees to provide the Superintendent, annually:
  - a. An annual report; and
  - b. A list of Foundation governing board, officers, and advisors

### **7.0 Limitations on Foundation**

The Foundation agrees not to make any payments to a District employee except with prior District written approval.

### **8.0 Confidentiality**

Neither the Foundation nor the District shall disclose or use any private or confidential donor, student, or employee information provided from one to the other except as required in and by the terms of this Understanding.

#### **9.0 Compliance with Applicable Law and Non-Discrimination**

The Foundation further agrees not to discriminate in any manner on the basis of race, religion, color, national origin, gender, disability, age, sexual orientation or preference, or marital, parental, or veteran's status in its programs and activities, and to comply with all non-discriminatory laws and policies that the District promulgates and to which the District is subject.

#### **10.0 Notices**

Any notice to either party hereunder must be in writing signed by the party giving it, and shall be deemed given when mailed postage prepaid by the U.S. Postal Service first class, certified or express mail or other overnight mail service, or hand delivered, when addressed as follows:

To District:  
Office of the Superintendent  
353 Cumberland Ave.  
Portland, Maine 04101

To Foundation:  
Foundation for Portland Public Schools: Attn: Executive Director  
353 Cumberland Avenue  
Portland, Maine 04101

Other addressee(s) may also be hereafter designated by written notice. All such notices shall be effective only when received by the addressee.

#### **11.0 Amendment and Termination**

1. This Understanding may be amended only in writing signed by an authorized representative of both Parties.
2. This Understanding shall terminate immediately in the event that:
  - a. The Foundation dissolves
  - b. The Portland Board of Public Education withdraws recognition of the Foundation
  - c. The Foundation ceases to be a non-profit corporation or ceases to be recognized by the Internal Revenue Service as described in Section 501(c)(3) of the Internal Revenue Code.
3. In the event the Foundation ceases to exist, all monies and items of value received by or held by the Foundation for the benefit of the District shall immediately be transferred to the District consistent with federal and state laws and any restrictions as may have been imposed by the donors.

#### **Signatures:**

IN WITNESS WHEREOF, Portland Public Schools and the authorized representative(s) of the Foundation for Portland Public Schools have executed this Understanding on this \_\_\_\_ day of \_\_\_\_\_, 2019,

the effective date of this Understanding. This Understanding will expire two years from the date of signing.

PORTLAND PUBLIC SCHOOLS

FOUNDATION FOR PORTLAND PUBLIC SCHOOLS

By 

By 

(Signature)

(Signature)

XAVIER BOTANA

Joshua C. Row

(Printed Name)

XAVIER BOTANA, SUPERINTENDENT

(Printed Name)

PRESIDENT, FPPS BOARD