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**INTERGOVERNMENTAL AGREEMENT BETWEEN  
MULTNOMAH EDUCATION SERVICE DISTRICT  
AND  
WOODLAND SCHOOL DISTRICT**

This Intergovernmental Agreement is between Multnomah Education Service District, hereinafter "MESD," and WOODLAND SCHOOL DISTRICT, hereinafter "Client" (collectively "the Parties"), pursuant to the authority granted in ORS 190.010 and ORS Chapter 190.

**THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

**Purpose.** MESD shall provide one student placement in the Functional Living Skills program at Knott Creek School and one student placement in the Functional Living Skills program with a 1:1 Educational Assistant at Wheatley School. MESD shall perform the work described in Attachment 1 (Scope of Work).

**Term of Agreement.** The initial Agreement term shall begin on the date it has been fully executed by the Parties or on September 6, 2021, whichever is later. Unless extended or terminated in accordance with its terms, this Agreement shall terminate on June 30, 2022, or when Client accepts MESD's completed performance, whichever occurs first.

**Payment for Work.** MESD's total compensation shall not exceed **\$ 215,738.00**. No payments shall be made nor work performed until this Agreement is fully executed by both Parties. Specific tasks are depicted in Attachment 1 and shall be delivered by MESD and/or Client once this Agreement has been executed. Unless otherwise agreed to in Attachment 1, MESD shall submit monthly invoices for services rendered, but shall not issue invoices prior to performance of service. Client shall remit payment within 30 calendar days of receipt of invoice, but shall not make payment prior to performance and receipt of invoice.

**Additional Expenses.** The Parties shall pay for additional costs and expenses as specified in and under the terms set out in Attachment 1.

**Agreement Documents.** The full Agreement between the Parties consists of: this Agreement document, and Attachment 1 (Scope of Work). Any conflict between the Agreement documents shall be resolved with the terms of this Agreement document having the highest priority, followed by the attachments in sequential order.

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**STANDARD TERMS AND CONDITIONS**

1. **Relationship.** This Agreement does not establish an agency or an employment relationship between the Parties. The Parties affirm that each is an independent contractor.
2. **Governing Law.** This Agreement and all rights, obligations, and disputes arising out of it shall be governed by Oregon law. All disputes and litigation arising out of this Agreement shall be brought and conducted in Multnomah County Circuit Court. If the 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. THE PARTIES AGREE TO THIS CHOICE OF LAW AND THE JURISDICTION OF THESE COURTS.
3. **Early Termination.** Termination shall not prejudice any right or obligation of the Parties already accrued prior to the effective date of termination. This Agreement may be terminated as follows, unless otherwise specified herein:
  - a. **Mutual.** The Parties may terminate this Agreement at any time by written mutual agreement.

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- b. **30 Days' Written Notice.** Either party may terminate this Agreement upon 30 calendar days' written notice. However, if the Agreement relates to a provision of special education services, the effective date of termination of services shall be 30 school days after the date the individualized education program team determines that the student's placement will be changed, unless prohibited by law.
- c. **Material Breach.** Either party may terminate this Agreement in the event of a material breach by the other party. To be effective, the party seeking termination must give the other party written notice of: the material breach; what actions the breaching party should take/complete in order to cure the material breach; and its intent to terminate if the material breach is not cured within 15 calendar days. The breaching party shall give the non-breaching party written notice of the actions it took or plans to take to cure the material breach before the 15 calendar day window to cure expires. If the breaching party does not fully cure the material breach within 15 calendar days from the date of the notice from the non-breaching party, this Agreement shall automatically terminate, unless the Parties mutually agree in writing to extend the window to cure.
- d. **Liability.** Early termination by either party shall not constitute a waiver of any claim either party may assert against the other under the terms of this Agreement. MESD shall not be liable for incidental or consequential damages arising or resulting from early termination of this Agreement. In the event of early termination, each party remains responsible for paying the other for all work satisfactorily performed prior to the termination date.
4. **Performance and Fiscal Audit.** At its discretion, MESD may conduct a performance and/or fiscal audit to determine whether the terms, conditions, obligations, agreements, and understandings of this Agreement are being met.
5. **Access to Records.** For the purpose of examination, copying, and audit, each party shall have access to the other party's books, documents, and other records that are related to this Agreement, unless otherwise limited by law.
6. **Time Is of the Essence.** Time is of the essence in all terms, provisions, covenants, and conditions contained in this Agreement and its Attachment(s).
7. **Compliance with Applicable Law.** Each party shall comply with all federal, state, and local laws, all regulations and administrative rules established pursuant to those laws, and all MESD policies that are applicable to the work done under this Agreement.
8. **Confidentiality.** Neither Party shall make any reports, information, nor data given to, prepared, or assembled by the Parties under this Agreement accessible to any third party without the other party's prior written consent. Whenever applicable, the Parties shall comply with all privacy requirements of the Family Educational Rights and Privacy Act (FERPA) and/or the Health Insurance Portability and Accountability Act (HIPAA). This section is subject to state and federal law regarding disclosure of public records.
9. **FERPA Redisclosure.** The Parties recognize that FERPA and its associated regulations provide that an educational agency or institution may only disclose personally identifiable information from an education record on condition that the party receiving such disclosure will not redisclose the information to any third party without the prior consent of the student's parent/guardian. The party receiving the disclosure may redisclose the information without prior consent only to its officers, employees, or agents, to use the information for the purposes for which the disclosure was made. Therefore, consistent with the requirements of FERPA, personally identifiable information obtained by the Parties in the performance of this Agreement shall only be used for the purposes identified in this Agreement, and shall not be disclosed or redisclosed to third parties without the prior written consent of the student's parent/guardian.
10. **Insurance:** MESD shall at all times maintain in force at MESD's expense, each insurance noted below:
- a. **Workers' Compensation** insurance for all subject workers in compliance with ORS 658.017. MESD and all subcontractors of MESD with one or more employees must have this insurance unless exempt under ORS 656.027.
- b. **Public Entity Liability** insurance, on an occurrence basis, with a combined single limit of not less than \$1,000,000 each occurrence for Bodily/Personal Injury and Property Damage, with an annual aggregate

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limit of \$3,000,000. This insurance must include contractual liability coverage, as well as professional liability coverage to cover the errors and omissions of staff who are performing under the scope and course of their duties at MESD. MESD's coverage will be primary in the event of loss.

- c. **Cyber-Liability** insurance, with a combined single limit of not less than \$1,000,000, plus excess coverage of not less than \$2,000,000. Excess coverage to be placed on a dedicated basis, outside the Oregon school district insurance pool (PACE) to ensure aggregate limits are not eroded.
- d. **Certificate(s) of Insurance.** MESD shall furnish a current Certificate(s) of Insurance to Client upon request. The Certificate(s) shall provide that there shall be no cancellation, termination, material change, or reduction of limits of the insurance coverage without 30 days written notice from MESD's insurer to the Client. The Certificate(s) shall also state the deductible or retention level. For Public Entity Liability and Cyber-Liability, the Certificate shall also provide that Client, its agents, officers, and employees are Additional Insureds with respect to MESD's services to be provided under this Agreement.

- 11. **Successors, Subcontracts, and Assignment.** The provisions of this Agreement are binding and inure to the benefit of the Parties, their respective successors, and validly permitted assigns, if any. Neither party shall subcontract or assign any part of this Agreement without the prior written approval of the other party. Any attempted subcontract or assignment of this Agreement without prior written approval shall be void.
- 12. **Quality of Work.** The Parties represent and warrant that any and all work under this Agreement shall be performed in a good workmanlike manner and in accordance with the highest of professional standards.
- 13. **Licenses.** At all times during the term of this Agreement, MESD represents and warrants that those who are assigned to perform services have any and all required licenses, certifications, or other evidence of the necessary skills, abilities, and professional knowledge needed to carry out the terms of this Agreement.
- 14. **Indemnity and Hold Harmless.** Each party shall be responsible exclusively for its respective officers, employees, and agents. Each party shall provide its own personnel with employment-related benefits and deductions that are required by law, including but not limited to federal and state income tax deductions, workers' compensation coverage, and Public Employees Retirement System/Oregon Public Service Retirement Plan contributions. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260–30.300), the Parties shall each defend, save, hold harmless, and indemnify the other from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever (including reasonable attorney fees) resulting from, arising out of, or relating to the acts or omissions of the party's own officers, employees, subcontractors, or agents in the performance of this Agreement.
- 15. **Remedies.** In case of either party's breach and in addition to the provisions of the Early Termination sub-paragraph d., Indemnity and Hold Harmless, and Attorney Fees paragraphs in this Agreement, either party's remedy shall be limited to termination of this Agreement and receipt of any payments to which either party is entitled for services performed prior to the effective termination date.
- 16. **Attorney Fees.** If any suit or action at law, in equity, or through arbitration is filed to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable attorney fees, costs, and disbursements, in addition to any other relief to which that party may be entitled. If the prevailing party is represented by in-house counsel, it shall nevertheless be entitled to recover reasonable attorney fees based upon the reasonable time, rates, and charges generally accepted for the type of legal services performed in the Portland, Oregon metropolitan area.
- 17. **Nonwaiver.** The waiver by either party of any breach, violation, or default of a provision of this Agreement shall not operate as a waiver of any subsequent breach, violation, or default of that or any other provision.
- 18. **Force Majeure.** Neither party shall be held responsible for delay or default caused by any contingency beyond its control, including, but not limited to: war or insurrection; strikes, lockouts, or walkouts by the party's own employees; fires; natural calamities; riots; or demands or requirements of governmental agencies other than the Parties to this Agreement.

- 19. **Severability.** If any clause or provision of this Agreement is or becomes illegal, invalid, impossible to perform, or unenforceable under present or future laws effective during the term of Agreement, the Parties intend that the remainder of this Agreement shall not be affected. The Parties intend that in lieu of each clause or provision of this Agreement that is or becomes illegal, invalid, impossible, or unenforceable, there be added as part of this Agreement a clause or provision as similar in terms as may be possible, legal, and enforceable.
- 20. **Entire Agreement.** This Agreement and its Attachment(s) together constitute the final and exclusive understanding of the Parties. There are no other warranties, promises, representations, agreements, conditions, or understandings between the Parties, either oral or written, other than those expressly set forth in this Agreement and its Attachment(s).
- 21. **Modifications and Amendments.** This Agreement shall not be modified or amended except by an express writing containing the terms of the modification or amendment that has been signed by both Parties.
- 22. **Handwritten Revisions.** Handwritten revisions made to this Agreement that are not initialed and dated by both Parties, shall be deemed to have been rejected.
- 23. **Joint Authorship.** The Parties reviewed this Agreement and negotiated for change to any language that either party found vague. Accordingly, anyone constructing and/or interpreting this Agreement shall not construe any of its terms strictly against either party.
- 24. **Headings.** The headings of this Agreement are provided for convenience only and are not intended to be used as tools of construction.
- 25. **Singular and Plural.** Words used in the plural shall also be interpreted to include the singular, and words used in the singular shall also be interpreted to include the plural.
- 26. **Notices and Contact Information.** Any kind of notice or demand required or desired to be given by either party must be made in writing, and shall be deemed delivered upon depositing the notice or demand in the United States mail, certified or registered, postage prepaid, addressed to the respective party at its address listed below.

**MESD Contact Address**

Multnomah Education Service District  
Attn.: Connie Taylor Nelson  
11611 NE Ainsworth Circle  
Portland, OR 97220-9017  
Phone: (503) 257-1617

**Client Contact Address**

Woodland School  
District Attn: Jake Hall  
800 2<sup>nd</sup> St  
Woodland, WA 98674  
(360) 841-2700

**THIS AGREEMENT IS NOT VALID UNTIL ALL SIGNATORY APPROVALS ARE COMPLETED**

**I have read this Agreement, including any Attachment(s). I certify that I have the authority to sign and enter into this Agreement. I understand the Agreement and agree to be bound by its terms.**

\_\_\_\_\_  
*Paul Coakley, MESD Superintendent*

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*Michael Green, Superintendent*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Date*

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*Multnomah Education Service District prohibits discrimination and harassment on any basis protected by law, including but not limited to race, color, religion, sex, national or ethnic origin, sexual orientation, mental or physical disability or perceived disability, pregnancy, familial status, economic status, veterans' status, parental or marital status or age. For more information and detail on MESD's non-discrimination policies, including procedures and contact information for reporting discrimination, please visit the MESD Non-Discrimination, Harassment & Bullying Notice page at <https://www.multnomahesd.org/nondiscrimination.html>.*

**ATTACHMENT 1**  
**SCOPE OF WORK**

**The parties in consideration of the promises of each other agree as follows relating to special education services as detailed below during the 2021-2022 school year.**

**MESD shall:** Provide one (1) student placement in Functional Living Skills at Knott Creek School for student OR, and one (1) student placement in Functional Living Skills / ALT at Wheatley School with a 1:1 Education Assistant to accommodate the educational needs of district student HC.

Invoice Other Party monthly. The contract amount will not exceed **\$215,738** as detailed below. The daily rate includes a 10% administration fee.

|                                | Daily Rate | Anticipated Attendance Days | Total      |
|--------------------------------|------------|-----------------------------|------------|
| Functional Living Skills       | 486.4      | 171                         | 83,174.40  |
| Functional Living Skills / ALT | 775.22     | 171                         | 132,563.62 |

Amount invoiced is based on enrollment dates.

**Client shall:**

Pay MESD within 30 calendar days upon receipt of invoice.

Notify MESD regarding the termination of the opening for this student. In the event of termination, MESD shall retain the amount of money previously paid based on the following formula: Number of days the opening for the student was maintained time the daily rate as noted above in the contract amount detail.