

TRILLIUM CHARTER SCHOOL CONTRACT

THIS CONTRACT ("Contract"), dated this 15th day of May, 2002, is entered into by PORTLAND SCHOOL DISTRICT NO. 1J, MULTNOMAH COUNTY ("School District" or "District") and TRILLIUM CHARTER SCHOOL ("Trillium"), an Oregon nonprofit corporation, for the operation of the Trillium Charter School ("Trillium").

RECITALS

WHEREAS the Oregon Legislature enacted the 1999 Charter Schools Act for certain purposes as enumerated in Chapter 338 of the Oregon Revised Statutes ("Act"); and

WHEREAS on September 17, 2001, an application ("Application") was submitted by Trillium for formation of the Trillium Charter School to operate within the School District and later supplemented by additional material that were considered part of the Application; and

WHEREAS the School District's Board of Education ("Board") has determined that the Application submitted to the School District for the formation of Trillium as a charter school complies with the purposes and requirements of the Act; and

WHEREAS by Resolution No. 2119 adopted January 14, 2002 the Board approved the Application for a K-8 program and directed District staff to work with and determine if Trillium has a fully developed comprehensive grade 9-10 high school program in order for Trillium to open in the Fall 2002 as a K-10 program, and further directed staff to begin the negotiation and execution of a contract acceptable to the Board and Trillium; and

WHEREAS by Resolution 2119, the Board further directed staff to determine if Trillium has prepared and submitted a comprehensive grade 11-12 program that meets all District and state requirements in order for the Trillium program to expand to a K-12 in the Fall 2003, and

WHEREAS the Act contemplates that the Application, as amended by this contract between Trillium and the School District, will constitute the agreement between the parties regarding the governance and operation of Trillium;

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual understandings, releases, covenants and payments herein described, the parties agree as follows:

AGREEMENT

A. Establishment of the Trillium Charter School. It is the intent of the parties that (1) the provisions of the Act, ORS 338.005 through ORS 338.185, strictly apply to and are incorporated into this Contract and shall supersede and control any conflicting language contained in the Application, (2) the provisions of this Contract shall supersede and control any conflicting

language contained in the Application, and (3) the provisions of the Act and this Contract supersede and control any prior understandings with the School District regarding the Trillium School. Trillium represents that to its knowledge, this Contract does not violate any existing contracts with third parties. The articles and bylaws of Trillium (see Exhibit 1 attached) provide for the operation of the public charter school in a manner consistent with this Contract.

B. Corporate Status. During the term of this Contract, Trillium agrees to maintain (a) its status as a nonprofit organization under Oregon law and (b) its status as an exempt organization under Section 501(c)(3) of the Internal Revenue Code. (See attached Exhibit 2, (require evidence of 501(c)(3) status or application to IRS for same.)

1. Authority of Trillium's Board. Trillium's governing board shall serve as fiscal agent for Trillium and shall be responsible for the school's compliance with applicable laws, rules, regulations, policies, procedures, and the terms and conditions of this Contract and the Act.

C. Contracting. Trillium shall clearly indicate to vendors and other entities and individuals outside the School District with which Trillium enters into any agreements for goods or services that the obligations of Trillium under such agreements or contracts are solely the responsibility of Trillium and are not the responsibility of the School District.

D. Operational Powers. Subject to the conditions and provisions of this Contract, Trillium shall be fiscally responsible for Trillium's operations within the limitations of any funding provided by the School District and other revenues derived by Trillium being used for Trillium's school purposes. Specific operational powers include, subject to ORS 338.115 and such other provisions of Oregon law as may apply, making all personnel decisions, including hiring, firing and discipline of teachers, supervisors and staff; contracting for goods and services necessary for the operation of Trillium; preparing a budget; procuring insurance and necessary bonds; leasing facilities for school purposes; purchasing, leasing or renting furniture, equipment or supplies; retaining fees collected from students in accordance with law; organizing and carrying out fund-raising efforts; and accepting and expending gifts, donations or grants of any kind in accordance with such conditions prescribed by the donor as are consistent with law and not contrary to any of the terms of this Contract.

E. Educational Program. Pupil Performance Standards. and Curriculum

1. Curriculum. The School District agrees to waive its curricular requirements, to the extent permitted by state law, but subject to the implementation by Trillium of the instructional programs as outlined in its Application, as amended herein.

(a) Trillium shall have the authority and responsibility of ensuring that Trillium's educational program, subject to the conditions of this Contract, is designed and implemented in a manner that is consistent with the Act, including, without limitation, requirements regarding content standards, pursuant to ORS 329.045(1).

(b) The parties are currently negotiating the terms of the Performance Benchmarks and expect the Benchmarks to be finalized by no later than June 30, 2002, at which point they will be incorporated as Exhibit 3 to this contract. Trillium shall meet or exceed the Performance Benchmarks set forth in Exhibit 3. If Trillium fails to make adequate yearly progress (as defined in the Performance Benchmarks) towards any benchmark in any school year, Trillium must address how it will achieve the required adequate yearly progress in its School Improvement Plan (see Section F.3.). If Trillium fails to comply with the requirements of the School Improvement Plan and continues to fail to make adequate yearly progress towards any benchmark in two consecutive years, this will be a basis to begin the termination procedure in Section K.

(c) Trillium agrees that Trillium will comply with all state statutory requirements concerning subjects of instruction, unless specifically exempted by the Act or waived by the State Board of Education

(d) Trillium will comply with OAR 581-022-1130 regarding diploma requirements in administration of its high school program.

2. Required Instructional Time. Trillium will ensure that Trillium will annually adopt and implement a school calendar that establishes requirements for instructional time provided by a school during each day or during a year in accordance with ORS 338.115(1)(n) and OAR 581-022-1620 that requires a minimum number of instructional hours annually: Grade K – 405 hours; Grades 1-3 – 810 hours; Grades 4-8 – 900 hours; Grades 9-12 -- 990 hours. Trillium will be accredited by the Northwest Association of Schools and Colleges as soon as eligible.

3. Records. Trillium shall comply with all applicable federal and state laws concerning the maintenance, retention, and disclosure of all operational records and of student records.

4. Nonreligious, Nondiscrimination Standards. The educational program of Trillium shall be nonreligious, nonsectarian and shall not discriminate against any student on the basis of race, creed, color, sex, national origin, religion, marital status, sexual orientation, political affiliation, or disability.

5. Enrollment Requirements. Enrollment shall be open to any child who resides within the School District. Additionally, enrollment shall be open to children not residing within the School District, subject to the provisions set forth in 1999 Or. Laws Ch.200, §15 and in accordance with ORS 338.125. Trillium must maintain an active enrollment of at least 25 students. Active enrollment for purposes of this Contract shall mean the total number of eligible students enrolled in and regularly attending Trillium with less than Ten (10) consecutive days of absences.

6. Student Registration. Trillium will ensure that Trillium completes a District Student Registration Form, beginning, according to the District's calendar, on the first

day of school in September 2002 and ending on the last day of school in June 2003, for each student upon admittance to their program and update the form according to District regulations and OAR 581-23-006 when a student withdraws. A student whose withdrawal status can be determined within ten days shall be marked as withdrawn from the active roll on the school day following that determination. A student must be withdrawn from the active roll on the day following the tenth consecutive day of absence.

7. Education of Students under the Individuals with Disabilities Education Act ("IDEA"). Trillium will comply with all District policies and regulations and the requirements of federal and state law concerning the special education of school-aged children who are eligible under the IDEA, including, but not limited to, the following:

- (a) All special education and related services shall be provided by the School District as permitted under the Act. Trillium will ensure that Trillium will cooperate in the delivery of such services;
- (b) When the name of a student with an IEP is selected in the Trillium lottery application process, the student's resident school district shall convene an IEP meeting within a reasonable period of time to determine whether the student can receive a free appropriate public education in a Trillium placement;
- (c) The IEP team is determined by state and federal law. Trillium teams shall have a District representative in attendance at all IEP meetings, as well as appropriate District specialists;
- (d) The student's IEP team shall determine eligibility, the content of the IEP, placement, and the provision of a free appropriate public education for an Trillium student. Trillium shall abide by the IEP team's decisions in these areas;
- (e) The District shall retain all state and federal special education funding for Trillium special education students;
- (f) The District has the discretion to determine which specialized programs and services will be offered, if any, on the Trillium site;
- (g) Trillium student IEP teams may recommend any appropriate placement for Trillium students based on the students' needs, whether in or out of the charter school. Trillium shall not change students' IEP programs without IEP team action;
- (h) Trillium shall provide substitutes for Trillium staff who are required to attend IEP meetings or other meetings related to a Trillium special education student;

- (i) Special education transportation shall only be provided to a Trillium special education student if it is listed as a related service on the student's IEP; and
- (j) Trillium shall immediately notify the District when it suspects that a student may have a disability and may need special education services as a result of that disability.

F. Evaluation of Pupil Performance and Annual Report

1. Trillium shall report in writing within forty-five (45) days after the conclusion of each semester to the Board and to the parents and community it serves on its compliance with the Performance Benchmarks and its compliance with the provisions of this Contract and report on the same topics to the State Board of Education following the last day of each school year, pursuant to ORS 338.095(1).
2. By May 1 of each year, Trillium will administer the Portland Public Schools and State of Oregon assessments, for determining student progress toward the Certificates of Initial and Advanced Mastery and attainment of state and local student performance standards. Results of these assessments shall be reported to the parents of Trillium students and to the Board within thirty (30) days of Trillium's receipt of the results from the assessments. The Board may designate, and shall bear the entire cost of, an external entity to evaluate the success of the academic program of Trillium. Trillium will cooperate fully in such assessment, including the provision of all requested data.
3. By October 30 of each year, commencing with the 2003-04 school year, Trillium shall prepare an annual School Improvement Plan in a form provided by the District and submit the Plan to the Board and to parents and community members served by Trillium. The Plan shall include an analysis of student performance data and growth in achievement, accomplishment of the previous year's established goals for the school, the revised improvement goals for the school, the action plan to achieve those goals, and the evaluation plan to measure accomplishment of the goals. The Board, parents, and community served by Trillium shall be given an opportunity to provide input regarding revisions to the School Improvement Plan.
4. Members of the Board, the District's Superintendent, or Superintendent's designee, may visit Trillium at any time during normal business hours for purposes of monitoring the progress of the implementation of this Contract. There shall be at least one annual on-site visit by the Board or the Board's designee to review compliance with the provisions of this Contract and to review growth in student achievement.
5. Trillium will furnish to the District copies of all written policies and procedures it may adopt with respect to any matter relating to its operations and educational program within Ten (10) days of adoption by Trillium's Board.

G. Financial and Budget. The Financial and Budget provisions of the Application are amended as set forth in Exhibit 4 attached to this Contract.

H. Funding

1. Funding and payments shall be made in accordance with the provisions of the Act and in strict accordance with the funding formula set forth in Exhibit 5. The District's obligation to fund Trillium under this Contract is subject to the District's receipt of payments from the State School Fund as provided under ORS Chapter 338.

2. There shall be a review, consistent with the District's obligations to the State Board of Education in this regard, of the number of pupils actually enrolled in Trillium for appropriate adjustments in funding to reflect actual enrollment per ADMw. Enrollment data for any given year of the Charter, including, without limitation, significant increases or decreases in enrollment, shall be considered in negotiating funding for the subsequent fiscal year. In addition, to the extent the School District experiences any reduction or increase in state funding support by a legislative rescission or other action, proportionate reductions or increases will be made to Trillium by adjustment or setoff in subsequent months. The District shall not be responsible for any payments to Trillium for student attendance during periods of time outside the School District's regular (September to June) school year.

3. On or before February 1 of each year, Trillium shall submit to the Board for its approval, Trillium's proposed budget for the upcoming school year.

4. It is the intent of the School District that Trillium receive a proportionate share of state, local and federal grant funding (when required by state or federal law), to the extent that Trillium is entitled to the same, complies with the conditions and requirements of such grants and applicable law, and fulfills the reporting requirements for such funding. Direction of such federal and state resources or categorical aid shall be contingent on Trillium's compliance with federal and state statutes and regulations regarding entitlement to such resources sufficient to permit the School District to claim reimbursement. The District will not interfere with, and this provision shall not be construed to limit, Trillium's ability to apply for grants available to charter schools and to retain the entire amount of such grants received less any administrative or other costs specifically permitted to be withheld from Trillium pursuant to state, federal or local law.

I. Financial Records and Annual Audit. Trillium agrees to establish, maintain, and retain appropriate financial records relating to Trillium for Seven (7) years, and to make such records promptly available to the School District upon written request. Trillium will retain a certified public accountant to conduct an annual audit of Trillium in accordance with State requirements. Trillium shall submit the audit to the School District, the State Board of Education, and ODE no later than September 30 of each Contract year. The first audit shall be due September 30, 2003, reflecting the fiscal year ending June 30, 2003. The audit shall be submitted to the District in accordance with the format of the State Chart of Accounts required of Oregon public school districts. Additionally, Trillium shall provide quarterly financial reports of Trillium to the Board

that track expenditures for the fiscal year within Ten (10) days of the end of each fiscal year and shall be subject to a review of its operations and finances by the Board or its designee as of November 1 and March 1 of each year.

J. Term. It is the intent of the Board that the Charter and this Contract are to be effective as of the date first written above to terminate on June 30, 2008 (unless earlier terminated as provided herein), and may be renewed only upon the authorization of the Board as provided in the Act. The Trillium school year shall mirror that of the District to the fullest extent possible (September to June). Trillium will begin operation in September 2002. If Trillium fails to open in Fall 2002, the District retains the right to terminate this contract. Although this Contract is for operation of Trillium as a charter school in the School District for the period described in this paragraph, any financial commitment on the part of the School District contained in this Contract is subject to annual appropriation by the State of Oregon and the parties agree that the School District has no obligation to fund Trillium operations except as expressly provided herein or in ORS Chapter 338.

K. Termination.

1. This Contract may be terminated, and the Charter revoked by the Board or Trillium in the manner and for any grounds stated in the Act and for any uncured material breach of this Contract including, but not limited to, the following:

- (a) Trillium's failure to achieve (or make adequate yearly progress toward achievement of) any of the Performance Benchmarks set forth in Exhibit 3;
- (b) Trillium's failure to meet generally accepted standards of fiscal management;
- (c) Insufficient enrollment of students;
- (d) Trillium's violation of any provision of law from which the public charter school is not specifically exempt, or has not obtained a waiver from the State Board of Education pursuant to ORS 338.025; or
- (e) Any other ground set forth in this Contract.

2. In executing the obligations and rights of termination under the Act, the parties agree to first make a good faith attempt to resolve any dispute regarding the operation of the Contract in the following manner:

- (a) The party with a concern regarding the other party's compliance with the Contract will notify the other party in writing of the concern.
- (b) The responding party shall submit a written response to the concern within Thirty (30) days of the receipt of the same.

(c) The termination provisions of the Act contained in ORS 338.105 may proceed if the parties are unable to agree in good faith to a resolution of the concern within Thirty (30) days of the receipt of the response.

(d) The time frames set forth in sections (b) and (c) of this paragraph may be extended by mutual agreement of the parties.

3. The dispute resolution process set forth in this Section shall not be required prior to the exercise of any contractual right conferred upon either the School District or Trillium under this Contract. The parties further agree that the School District reserves the right, without exhausting the good-faith resolution process described in this Section, to immediately invoke the health and safety termination provisions of the Act with respect to this Contract.

L. Dissolution. In the event Trillium should permanently cease operations for whatever reason, including the nonrenewal or revocation of this Charter, the assets that were purchased with public funds under this Contract shall be disbursed as provided by the Act.

M. Employment Matters. The guidelines set forth in the Application concerning employment matters such as employee relationships, job descriptions, and terms and conditions of employment are accepted by the School District, subject to the provisions of the Act and the following conditions:

1. Trillium shall be the employer of personnel at the public charter school. The District shall not be the employer of personnel at the public charter school and will not collectively bargain with Trillium employees. Trillium assumes sole responsibility for conducting appropriate criminal background checks for all Trillium staff members and Trillium assumes sole legal responsibility for all claims resulting from acts of misconduct by Trillium staff.

2. At least 50 percent of Trillium's Full Time Equivalent of teachers and administrative staff must possess a valid Oregon teaching or administrative license. By September 15 of each year, Trillium shall submit to the Board a list of all teachers and administrators employed by Trillium designating the licenses, endorsements, degrees, and qualifications of the same. Trillium shall provide the same information to the Board with respect to any new hires of teachers or administrators it makes during the course of each year.

3. Trillium shall notify the School District and other appropriate authorities, in accordance with law, of discipline of Trillium employees arising from misconduct that threatens harm to students.

N. Insurance and Legal Liabilities: The parties agree that the following provisions shall control any conflicting language contained in the Application materials:

1. Insurance. Trillium shall at all times maintain and keep in force the following insurance:

- (a) **Commercial General Liability Insurance** in an amount of not less than \$2,000,000 **combined** single limit per occurrence/\$5,000,000 general annual aggregate covering the School District, its Board, employees, and volunteers against liability for damages because of personal injury, bodily injury, death, or damage to property, including the loss of use thereof. Coverage to include but not be limited to contractual liability, advertisers' liability, employee benefits liability, professional liability, and teachers' liability.
- (b) **Directors and Officers Liability Insurance** in an amount not less than \$1,000,000 each loss/\$1,000,000 each policy year covering the School District, its Board, employees, and volunteers against liability arising out of wrongful acts and employment practices.
- (c) **Automobile Liability Insurance** in an amount not less than \$1,000,000 combined single limit covering the School District, its Board, employees, and volunteers against liability for damages because of bodily injury, death, or damage to property, including the loss of use thereof arising out of the ownership, operation, maintenance, or use of any automobile. The policy will include underinsured and uninsured motorist coverage at the limits equal to bodily injury limits.
- (d) **Workers' Compensation Insurance** shall also be maintained according to State of Oregon statutes (ORS Chapter 656). Employers' Liability Insurance with limits of \$100,000 each accident, \$100,000 disease each employee, and \$500,000 each policy limit.
- (e) **Employee Dishonesty Insurance** will be in force covering all employees and volunteers. The policy shall carry limits of no less than \$75,000. Coverage shall include faithful performance and loss of monies and securities.
- (f) **Property Insurance** shall be required on all owned or leased buildings or equipment. The insurance shall be written to cover the full replacement cost of the building and/or equipment on an all risk of direct physical loss basis, including earthquake and flood perils.
- (g) The School District shall be an additional insured on items (a) and (c) of this paragraph and the policies shall provide for a Thirty (30) days prior written notice to the School District of cancellation or material change. Trillium must show proof of all the above insurance before initial operation.
- (h) The District shall provide Trillium with self-insurance certificates and endorsements that demonstrate the insurance limits.

2. Legal Liabilities. The parties agree that:

(a) Trillium may sue or be sued as a separate legal entity apart from the School District and the School District has no responsibility to indemnify Trillium in any fashion with respect to their activities.

(b) Trillium is an independent contractor providing charter school educational services and that neither it nor its employees or agents are employees of the School District. Trillium agrees that it shall indemnify and hold harmless the School District against and from any cost, expenses, attorney fees, damages, claims, grievances, injury, or loss to which the School District may be subject directly relating to any wrongdoing, misconduct, want of care, skill, negligence, or default by Trillium, Trillium's agents, employees, or assigns, in the execution or performance of this Contract and that the immunity provisions of the Act protecting the School District and Board (ORS 338.115(7)) shall be strictly enforced.

(c) Subject to the limitations of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300), the School District agrees that it shall indemnify and hold harmless Trillium against and from any costs, expenses, attorney fees, damages, claims, grievances, injury, or loss to which Trillium may be subject directly relating to any wrongdoing, misconduct, want of care, skill, negligence, or default by the School District, the School District's agents, employees, or assigns, in the execution or performance of this Contract.

O. Transportation. The School District shall not provide transportation except as required in the Act. In the event that School District bus routes cover the Trillium attendance areas, the School District shall provide transportation along such bus routes in accordance with the terms of the Act.

P. School Location. Trillium shall be responsible for securing a location for the operation of the charter school. Before commencing operations of the charter school, Trillium shall ensure that the location is in compliance with all applicable local, state, and federal laws and regulations, including but not limited to those relating to accessibility and student safety. Trillium shall ensure that it remains in compliance with all such applicable laws during the term of this contract.

Q. General Provisions.

1. Entire Agreement. This Contract, with attachments, contains the entire understandings of the parties, and all prior representations, understandings, and discussions are merged herein and superseded and canceled by this Contract.

2. Nonassignment. The parties may not assign any rights or benefits they are entitled to under this Contract to any entity or individual.

3. Amendment. This Contract may only be modified or amended by further written agreement executed by the parties hereto. The parties agree that they will each consider any requested amendments to this contract in good faith and with the intent of enhancing the services and educational programs offered to the students at Trillium.
4. Governing Law and Enforcement. This Contract will be governed and construed according to the laws of the State of Oregon.
 - (a) Attorney Fees. If a suit, action, arbitration or other court proceeding of any nature whatsoever, including without limitation any proceeding under the U.S. Bankruptcy code, is instituted the prevailing party as determined by the court shall be entitled to recover reasonable attorney fees and costs.
5. Notice. Any notice required, or permitted, under this Contract, shall be in writing and shall be effective upon personal delivery (subject to verification of service or acknowledgment of receipt) or three (3) days after mailing when sent by certified mail, postage prepaid, to Trillium President, 116 N. Page, Portland, Oregon 97227, in the case of notice to Trillium, and to Office of the Superintendent, Portland School District No. 1J, P.O. Box 3107, Portland, Oregon, 97208-3107, for notice to the School District.
6. No Waiver. The parties agree that no assent, express or implied, to any breach by either of them of any one or more of the covenants and agreements expressed herein shall be deemed or be taken to constitute a waiver of any succeeding or other breach.
7. Invalidity. If any provision of this Contract is deemed to be unenforceable or invalid for any reason, the remainder of the Contract shall remain in effect, unless otherwise terminated by the parties in accordance with the terms contained herein.
8. No Third Party Beneficiary. This Contract shall not create any rights in any third parties who have not entered into this Contract, nor shall any third party be entitled to enforce any rights or obligations that may be possessed by either party to this Contract.
9. Execution in Counterparts. This Contract may be executed and delivered in counterparts, each of which, when so executed and delivered, shall be effective.