

**INTERLOCAL AGREEMENT FOR RENEWING SERVICES
FISCAL YEAR 2020-2021**



**EDUCATIONAL SERVICE DISTRICT NO 112
2500 NE 65th Avenue
Vancouver WA 98661-6812**

Parties to the Agreement:

Educational Service District No. 112, hereinafter referred to as “ESD112”, and KWRL, 800 Second Street, Woodland WA 98674-8467, hereinafter referred to as the “District”.

IN WITNESS WHEREOF, the District and ESD112 (the Parties) have executed this Agreement on the date and year indicated below. Signed versions of this Agreement transmitted by facsimile copy or electronic mail shall be the equivalent of original signatures on original versions.

KWRL

AUTHORIZED SIGNATURE:

DATE:

EDUCATIONAL SERVICE DISTRICT NO 112

AUTHORIZED SIGNATURE:

DATE:

Summary Statement-Agreement Purpose**COMMERCIAL DRIVER DRUG AND ALCOHOL TESTING CONSORTIUM**

To provide Drug and Alcohol testing for drivers who are required to have a commercial driver’s license to perform their employment responsibilities.

Agreement Number: 21019-077**Financial Terms:** Payments under this Agreement shall not exceed:

\$215.00 annual administrative fee

\$ 81.00 per drug test

\$ 50.00 onsite testing fee

\$ 50.00 per participant supervisor training

Agreement Period

Initial Term Start: September 1, 2020

Initial Term End Date: August 31, 2021

Nonrenewal Notification: May 1, 2021

Invoice Schedule: (1) Administrative fee to be billed annually, September 2020. (2) Drug testing, onsite testing fee and supervisor training to be billed monthly, as incurred

Attachments: This Agreement consists of this signature page and the following exhibits, which constitute the entire understanding of the Parties.

Exhibit A: Terms for Services Provided**Exhibit B: General Terms & Conditions****ESD112 INFORMATION**

REV ACCT NO: 7402 71 1610

DEPT APPROVAL JK

BUDGET APPROVAL AA

BUS SVC APPROVAL CS

IF OPTING OUT OF ELECTRONIC SIGNATURE:

Send scanned copy of Agreement with executed signature by email to:
districtcontracts@esd112.org

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**EXHIBIT A
 TERMS FOR SERVICES PROVIDED**

1. **Purpose.**
 - 1.1 ESD112 and the District are entering into this Agreement for the purpose of providing a Consortium of districts and agencies for a Drug and Alcohol Testing Program to implement U.S. Department of Transportation (DOT) rules requiring drug and alcohol testing of drivers who are required to have a commercial driver's license to perform their employment responsibilities for member districts.
 - 1.2 The provision of educational, instructional or specialized services in accordance with this Agreement are intended to improve student learning or achievement.

2. **Term.**
 - 2.1 **Initial Term.** The Initial Term for the Agreement shall be from September 1, 2020 to August 31, 2021.
 - 2.2 **Renewal Term.** This Agreement shall automatically be renewed for an additional one-year term (the Renewal Term) unless either party to the Agreement notifies the other party in writing prior to May 1st that it is not renewing the Agreement. The party that fails to provide written notice before May 1st shall be required to pay damages in accordance with Section 4 of Exhibit B. Changes to services ESD112 is obligated to provide or fees the District is obligated to pay shall be addressed as amendments (Exhibit B, Section 3) to this Agreement.

3. **Finance, Budget and Property.**
 - 3.1 **Agreement Amount.** The District shall pay ESD112 an amount for services provided under this Agreement, as described in Section 1.1 above and Section 4 below, in accordance with the following fee schedule;
 - 3.1.1 \$215.00 for annual administrative fee
 - 3.1.2 \$81.00 per test administered; drug and alcohol tests administered concurrently are billed as one test
 - 3.1.3 \$50.00 on-site testing fee for less than five drivers or when the mobile van is requested for testing
 - 3.1.4 \$50.00 per participant for supervisor training
 - 3.2 **Invoicing.** ESD112 shall invoice the District for the annual administrative fee (Section 3.1.1 above) of \$215.00 by September 30, 2020. Testing, on-site testing and supervisor training fees (Sections 3.1.2-3.1.4 above) shall be invoiced monthly, as incurred. Invoices shall be paid within thirty (30) days of receipt.
 - 3.3 **Budget.** A separate budget for services under this Agreement is not necessary and therefore is not being prepared. Expenses and revenues shall be addressed in the District's and ESD112's budget.
 - 3.4 **Property.** All personal property and assets acquired or received in connection with the obligations under this Agreement, including but not limited to equipment, materials, supplies and funds, shall be owned and retained by ESD112, both during the term of this Agreement and after the Agreement is terminated, partially or completely. Real property shall not be acquired.

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- 4. Scope of Services and Parties' Obligations.** The Parties agree to fulfill the following obligations:
- 4.1 Responsibilities of ESD112.** ESD112 shall:
- 4.1.1** Provide coordination, administration, and management of the Consortium. ESD112 may contract with a third party on behalf of the Consortium for the services to be provided in the Agreement.
 - 4.1.2** Assist the District in adopting and/or revising policy and procedures for drug and alcohol testing of employees required to have a commercial driver's license.
 - 4.1.3** Provide training and/or educational materials required by the DOT for transportation supervisors and District designees and make training available for new hires thereafter.
 - 4.1.4** Provide driver awareness educational materials.
 - 4.1.5** Form pools of member district CDL drivers for the purpose of random selection of drivers for testing and assist District program administrators with notification procedures.
 - 4.1.6** Provide random, pre-employment (drug only), post-accident, reasonable suspicion, return-to-duty and follow-up drug and alcohol testing services.
 - 4.1.7** Provide medical review officer services.
 - 4.1.8** Assist the District in developing a list of resources available for substance abuse and alcohol misuse problems.
 - 4.1.9** Assist the District with required record retention.
 - 4.1.10** Assist the District with reports required by DOT.
 - 4.1.11** Assist the District in responding to DOT audits.
 - 4.1.12** Provide technical assistance as needed.
 - 4.1.13** Provide annual testing statistics to Consortium districts.
 - 4.1.14** Send the District proposed amendments to this Agreement at least forty-five (45) days before the amendments shall take effect.
 - 4.1.15** Invoice the District in accordance with Section 3 above.
- 4.2 Responsibilities of the District.** The District shall:
- 4.2.1** Comply with drug and testing rules published by the DOT and the Federal Motor Carrier Safety Administration.
 - 4.2.2** Provide the Consortium administrator, or designated testing provider with required data regarding drivers who are subject to testing. The data is to be updated regularly so that the Consortium may comply with the requirements of the DOT.
 - 4.2.3** Designate a drug and alcohol testing program administrator (designated employer representative) and back-up program administrator to receive confidential information regarding testing and assist in coordinating testing.
 - 4.2.4** Ensure that a District supervisor or designated employee receive *Supervisor "Reasonable Suspicion"* training, provided by the

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Consortium.

- 4.2.5 Make every effort to ensure the prompt attendance of those drivers selected by the Consortium for random testing at the agreed upon location.
- 4.2.6 Retain restricted records concerning drivers and test results at a secured location in the District.
- 4.2.7 Assume full responsibility for collecting fees for tests to be paid by the employee such as doctor evaluations for “shy lung”, “shy bladder” or split specimen testing.
- 4.2.8 Increase fees paid to cover the cost of additional amounts required should the fees to be paid under this Agreement be insufficient to pay for the services required by the District.
- 4.2.9 Discuss any additional services that are needed that are beyond the scope of Agreement and execute mutually agreed upon amendments to this Agreement in accordance with Exhibit B, Section 3.
- 4.2.10 Pay ESD112 in accordance with Section 3 above.

5. **Agreement Contacts.**

| | <u>THE DISTRICT</u> | <u>ESD 112</u> |
|--|------------------------------|--|
| SIGNATURE AUTHORITY / NOTICE CONTACT-Required | | |
| Name: | Michael Green | Tim Merlino |
| Position: | Superintendent | Superintendent |
| Phone: | 360.841.2700 | 360.750.7500 |
| Email: | greenm@woodlandschools.org | tim.merlino@esd112.org |
| PROGRAM CONTACTS | | |
| Name: | Shannon Barnett | Jenny Kosaki |
| Position: | KWRL Transportation | Director of Specialized Transportation |
| Phone: | 360.841.2023 | 360.952.3597 |
| Email: | barnetts@kwrl.org | jenny.bullard@esd112.org |
| FISCAL / BUDGET CONTACTS | | |
| Name: | Stacy Brown | Angel Almendarez |
| Position: | Business Manager | Budget Analyst |
| Phone: | 360.841.2715 | 360.952.3437 |
| Email: | brownst@woodlandschools.org | angel.almendarez@esd112.org |
| ACCOUNTING / BILLING CONTACTS | | |
| Name: | Mary Gleason | Christy Stalcup |
| Position: | Accounts Payable | AR Specialist II |
| Phone: | 360.841.2714 | 360.952.3490 |
| Email: | gleasonm@woodlandschools.org | christy.stalcup@esd112.org |

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**EXHIBIT B
GENERAL TERMS & CONDITIONS**

1. **Authority & Organization.**
 - 1.1 This Agreement is entered into in accordance with the authority granted in the Interlocal Cooperation Act, RCW 39.34.030 and provisions that authorize educational service districts and school districts to contract with each other for services, specifically 28A.310.010, 28A.310.180, 28A.310.200, 28A.320.080 and 28A.320.035.
 - 1.2 A separate legal entity is not being created. ESD112 shall administer the joint undertaking described in the terms of this Agreement.

2. **General Responsibilities of the Parties.** ESD112 and the District shall:
 - 2.1 Conduct background checks on any officials, employees, volunteers or agents who may perform obligations under this Agreement and who may have contact with children in a public school or ESD112 facility. No party/person who has plead guilty to, or been convicted of, a felony crime specified in RCW 28A.400.322 shall be allowed to do work under this Agreement if they may have contact with children in a public school or ESD112 facility. Failure to comply with this provision is grounds for immediate termination of the Agreement.
 - 2.2 Comply with federal, state, and local laws in performing obligations under this Agreement, and any policies or regulations adopted by the Parties' boards of directors.
 - 2.3 Obtain and maintain general liability coverage, including contractual liability coverage, and automobile coverage in an amount not less than \$1,000,000 per occurrence. The Parties shall, upon request, provide each other suitable evidence of the coverage required.
 - 2.4 Obtain any licenses or permits required to perform their respective obligations under this Agreement.
 - 2.5 Maintain books, records, documents, data and other materials compiled and related to the performance of obligations under this Agreement for the time period required under law or any applicable grant agreement. Both Parties agree to provide access to and copies of any such books, records, documents, data or other materials to the other party upon request.
 - 2.6 Take all necessary steps to protect the confidentiality of educational records and shall not disclose such records or the information obtained from having access to such records without obtaining the consent of the other party and the parent of the student whom the record pertains to.

3. **Amendment.** Changes to the services ESD112 is obligated to provide or fees the District is obligated to pay shall be addressed in signed amendments to this Agreement, provided forty-five (45) days before the amendment is to take effect, unless otherwise mutually agreed.

4. **Termination and Damages for Termination with Inadequate Notice.**

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- 4.1 Mutual Termination.** This Agreement may be terminated by mutual agreement by the Parties.
- 4.2 Damages Paid by the District for Services Provided by Certificated Employees.** If the District fails to notify ESD112 that it is terminating this Agreement prior to the Renewal Term of May 1st (see Exhibit A, Section 2.2) and this Agreement is for services provided by ESD112 employees who have a certificated contract with ESD112, there may be material adverse financial consequences to ESD112. The adverse financial consequences, or damages, may likely exceed the fee the District would have paid for the Renewal Term. If the District terminates the Agreement without giving notice prior to May 1st and ESD112 has employed certificated staff to provide services under the Agreement, the District agrees to pay ESD112 the amount owed for the Renewal Term as damages. The damages the District is agreeing to pay shall represent a reasonable reflection and estimate of the damages ESD112 shall incur.
- 4.3 Damages Paid by the District for Services Provided by Non-Certificated Employees.** If the District fails to notify ESD112 that it is terminating this Agreement prior to the Renewal Term of May 1st (see Exhibit A, Section 2.2) and this Agreement is for services that are provided by ESD112 employees who do not have a certificated contract with ESD112, the damages ESD112 shall incur may be less than the fee the District would have paid to receive the services for the Renewal Term. In that case, the District shall pay ESD112 for damages ESD112 incurs as a direct or indirect result of not being notified by May 1st that the District is terminating the Agreement.
- 4.4 Damages Paid by ESD112.** If ESD112 fails to notify the District that it is terminating this Agreement prior to the Renewal Term of May 1st (see Exhibit A, Section 2.2), ESD112 shall pay the District the costs the District incurs to obtain the services ESD112 was obligated to provide from a third party, but only to the extent the costs exceed what the District would have paid ESD112, and the fees the District pays the third party must be based on reasonable market rates.
- 4.5 Payment.** The damages that are owed under this section shall be paid in full within thirty (30) days of receipt of an invoice. This requirement shall survive termination of the Agreement.
- 5. General Provisions.**
- 5.1 Assignment.** Neither this Agreement nor any interest therein may be assigned by either party without the prior written consent of the other party.
- 5.2 Attorneys' Fees and Costs.** In the event litigation arises out of this Agreement, each party shall bear its own attorney's fees and costs.
- 5.3 Authority.** The terms and conditions of this Agreement to which the Parties agree are being entered into by appropriate resolutions or delegation of authority by the respective boards of directors of ESD112 and the District.
- 5.4 Captions.** Paragraph headings have been included for the convenience of the Parties and shall not be considered a part of this Agreement for any purpose relating to construction or interpretation of the terms of this Agreement.
- 5.5 Conflict of Interest.** No person engaged in any activity associated with this Agreement has a personal financial interest, direct or indirect, in this Agreement.

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ESD112 and the District warrant that neither party presently has interests, and will not acquire interests, directly or indirectly, which would create a conflict of interest in performing the obligations under this Agreement. Any direct or indirect conflict of interest must be disclosed.

- 5.6 Force Majeure.** ESD112 and the District shall not be liable for any failure to perform its obligations in this Agreement, and shall not be liable for the damages in Section 4 above, if the failure to perform or action that gave rise to damages is a result of any act of God, riot, war, civil unrest, flood, earthquake, or other cause beyond such party's reasonable control, such as changes to federal, state or local laws, but excluding failure caused by a party's financial condition or negligence.
- 5.7 Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Washington and any action or litigation undertaken to enforce the terms of this Agreement shall be conducted in Clark County, Washington.
- 5.8 Indemnification.** Both Parties agree to protect, defend, indemnify and hold the other party, and its directors, officers, agents and employees harmless from any and all claims and losses that are caused by the indemnifying party, or the indemnifying party's directors', officers', agents' or employees' negligent or malicious acts or omissions.
- 5.9 Intellectual Property.** Any materials ESD112 produces shall be owned by ESD112. ESD112 shall be considered the author of such materials. To the extent materials being produced in connection with this Agreement are found to be "works for hire", the District hereby irrevocably assigns all right, title and interest in such materials, including intellectual property rights, to ESD112 effective from the moment of creation. The District shall not use any materials produced for, or by, ESD112 in connection with this Agreement without obtaining ESD112's prior written consent.
- 5.10 Non-Discrimination.** Per requirements of state, local and federal laws, ESD112 and the District agree not to discriminate on the basis of race, color, creed, religion, national origin, age, sex, gender expression or identity, sexual orientation, genetic information, honorably discharged veteran or military status, marital status, family/parental status, income derived from a public assistance program, political beliefs, non-job-related physical, sensory, or mental disabilities, use of a trained guide dog or service animal or reprisal or retaliation for prior civil rights activity. Inquiries regarding compliance and/or grievance procedures for ESD112 may be directed to ESD112 at its address above.
- 5.11 Notice.** Whenever notice is required under this Agreement, it shall be provided by emailing, with receipt confirmation, or mailing notice to the contacts designated in Exhibit A, Section 5. Notice shall be deemed effective upon the earlier of actual receipt or three (3) days after notice is deposited in the United States Postal Service mail, by certified mail, postage prepaid.
- 5.12 Severability.** If any term of condition of this Agreement or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other terms, conditions, or applications of this Agreement which can be given effect without the invalid term, condition, or application and, to this end, the terms and conditions of this Agreement are declared severable.

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- 5.13 Waiver.** No provision of this Agreement, or the right to receive reasonable performance of any act called for by its terms, including but not limited to the right of a performing party to notify a non-performing party there has been a unilateral early termination, shall be deemed waived by a party's failure to enforce the provision or rights to performance in a particular transaction or occurrence. Any and all waivers shall be in writing and signed by the party waiving the provision or its rights to performance. Any waiver that is not in writing shall not be binding or effective.
- 5.14 Whole Agreement.** The Parties agree that this Agreement, together with all appendices, if any, constitute the entire agreement between the Parties and supersedes all prior or existing written or oral agreements between the Parties and may not be amended other than in writing signed by the Parties.
- 6. Exclusion, Debarment and Suspension Certification.** Per the requirements of Executive Order 12549, ESD112 and the District certify that neither they, nor their officers, directors, general managers or persons having primary management or supervisory responsibilities, are on the Excluded Parties List Report (web address: <http://www.sam.gov>) and that they are not presently debarred, suspended, proposed for debarment, or declared ineligible or voluntarily excluded for the award of contracts by any Federal governmental agency or department. ESD112 and the District shall provide immediate written notice to each other if, at any time during the term of this Agreement, including any renewals hereof, the Parties learn that this certification has become erroneous by reason of changed circumstances.