

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding, (hereinafter “MOU”), is made by and between the Milwaukee Board of School Directors on behalf of Milwaukee Public Schools, an entity created by the laws of the State of Wisconsin, (hereinafter “MPS”), and Washington High School Alumni Scholarship Foundation, Inc., a Wisconsin non-stock corporation (hereinafter “WHSASF”).

RECITALS

WHEREAS, Washington High School acquired, as a gift from the 1927 graduating class, two large oil paintings by Dr. Sven Birger Sandzén entitled “A Mountain Symphony” and “A Creek at Twilight” (together, the “Sandzén Paintings”); and

WHEREAS, after many years on display at Washington High School, the Sandzén Paintings were removed and placed in storage at the school; and

WHEREAS, WHSASF and MPS were unaware of the potential value of the Sandzén Paintings until a Birger Sandzén expert contacted the principal of Washington High School regarding purchasing the Sandzén Paintings;

WHEREAS, the Sandzén Paintings have since been stored at various art galleries and local museums without a permanent home; and

WHEREAS, each of the Sandzén Paintings is of a value that makes their display at Washington High School or any other District building infeasible; and

WHEREAS, WHSASF has made a formal request to MPS to sell the Sandzén Paintings and use the proceeds to fund additional scholarships for students at Washington High School; and

WHEREAS, WHSASF members have the connections and resources necessary to sell Sandzén Paintings at the highest value possible; and

WHEREAS, the parties have determined that it would be mutually beneficial to partner in the disposition of these MPS assets;

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

1. RESPONSIBILITIES OF WHSASF

- a. WHSASF shall have the rights to restore and market the Sandzén Paintings for sale, subject to the followings terms and conditions:
 - i) At all times during the restoration and marketing period, possession of the Sandzén Paintings will remain with MPS, except during the physical restoration and sales process.
 - ii) WHSASF shall, at its sole cost and discretion, restore the Sandzén Paintings to a condition that will ensure a maximized sale price. If the fine arts agent referenced in paragraph 1(a)(iii) offers to restore the Sandzén Paintings at no cost to WHSASF or MPS, it shall be permitted to do so provided the restoration costs are not deducted from the final sale price of the Sandzén Paintings.

- iii) A fine art agent with the appropriate skills and experience to broker a sale of the Sandzén Paintings shall be selected by WHSASF and approved by MPS in writing, which approval shall not be withheld except for demonstrated cause. Brokerage fees or commissions shall be one factor MPS considers when making its approval determination.
- iv) The final sale price of each of the Sandzén Paintings must meet a minimum offer of the appraised value as determined by the fine arts agent (“Sale Proceeds”) unless otherwise agreed to by MPS and WHSASF. Each Sandzén Painting can be sold independent of the other.
- b. WHSASF shall establish a Sandzén Scholarship Fund account for the balance of the Sales Proceeds after distribution pursuant to ¶ 3 herein, to be used to award scholarships to Washington High School graduates at WHSASF’s discretion (hereinafter, “Scholarship Fund”). Notwithstanding the foregoing, MPS shall be granted access to WHSASF’s accounting records relating to the Sandzén Scholarship Fund, upon reasonable request, to verify the funds are being distributed as contemplated by this MOU.
- c. WHSASF will maintain, during the term of this MOU, the following insurance: Directors and Officers Liability Insurance of not less than \$1,000,000 for each occurrence with a combined aggregate of \$2,000,000; Comprehensive General Liability of not less than \$1,000,000 for each occurrence with a combined aggregate of \$2,000,000; and Umbrella Insurance of not less than \$1,000,000. WHSASF will name “the Milwaukee Board of School Directors” as an additional insured on the comprehensive general liability and umbrella policies and as a “Certificate Holder” on the professional liability policy. WHSASF will assume all risk of loss or damage to its property and waives all claims with respect thereto against MPS, unless such loss or damage is caused directly or proximately by any wrongful, intentional, or negligent act or omission of MPS and its employees. Proof of required insurance coverage will be provided by WHSASF to MPS upon request. In lieu of crime insurance, WHSASF shall employ a bonded financial representative to oversee the Scholarship Fund. Any proceeds realized herein shall be distributed to WHSASF consistent with the terms of this MOU.
- d. There will be no cost to MPS for any of the restoration and marketing of the Sandzén Paintings.

2. RESPONSIBILITIES OF MPS

- a. MPS shall continue to pay to store the Sandzén Paintings at Bresler Eitel Framing Gallery until the sale of each Sandzén Painting has closed, but shall cooperate with WHSASF and its agents in obtaining access as needed with respect to WHSASF’s obligations under ¶ 1 above.
- b. MPS shall pay to have the Sandzén Paintings reappraised prior to sale by an appraiser mutually agreed upon by the parties.
- c. For each Sandzén Painting, MPS shall provide a bill of sale to the purchaser, warranting its title thereto.
- d. MPS shall distribute the Sales Proceeds in accordance with ¶ 3 below.
- e. For the benefit of Washington High School, its students and alumni, and to further the artist’s goal of art appreciation, MPS shall, at its sole cost and expense, commission replicas of the Sandzén Paintings for display at Washington High School.
- f. MPS shall monitor the Sandzén Scholarship Fund to ensure the intent of this MOU is fulfilled.

3. DISTRIBUTION OF SALE PROCEEDS

- a. The Sales Proceeds shall be distributed as follows and in the order listed below:
 - i) Any brokerage fee or commission due for the sale of the Sandzén Paintings shall be paid out of the Sales Proceeds at the time of receipt.
 - ii) The balance of the Sales Proceeds shall be distributed to WHSASF promptly (but no later than 65 days from the date of receipt of the Sales Proceeds by MPS) for deposit in a segregated Sandzén Scholarship Fund for the benefit of Washington High School graduates (“Sandzén Scholarship Fund”) as described in ¶ 1.b. above.

4. REPORTING AND AUDITING

- a. WHSASF shall at all times keep the Sandzén Scholarship Fund segregated from all other donations and grants received by WHSASF for scholarship purposes, and keep detailed records relating to disbursements from the Sandzén Scholarship Fund, which shall be made available to MPS on September 30 of each year of the Term.
- b. MPS, its Office of Board Governance - Audit Services, or any other authorized representative of MPS it may name, shall have, after reasonable notice, the right to inspect and audit all data and records of WHSASF related to the carrying out of this MOU for a period up to seven (7) years from the distribution of Sales Proceeds (the “Term”).

5. INDEMNITY

- a. WHSASF will indemnify and hold harmless MPS, its agents, employees and officers against any and all claims, demands, actions and causes of action and resulting liability, loss, damages, costs and expenses arising out of the services provided pursuant to this MOU for injury to persons and damages to the extent caused directly or proximately by any wrongful, intentional or negligent act or omission of WHSASF or WHSASF’s officers, employees or agents. This obligation will not extend to wrongful, intentional or negligent acts or omissions of WHSASF, its officers, employees and agents, if and only if, such acts or omissions are in response to a negligent directive, policy or instruction issued to WHSASF by MPS or its employees.
- b. To the extent permitted by the laws of the State of Wisconsin, including but not limited to Wis. Stat. § 893.80, MPS will indemnify and hold harmless WHSASF, its officers, employees and agents against any and all claims, demands, actions and causes of action and resulting liability, loss, damages, costs and expenses for injury to persons and damages to the extent caused directly or proximately by any wrongful, intentional, or negligent act or omission of MPS and its employees so long as such act or omission is within the scope of employment within the meaning of Wis. Stat. § 895.46.
- c. The obligations identified in ¶ 5 of this MOU will survive the termination of the MOU.

6. TERM

Except as set forth in ¶ 7 below, this MOU will be effective upon execution and, if the Sandzén Paintings are sold, continue in full force and effect until no Sandzén Scholarship Funds remain in the Sandzén Scholarship Fund. Notwithstanding the foregoing, WHSASF shall have twelve (12) months from the execution

date of this MOU to procure a willing and able buyer for the Sandzén Paintings. In the event the Sandzén Paintings have not been sold, or are not under contract for sale at the time, the parties shall mutually agree whether to extend this MOU or amend its terms to pursue a different disposition strategy.

7. MISUSE OF SCHOLARSHIP FUND

- a. In the event MPS determines, based on its inspection of records pursuant to ¶ 4 herein, that WHSASF is utilizing the Sandzén Scholarship Fund for a purpose other than the Sandzén Scholarship Fund, it shall immediately provide WHSASF written notice detailing the alleged violation(s) of the terms of this MOU. Notwithstanding the foregoing, MPS may not question WHSASF's administration of the Sandzén Scholarship Fund with respect to:
 - (1) The number of scholarships awarded each year, provided at least one scholarship is awarded annually unless approved by MPS;
 - (2) The amount of each scholarship awarded, provided the amount does not exceed \$50,000 for a single student;
- b. Upon receipt of the written notice, WHSASF shall refrain from expending additional Sandzén Scholarship Funds from the account until the dispute regarding the alleged violation(s) has been resolved. WHSASF shall have thirty (30) days to either remedy the alleged violation(s) or provide an explanation in writing to MPS relating to its concerns.
- c. If the alleged violation(s) is/are not remedied, or MPS is not satisfied with WHSASF's explanation, the parties mutually agree to cooperate in good faith to come to a resolution, including, if necessary engaging in mediation with a mutually agreed upon mediator (with the costs of mediation shared equally between the parties), prior to initiating any action against the other in accordance with ¶ 13 below.

8. TERMINATION

- a. If either party breaches its obligations hereunder, the non-breaching party shall have the right to terminate this MOU by giving thirty (30) days written notice by Certified Mail or Registered Mail, specifying the alleged violation(s) and the effective date of termination. The MOU shall not be terminated if, upon receipt of notice, the alleged breaching party cures the alleged violation(s) within thirty (30) days or give notice disputing within 30 days that there is a breach. If there is such a notice then the parties shall submit the same to mediation.

9. INDEPENDENT CONTRACTOR

In entering into this MOU, and in acting in compliance herewith, WHSASF is at all times acting and performing as an independent contractor, duly authorized to perform the acts required of it hereunder. WHSASF further agrees that MPS is not to be charged with the obligation or responsibility of extending any fringe benefits such as hospital, medical and life insurance, or pension plans which may be extended to employees of MPS from time to time to any individual or entity providing services pursuant to this MOU.

10. NOTICE

- a. Notice to WHSASF will be sufficient if sent by first-class mail to Washington High School Alumni Scholarship Foundation c/o Barbara Stein, 777 North Prospect Avenue, Unit 601, Milwaukee, WI 53202 or to such other address as WHSASF may designate to MPS in writing.

- b. Notice to MPS will be sufficient if sent by first-class mail to Emily Van Deraa, Contract Law Coordinator, 5225 West Vliet Street, Room 160, Milwaukee, WI 53208 or to such other address as MPS may designate to WHSASF in writing.

11. MODIFICATION

No modification, expansion or amendment of this MOU will be of any force or effect unless in writing and signed by the parties hereto.

12. SEVERABILITY

All terms and covenants herein are severable. In the event any single term or covenant is found invalid by an agency or court of competent jurisdiction, this MOU will be interpreted as if such invalid terms or covenants were not contained herein.

13. CHOICE OF LAW & FORUM

This MOU will be governed in all respects by, and construed in accordance with, the laws of the State of Wisconsin. The venue of any action hereunder will be in Milwaukee County, Wisconsin.

14. FINAL EXPRESSION

This MOU is intended by WHSASF and MPS as a final expression of their agreement and as a complete and exclusive statement of its terms. This MOU supersedes all prior proposals, negotiations, conversations, discussions and agreements among the parties concerning the subject matter hereof.

This Memorandum of Understanding may be executed in counterparts and by facsimile. Electronic and Facsimile signatures shall have the same effect as original signatures.

IN WITNESS WHEREOF, the parties have signed this Memorandum of Understanding.

MILWAUKEE PUBLIC SCHOOLS

**WASHINGTON HIGH SCHOOL ALUMNI
SCHOLARSHIP FOUNDATION, INC.**

Darienne B. Driver, Ed.D.
Superintendent of Schools

Steven Brown
President

Date

Date