

**NORTHWEST REGIONAL EDUCATION SERVICE DISTRICT  
CLATSOP, COLUMBIA, TILLAMOOK & WASHINGTON COUNTY  
MASTER SERVICES AGREEMENT (Non Public Works)**

**This AGREEMENT is between NORTHWEST REGIONAL EDUCATION SERVICE DISTRICT (the ESD) and \_\_\_\_\_ (Contractor).**

**Business Name of Contractor**

The parties agree as follows:

**Effective Date and Termination Date:** The effective date of master services agreement shall be \_\_\_\_\_, or the date on which each party has signed this agreement, whichever date is later. Unless earlier terminated as provided below, the termination date shall be \_\_\_\_\_.

**ESD Purchases Not required and Subject to Change:** The ESD is not required to make any purchases under this agreement. This agreement is to provide for services on an as needed or scheduled basis.

**Contractor's Agreement to Sell Services:** Contractor agrees to sell to or provide with the ESD, on a requirements basis, the Services described in the Statement of Work (SOW) contract.

**Statement of Work:** Contractor shall perform the work described in the Statement of Work Contract. **Services to be performed also outlined on quote provided with original request.**

**Payment for Work:** The ESD agrees to pay Contractor in accordance with the Statement of Work Contract. Payment shall not exceed amount listed on Statement of Work and will be paid upon successful completion of work outlined on Statement of Work.

**Contract Documents:** The Contract Documents consist of the following documents which are listed in descending order of precedence: this Contract; attachments to this Contract, including the **Statement of Work Contract** (Statement of Work, Compensation, Payment and Renewal Terms) and **Certification Statement for Corporation or Independent Contractor Status.**

A conflict in the contract documents shall be resolved in the priority listed above with this Contract taking precedence over all other documents. The contract documents are the entire contract between the parties and shall supersede any prior representation, written or oral.

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**NWRES D**  
**STANDARD TERMS AND CONDITIONS**

1. **Time is of the Essence.** Time is of the essence in the performance of this Contract.
2. **Subcontracts and Assignment.** Contractor shall not subcontract any of the work required by this Contract or assign or transfer any of its interest in this Contract, without the prior written consent of the ESD, which may be withheld without cause. In addition to any other provisions the ESD may require, Contractor shall require of any permitted subcontract under this Contract, that the Sub-Contractor be bound by all the same terms and conditions of this agreement. Such sub-contracts are solely between the Contractor and the Sub-Contractor and shall not have any binding effect on the ESD.

This contract is not assignable by the Contractor, either whole or in part, unless Contractor has obtained the prior written consent of the ESD.

3. **Other Contractors.** The ESD may undertake or award other contracts for additional or related work, and the Contractor shall fully cooperate with such other contractors and with any ESD employees concerned with such additional or related work, and shall coordinate its performance under this contract with such additional or related work. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by ESD employees.
4. **Independent Contractor Status.** Contractor shall certify status as an independent contractor in accordance with the Certification Statement for Corporation or Independent Contractor Status.
5. **No Third Party Beneficiaries.** The ESD and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Contract and expressly described as intended beneficiaries of this Contract.
6. **Successors in Interest.** The provisions of this Contract shall be binding upon and inure to the benefit of the parties and their successors and approved assigns, if any.
7. **Nonperformance.** In the event of nonperformance under this contract, the ESD, after seven (7) days written notice, shall have the right to obtain from other sources such products and/or services as may be required to accomplish the work not performed, and it is agreed that the difference in cost, if any, for said work or goods shall be borne by the Contractor. For purposes of this section, nonperformance shall be defined as failure to appear and perform work and/or deliver goods as specified and scheduled.
8. **Escalation.** Any price or cost adjustments shall be submitted by the Contractor no less than 60 days prior to the time in which such increases are to become effective. The ESD reserves the right to reject any modifications of the contract unacceptable to the ESD. Prices must be held firm for the first 12 months of the contract.
9. **Early Termination.** This Contract may be terminated as follows unless otherwise specified herein:
  - a. The ESD and Contractor, by mutual written agreement, may terminate this Contract at any time.
  - b. The ESD in its sole discretion may terminate this Contract for any reason on 30 days written notice to Contractor.
  - c. Either the ESD or Contractor may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination, the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within 15 days of the date of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.
  - d. Notwithstanding paragraph 9(c), the ESD may terminate this Contract immediately by written notice to Contractor upon denial, suspension, revocation or non-renewal of any license, permit, or certificate that Contractor must hold to provide services under this Contract.

## 10. Payment of Invoices

- a. Method of Payment. Unless otherwise provided in the Statement of Work Contract, payment shall be approved monthly by the ESD, net thirty (30) days unless otherwise specified upon submission of invoice(s) at the end of each month to the ESD. Please send all invoices via email to: AP\_Invoice@nwresd.k12.or.us or by USPS mail to Northwest Regional ESD Fiscal Services Dept. at 5825 NE Ray Circle Hillsboro, OR 97124.
- b. Payment on Early Termination. Upon termination pursuant to paragraph 9, payment shall be made as follows:
  - (i) If terminated under 9(a) or 9(b) for the convenience of the ESD, the ESD shall pay Contractor for work performed prior to the termination date if such work was performed in accordance with the Contract. The ESD shall not be liable for direct, indirect or consequential damages. Termination shall not result in a waiver of any other claim the ESD may have against Contractor.
  - (ii) If terminated under 9(c) by the Contractor due to a breach by the ESD, then the ESD shall pay the Contractor for work performed prior to the termination date if such work was performed in accordance with the Contract.
  - (iii) If terminated under 9(c) or 9(d) by the ESD due to a breach by the Contractor, then the ESD shall pay the Contractor for work performed prior to the termination date provided such work was performed in accordance with the Contract less any setoff to which the ESD is entitled.
- c. Payment of Laborers. The Contractor shall, to the extent that is required by Oregon State, Federal, and Local law:
  - (i) Make payment promptly, as due, to all persons supplying to such Contractor labor or material for the prosecution of the work provided for this contract;
  - (ii) Pay all contributions or amounts due the Industrial Accident Fund by the Contractor or subcontractors, if permitted, incurred in the performance of this contract;
  - (iii) Not permit any lien or claim to be filed or prosecuted against the ESD on account of any labor or material furnished; and
  - (iv) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to it by any person in connection with this contract as such claim becomes due, the ESD may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of such contract.

The payment of a claim in this manner shall not relieve the Contractor or the Contractor's surety, if any, from obligation with respect to any unpaid claims.
- d. Payment for Medical Care
  - (i) To the extent any of Contractor's employees are covered by the Oregon employment laws, the Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
- e. Non-Appropriation
  - (i) If payment for work under this contract extends into the ESD's next fiscal year, ESD's obligation to pay for such work is subject to approval of future appropriations to fund this Contract by the School Board.
- f. Adequate Funding
  - (i) Continuation of this contract, at specified levels, is conditioned on adequate funding under the ESD's budget adopted in June of each year. ESD reserves the right to adjust the level of services in accordance with funding levels adopted.

- 11. Remedies.** In the event of breach of this Contract the parties shall have the following remedies:
- a. If terminated under 9(c) by the ESD due to a breach by the Contractor, the ESD may complete the work either itself, by agreement with another Contractor, or by a combination thereof. If the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then the Contractor shall pay to the ESD the amount of the reasonable excess.
  - b. In addition to the remedies in paragraphs 9 and 10 for a breach by the Contractor, the ESD also shall be entitled to any other equitable and legal remedies that are available.
  - c. If the ESD breaches this Contract, Contractor's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Contractor is entitled.
- 12. Hours of Labor.** For those employees of Contractor covered or subject to Oregon employment laws:
- a. Persons employed under this Contract shall receive at least time and a half pay for work performed on the legal holidays specified in ORS 279.334(1) (a) (C) (ii) to (vii) and for all overtime worked in excess of 40 hours in any one week, except for individuals who are excluded under ORS 653.010 to 653.261 or under 29 USC 201 to 209 from receiving overtime.
  - b. Except as provided above, no person shall be employed for more than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or where the ESD absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279.051, the laborer shall be paid at least time and a half pay:
    - (i) for all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or
    - (ii) for all overtime in excess of ten hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; or
    - (iii) For work performed on Saturday and on any legal holidays specified in ORS 279.334.
- For those employees of Contractor that are covered or subject to Oregon employment laws, Contractor must, pursuant to ORS 279.316(1) (b), give notice to employees who perform work on this Contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
- 13. Time Limitation on Claim for Overtime.** To the extent any of Contractor's employees are covered by the Oregon employment laws, such covered worker employed by the Contractor shall be foreclosed from the right to collect for any overtime under this contract unless a claim for payment is filed with the Contractor within 90 days from the completion of the contract, providing the Contractor has:
- a. Caused a circular clearly printed in blackface pica type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place which is readily available and freely visible to any or all workers employed on the work, and
  - b. Maintained such circular continuously posted from the inception to the completion of the contract on which workers are or have been employed.
- 14. Workers' Compensation.** To the extent any of Contractor's employees are covered by the Oregon employment laws, the Contractor, its subcontractors, if any, and all employers working under this contract, are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers.
- 15. Hazardous Chemicals.** Contractor shall notify the ESD prior to using products containing hazardous chemicals to which the ESD students or employees may be exposed. Products containing hazardous chemicals are those products as defined in OAR Chapter 437. Upon the ESD's request, Contractor shall immediately provide Materials Safety Data Sheets pursuant to OAR 437-004-9800.
- 16. Errors.** The Contractor shall perform such additional work as may be necessary to correct errors in the work required under this contract without undue delays and without additional cost.

17. **Access to Records.** The Contractor agrees that the ESD and its authorized representatives shall have access to the books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcripts.

Contractor shall maintain all fiscal records directly relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that the ESD's duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of Contractor that are pertinent to this Contract to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

18. **Ownership of Work.** All work products created by the Contractor as part of Contractor's performance of this Contract, including background data, documentation and staff work that is preliminary to final reports, shall be the exclusive property of the ESD. If any such work products contain intellectual property of the Contractor that is or could be protected by federal copyright, patent, or trademark laws, Contractor hereby grants the ESD a perpetual, royalty-free, fully paid-up, non-exclusive and irrevocable license to copy, reproduce, deliver, publish, perform, dispose of, use, re-use, in whole or in part, and to authorize others to do so, all such work products. The ESD shall have no rights in any pre-existing work product of Contractor provided to the ESD by Contractor in the performance of this contract except to copy, use and re-use any such work product for ESD use only.

If this contract is terminated by either party or by default, the ESD, in addition to any other rights provided by this contract, may require the Contractor to transfer and deliver such partially completed work products, reports or other documentation that the Contractor has specifically developed or specifically acquired for the performance of this contract.

19. **When Work is Performed on ESD Property (including Schools), Contractor shall comply with the following:**

- a. **Identification.** Notwithstanding 20c, Contractor's performing work on ESD Property or for ESD shall be in full uniform at all times. Uniforms shall include shirt with company identification attached. In addition, all such persons shall carry photo identification and will present such, to anyone on request. If such identification cannot be produced by Contractor, or is not acceptable to ESD, ESD may provide at its sole discretion, such identification tags to Contractor. Contractor shall bear the entire cost of producing and assigning such identification.

Contractors that do not have specific uniforms for employees, shall provide identification tags as described above, and or any other mechanism, the ESD in its sole discretion determines is required to easily identify Contractors.

As required by schools served by the ESD, each day of work Contractor's employees shall sign into the Main Office to receive an in-school identification/visitors tag to be displayed on the person at all times they are in the school or other location.

- b. **No Smoking.** Smoking or other use of tobacco is prohibited on the ESD property.
- c. **No Drugs.** ESD property sites and schools served by the ESD are designated drug-free zones.
- d. **No Weapons or Firearms.** Except as provided by Oregon Statutes and ESD policy, weapons and firearms are prohibited on ESD property.
- e. **Safety.** Prior to instituting work on ESD property, Contractor, its subcontractors, and suppliers shall review the safety and security policies issued by the ESD's Environmental Health and Safety Department and shall comply with those policies while on ESD property.

20. **When Work is Performed in or on School Sites, Contractor shall comply with the following:**

- a. **No Unsupervised Contact with Students.** Contractor will ensure that Contractor, any subcontractors, and their officers, agents and employees will have no direct unsupervised contact with students while on ESD/School District property. Contractor will work with the ESD to ensure compliance with this requirement. If The Work under this contract requires unsupervised contact with students, then Contractor shall submit to fingerprinting and a criminal background check pursuant to ORS 181.525, 181.539 and 342.223. Contractor shall pay for all required background and security checks.

- b. **Confidentiality.** Contractor will not disclose any information or records regarding students or their families that Contractor may learn or obtain in course and scope of Contractor's performance of this Contract.
  - c. **Criminal Records Check.** Notwithstanding paragraph 20a, Contractor will provide verification of criminal records check and fingerprinting for any Contractor, sub-contractor, officer, agent or employee who may, by the nature of the Work, have direct, unsupervised contact with students while on the ESD/School District property. Cost of the records check and fingerprinting shall be born by the Contractor. No work may proceed until the ESD receives verification of a satisfactory criminal records check.
  - d. **Child Abuse Reporting Act.** Contractor shall comply with the child abuse reporting law (ORS 491B.005 through 419B.050) as if Contractor were a mandatory abuse reporter. Contractor shall immediately report to the proper state or law enforcement agency circumstances supporting reasonable cause to believe that any child has been abused. Contractor shall report to the Principal or designated school authority the circumstances supporting reasonable cause to believe that any child has been abused.
- 21. Employment Standards.** The Contractor agrees that upon request by the ESD, it shall remove from all ESD premises any Contractor's employee who, in the sole opinion of the ESD, is guilty of improper conduct, bringing any unauthorized personnel (including their own children) into a facility, or is not qualified to perform the work assigned.
- 22. Security.** Any disclosure or removal of any matter and/or property on the part of the Contractor or Contractor's employees shall be cause for immediate cancellation of the contract. Any liability, including, but not limited to, attorney fees, resulting from any action or suit brought against the ESD as a result of the Contractor's or Contractor's employees' willful or negligent release of information, documents or property contained in or on ESD property shall be borne by the Contractor. All information, documents and property contained within these facilities shall be considered privileged and confidential.
- 23. Compliance with Applicable Law.** Contractor shall comply with all federal, state, and local laws applicable to public contracts and to the work done under this Contract, and all regulations and administrative rules established pursuant to those laws.
- 24. Public Employee Retirement System.** Contractor represents and warrants that (a) Contractor is not active as an employee in the Public Employee Retirement System; (b) Contractor has not received wages from the ESD or any other public entity during this calendar or fiscal year.
- 25. Indemnity and Hold Harmless.** Contractor shall defend, indemnify, and hold the ESD, its officers, agents and employees, harmless against all liability, loss, costs, or expenses, including attorney's fees, and against all claims, actions or judgments based upon or arising out of damage or injury (including death) to persons or property caused by any act or omission of an act sustained in any way in connection with the performance of this contract or by conditions created thereby, or based upon violation of any statute, ordinance or regulation. This contractual indemnity provision does not abrogate common law or statutory liability and indemnification to the ESD, but is in addition to such common law or statutory provisions.
- 26. Insurance.** Contractor shall provide proof of insurance as required on the Standard Services Contract Insurance Requirements attachment.
- 27. Waiver.** Waiver of any default under this Contract by the ESD shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Contract.
- 28. Governing Law.** The provisions of this Contract shall be construed in accordance with the laws of the State of Oregon and, rules of the ESD, as they appear at the time of signing or any subsequent addenda. Any legal action involving any question arising under this Contract must be brought in Multnomah County Circuit Court. If a claim must be brought in a federal forum, then it shall be brought and conducted in the United States District Court for the State of Oregon.
- 29. Severability.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held invalid.

- 30. Merger Clause.** This Contract and the attached exhibits constitute the entire agreement between the parties. All understandings and agreements between the parties and representations by either party concerning this Contract are contained in this Contract. No waiver, consent, modification or change in the terms of this Contract shall bind either party unless in writing signed by both parties. Any written waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.
- 31. Anti-discrimination Clause.** Contractor must comply with all applicable requirements of federal and state civil rights law and rehabilitation statutes and shall not discriminate based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, source of income, or political affiliation in programs, activities, services, benefits or employment. Contractor shall not discriminate against minority-owned, women-owned or emerging small businesses.
- 32. Rule of Construction.** The rule of construction that a contract is construed against the drafter shall not apply to any dispute over the interpretation of application of the contract.

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#### CONTRACTOR DATA AND SIGNATURE

Business Name:			
Business Address:		Phone:	
Federal Tax ID#		or	Social Security #:
Is Contractor a nonresident alien? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
Business Designation (check one):	<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> Partnership	
<input type="checkbox"/> Corporation-for-Profit	<input type="checkbox"/> Corporation-for-Non-Profit		
<input type="checkbox"/> Other	(describe here):		

Federal tax ID numbers or Social Security numbers are required pursuant to ORS 305.385 and will be used for the administration of state, federal and local laws. Payment information will be reported to the Internal Revenue Service under the name and Federal tax ID number or, if none, the Social Security number provided above.

**I have read this Contract including the attached documents. I certify that I have the authority to sign and enter into this Contract. I understand the Contract and agree to be bound by its terms.**

Name (please print)	Signature	Title	Date

**NOTE: Contractor must also sign the Certification Statement for Corporation or Independent Contractor Status.**

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#### Northwest Regional Education Service District SIGNATURE

(This contract is not binding on the ESD until signed the appropriate signing authority)

		Superintendent	
Name (please print)	Signature	Title	Date