

DONATION AGREEMENT

This Donation Agreement ("Agreement") is made as of the last day of execution below ("Effective Date"), by and between SchoolSeed Foundation ("SchoolSeed") and White Station Community Court Project, Inc. ("WSCC") (each individually a "party" and collectively the "parties").

RECITALS

1. SchoolSeed is an independent organization exempt from Federal income tax pursuant to 26 U.S.C. § 501(c)(3) and donations to it are deductible under 26 U.S.C. § 170(b)(1)(A)(vi).
2. SchoolSeed works with donors who wish to improve education in Shelby County, Tennessee public schools by building collaborative partnerships within the community, by helping develop and implement a shared vision of educational excellence, and by researching, creating and implementing programs to improve the quality of education for all students in the Shelby County, Tennessee School System.
3. WSCC is a Tennessee Non-Profit Corporation leading the effort to have designed, have funded and have constructed a specific improvement to White Station High School ("WSHS"); specifically, the creation of an outdoor learning area and walkway (the "Project").
4. WSCC has a Master Plan created by the University of Memphis for the physical improvement of WSHS which includes creation of the Project.
5. WSCC is working with Shelby County, Tennessee Schools ("SCS") and WSHS to obtain input on a desirable layout and content of the Project.
6. WSCC intends to hire an architect to create the architectural plans for the Project.
7. WSCC intends to hire Flintco, LLC as construction manager for the Project.
8. WSCC intends to process the construction application and all other paperwork with local government to obtain permission to construct the Project.
9. WSCC is seeking donations to fund the Project.
10. WSCC intends to act as agent for qualified donors, as determined by WSCC, in contracting with SCS for naming recognition of the qualified donors' funding of the Project.
11. WSCC intends to act as agent for donors desiring to make donations for the Project.
12. WSCC desires that SchoolSeed be the immediate beneficiary of any and all donations for the Project, subject to the terms and conditions of the Agreement, and upon the condition that SchoolSeed shall, upon completion of the Project, as determined by WSCC and SCS, relinquish all right, title and interest in and to the Project to SCS and/or WSHS.

13. WSCC also desires that SchoolSeed be the fiscal agent for the Project, subject to the terms and conditions of the Agreement.

14. SchoolSeed has determined that WSCC's efforts with respect to the Project are consistent with SchoolSeed's goals and wishes to make arrangements with WSCC to assist in its efforts as both beneficiary and fiscal agent.

15. The parties desire to enter into the Agreement specifying the terms and conditions of the relationship among SchoolSeed, WSCC and all donors.

WHEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED IN THE AGREEMENT, THE PARTIES AGREE AS FOLLOWS:

1. **Fiscal Agency.** SchoolSeed shall act as WSCC's fiscal agent for the Project and shall assume administrative responsibilities for the payment of all expenditures for the Project in accordance with WSCC's written instructions and the terms and conditions of the Agreement.

a. **SchoolSeed's responsibilities/services as fiscal agent:**

- i. SchoolSeed shall establish and operate for the use of WSCC a designated account ("Account") segregated, separate and independent on SchoolSeed's books. All funds received by SchoolSeed for the Project shall be deposited into the Account. All funds deposited into the Account shall be used to support the Project, unless other written instructions are received from WSCC, and shall be subject to the terms and conditions of the Agreement.
- ii. Except for payment of the SchoolSeed fee as outlined in the Agreement, SchoolSeed shall never transfer any funds from the Account unless pursuant to a written instruction from WSCC's authorized personnel.
- iii. SchoolSeed shall pay authorized expenses from the Account as directed by written instructions from WSCC's authorized personnel.
- iv. SchoolSeed shall maintain separate accounting records for the Account showing funds deposited in the Account for the Project and payments made out of the Account that, at a minimum, include the following ("accounting records"):
 - A. The date written instructions/authorization to pay was received from WSCC's authorized personnel;
 - B. The name of WSCC's authorized personnel authorizing the payment;
 - C. Payee's name and mailing address;
 - D. The payment amount;

2. Beneficiary. SchoolSeed shall be beneficiary of all donations contributed for the Project and deposited into the Account.

a. SchoolSeed's responsibilities as beneficiary:

- i. SchoolSeed shall maintain the accounting records showing all funds deposited into the Account for the Project, including the date and amount of each deposit and the identity and mailing address of each associated donor.**
- ii. SchoolSeed shall prepare and timely forward to each donor a donation confirmation letter upon the donation becoming irrevocable.**
- iii. SchoolSeed shall, upon written notification from WSCC that the Project is complete, accomplish formal transfer of the Project to SCS and/or WSHS, including formal relinquishment of all right, title and interest therein to SCS and/or WSHS.**
- iv. SchoolSeed shall, upon written notification from WSCC that the Project is complete, transfer all remaining and unexpended donated funds in the Account to the donor thereof, or to another SchoolSeed account, pursuant to WSCC's written instructions.**
- v. SchoolSeed shall, upon written notification from WSCC that the Project has failed, for any reason, return any remaining, unexpended balances of donated funds in the Account to the donor thereof, or to any other SchoolSeed account, pursuant to WSCC's written instructions.**
- vi. SchoolSeed shall timely reconcile its donor records with WSCC's donor records upon WSCC's written request.**
- vii. SchoolSeed shall make available all accounting records showing funds deposited into the Account for review by WSCC's authorized personnel no later than one (1) business day after receipt after WSCC's authorized personnel of a written request to review accounting records.**

b. WSCC's responsibilities as donor agent:

- i. WSCC shall deliver, or have delivered, all funds donated for the Project to SchoolSeed for deposit into the Account.**
- ii. WSCC shall provide SchoolSeed with each donor's name, mailing address, donation amount and instructions with respect to the use of the donor's funds, if applicable.**
- iii. WSCC shall timely notify SchoolSeed in writing:**
 - A. That the donation has become irrevocable;**

- B. That the Project is complete and that SchoolSeed shall accomplish transfer of the Project to SCS and/or WSHS;
- C. That the Project has failed; and/or
- D. Any instruction regarding distribution of funds other than to pay expenditures pursuant to ¶ 1(a) above.

3. WSCC shall not use funds deposited into the Account to carry on any activity that will in any way jeopardize SchoolSeed's tax exempt status. No material changes in the purposes or activities of WSCC, with respect to the Project, shall be made without prior written notice to SchoolSeed.

4. SchoolSeed and/or WSCC shall not directly or indirectly use funds deposited into the Account to attempt to influence legislation or participate or intervene in any political campaign on behalf of, or in opposition to, any candidate for public office or otherwise engage in the carrying on of propaganda, within the meaning of Section 501 (c)(3) of the Internal Revenue Code of 1986, as amended.

5. SchoolSeed and/or WSCC shall maintain all financial and/or accounting records relating to the Project according to generally accepted accounting principles; retain such financial and/or accounting records as long as required by law and no less than three (3) years after expiration of the Agreement; and, make records available to auditors as required by law.

6. All disbursements from the Account shall be treated as payments made to or on behalf of the effort to accomplish the purposes of the Project.

7. The terms and conditions of the Agreement commence upon the Effective Date and will expire upon either the completion or failure of the Project or termination of the Agreement. The Agreement will terminate if any of the following events occur:

- a. SchoolSeed requests WSCC to cease activities that SchoolSeed deems might jeopardize its tax-exempt status and WSCC fails to comply within a period of ten (10) days;
- b. SchoolSeed or WSCC fails to perform or observe any other covenant of the Agreement, and this failure remains unremedied fifteen (15) days after notice in writing; or
- c. Upon expiration of four (4) weeks after either the SchoolSeed or WSCC have given written notice of its intent to terminate the Agreement. In the event of termination, remaining funds will be returned to the respective donors or to any other SchoolSeed account, as per WSCC's written instructions.

8. The Agreement represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations or agreements, whether oral or written.

9. The Agreement may be modified or amended only by written instrument signed by both parties.

10. Each party shall comply with all applicable federal and state laws and regulations mandating confidentiality of information. SchoolSeed acknowledges that, in dealing with individuals in discharging and providing its fiscal agent responsibilities/services, any information gathered for the provision of services is confidential information. Each party agrees to hold all information in strict confidence, and except as expressly set forth herein, or required by law, will not disclose such confidential information to any third party(s), including but not limited to any corporation, company, group, partnership, agency or individual.

11. The Agreement shall become effective on the Effective Date.

12. All notices, approvals, requests, instructions, consents and other communications required or permitted hereunder shall be in writing and shall be effective when delivered by any of the following methods: hand-delivery, sent by facsimile, sent by FedEx Express service or sent by United States certified or registered mail, postage prepaid, and addressed to the parties as follows:

If to SchoolSeed: SchoolSeed Foundation
P.O. Box 111169
Memphis, TN 38111
Attention: Vince McCaskill
Email: vince@schoolseed.org

If to WSC/LC: Richard J. Myers, Esq.
Board Member and President
Apperson Crump PLC
6070 Poplar Avenue, Suite 600
Memphis, Tennessee 38119
Email: rmyers@appersoncrump.com

or to such other address provided to the other party by written notification.

13. Neither party shall be responsible to the other party for any excusable delay ("Excusable Delay") in the performance of its respective duties under the Agreement. An Excusable Delay shall be deemed to have occurred if a party's delay in performance is due to causes beyond its reasonable control and not occasioned by its intentional acts or negligence, including, but not limited to, acts of God, court actions and orders, acts of public enemies, orders of any kind of the government of the United States or any country, state or local officials, or any civil or military authority, insurrections, riots, earthquake, fire, storm, restraint of government and people or other similar acts or occurrences.

14. The failure of either party at any time to require performance by the other of any provision of the Agreement shall in no way affect the party's right to enforce such provisions, nor shall the waiver by either party of any provision of the Agreement be taken or held to be a waiver of any further breach of the same provision or other provision.

15. Each party agrees that it will take such actions, provide such documents, do such things and provide such further assurances as may reasonably be requested by the other party during the term of the Agreement, including to better effectuate the purpose and intent of the Agreement.

16. The Agreement shall be governed by, and interpreted in accordance with, the laws of the State of Tennessee without regard to the application of choice of law principles. Each of the parties hereby (a) acknowledges and agrees that the state and federal courts located in Shelby County, Tennessee shall have exclusive jurisdiction over any and all matters arising out of, related to and/or resulting from the Agreement and (b) covenants and agrees not to institute any action in any other forum and waives any right such party may have to assert the defense of forum non conveniens or to object otherwise to such forum and/or venue.

17. If legal action of any kind ensues between the parties under, or to enforce any provision or obligation of, the Agreement, the prevailing party shall be entitled to an award of its attorney's fees and expenses.

18. All qualified donors shall be third party beneficiaries of the Agreement with the same rights thereunder as the parties.

19. If WSCC and a donor jointly give a written instruction to SchoolSeed regarding disbursement of said donor's remaining fund balance, then SchoolSeed shall comply with said written instruction.

20. All recitals above are incorporated into the Agreement.

21. Each party represents and warrants that it has full power and lawful authority to enter into the Agreement and consummate the transactions contemplated herein.

22. Each party agrees to indemnify, defend and hold harmless the other party, including its successors, assigns, officers, directors, agents and employees, from and against any claim, liability, loss, expense, demand, suit or judgment against the former arising out of, or related to, its operations, performance of duties with respect to the Agreement, conduct of business or any other act or omission.

23. The Agreement may be executed in one (1) or more counterparts which, when considered together, shall constitute one and the same instrument. In making proof of the Agreement, it shall not be necessary to produce or account for more than one (1) such counterpart. The exchange of copies of the Agreement and of signature pages by electronic transmission shall constitute effective execution and delivery of the Agreement and may be used in lieu of the original Agreement for all intents and purposes. Signatures of the parties and counterparts of the Agreement which are transmitted by electronic transmission shall be deemed to be enforceable, original signatures for all intents and purposes.

[Signatures on the following page]

IN WITNESS WHEREOF, the parties hereto have executed the Agreement.

Accepted for SchoolSeed:

Vincent McCaskill
Vincent McCaskill, Executive Director

5-13-16
Date:

Accepted for WSCC:

Richard J. Myers
Richard J. Myers, President and Board Member

13 May 16
Date

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, the undersigned Notary Public in and for the State and County aforesaid, personally appeared Vincent McCaskill, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Executive Director of SchoolSeed Foundation, the within named bargainer, and that he as such Executive Director, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of SchoolSeed Foundation by himself as such Executive Director.

WITNESS my hand and official seal this 13th day of May, 2016.

Tangela Pearson
Notary Public

My commission expires: 10-17-18



STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, the undersigned Notary Public in and for the State and County aforesaid, personally appeared Richard J. Myers, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the President and Board Member of White Station Community Court Project, Inc. the within named bargainer, and that he as such President and Board Member, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of White Station Community Court Project, Inc. by himself as such President and Board Member.

WITNESS my hand and official seal this 15th day of May, 2016.

My commission expires: 10-17, 2018.

Angela Pearson
Notary Public

My commission expires: 10-17-18

