



## MEMORANDUM OF AGREEMENT BETWEEN



Educational Service District 123  
*(Hereinafter referred to as ESD 123)*  
3924 West Court Street  
Pasco, WA 99301  
Tel: (509) 547-8441

AND

Kennewick School District  
*(Hereinafter referred to as  
District)*  
1000 W, 4<sup>th</sup> Avenue  
Kennewick, WA 99336  
Tel: (509) 222-5000

**WHEREAS** the Educational Service District 123 (ESD 123) and Kennewick School District (District) desire to enter into an agreement.

**NOW, THEREFORE**, in consideration of the premises and of the mutual promises herein, the parties hereto agree to enter a contractual arrangement with the following terms and conditions:

**I. PURPOSE:**

The purpose of this Agreement is to provide the district-enrolled student(s) educational services through Candy Mountain Academy. Candy Mountain Academy is a program operated by ESD 123 designed to address the academic and behavioral needs of students with maladaptive behaviors.

The goal of Candy Mountain Academy is to teach students how to work appropriately in classrooms and transition them back to their home district. This is accomplished through consistent and honest feedback paired with opportunities to practice those behaviors in a school environment.

**II. DISTRICT AGREES TO:**

- 1) Acknowledge that by entering into this Agreement it is causing financial commitments by other parties, and therefore, agrees not to terminate prior to the expiration date without the consent of ESD 123, except when such situations are beyond the control of the District (e.g. student withdrawal).
- 2) Have full responsibility for the development of the student's evaluation(s), Individualized Education Plan (IEP), transcript, and participation and attendance in the IEP meetings.
- 3) Complete all state and federal reporting for District students. The District shall report the students on District's P223 and P223H.
- 4) Maintain all responsibilities as the resident district, including providing free and appropriate education (FAPE). Extended school year services and assistive technology devices, as required by the student's IEP, will be the responsibility of the District.
- 5) Ensure Candy Mountain Academy receives all pertinent documentation related to the student's educational program (e.g., IEP, evaluation, vaccination record, testing scores, transcripts, etc.).
- 6) Provide transportation of students to and from Candy Mountain Academy and assume full responsibility for all costs associated with transportation.

- 7) Pay ESD 123 in accordance with this Agreement, the service cost required to support District's students(s) for annual placement and services within Candy Mountain Academy. If a student requires more intensive support beyond the basic Candy Mountain Academy staffing (e.g., 2:1 assistant support, nursing services, specialty teacher services, etc.), the additional costs will be negotiated between Candy Mountain Academy and District. *The additional costs will be described in Appendix A.*
- 8) Compensate ESD 123 for services within 30 days of invoice receipt.

**III. EDUCATIONAL SERVICE DISTRICT 123 AGREES TO:**

- 1) Create and oversee the operation of Candy Mountain Academy, a program for students with severe maladaptive behaviors.
- 2) Provide academic services and behavioral support to enrolled District students as identified in students' IEPs.
- 3) Ensure Candy Mountain Academy staff are appropriately trained to work with students who become enrolled in Candy Mountain Academy.
- 4) Review each admitted student for appropriate placement less than 30 days prior to enrollment of Academy enrollment.
- 5) Collaborate with District to maintain compliance in support of District's Safety Net applications for enrolled students, including but not limited to ensuring that appropriate Candy Mountain Academy staff members participate in IEP development meetings and quarterly progress report meetings for each student served pursuant to this Agreement.
- 6) Inform the District prior to all meetings with parent(s)/guardian(s) of students served pursuant to this Agreement in order to facilitate District attendance at said meetings, if deemed necessary by the District.
- 7) Inform District of classes completed per semester along with a report of appropriate additions to students' transcripts.
- 8) Create an advisory council consisting of 5 representatives from participating districts. The purpose of such advisory council is to monitor the performance of this Agreement and recommend amendment(s) to the Agreement. Additionally, the advisory council will be responsible for making recommendations to the Director of Candy Mountain Academy regarding policies unique to the operation of Candy Mountain Academy. The advisory council will meet as needed. Recommendations by the advisory council will be made by a vote of greater than 50% of a quorum. A quorum is at least 50% of the representatives appointed to the advisory council.
- 9) Invoice District once per month.

**IV. TERM OF AGREEMENT:**

This agreement shall commence on August 1, 2022, and shall terminate on June 30, 2023.

**V. TERMINATION:**

This agreement may be terminated up to 30 days' notice in writing by either party to the agreement.

**VI. PROHIBITION AGAINST ASSIGNMENT:**

Neither this agreement nor any interest therein may be assigned by either party without first obtaining the consent of the other party.

**VII. SUPPLANT:**

No use of funds from this agreement shall be used to supplant existing programs or replace programs.

**VIII. INDEMNIFICATION:**

The District and ESD 123 agree to mutually indemnify and hold each other harmless for any and all claims which hereafter arise on the part of any and all persons as a direct or indirect result of District or ESD 123 employees or agents' performance, or failure to perform duties pursuant to this agreement.

**IX. APPLICABLE LAW:**

The laws of the State of Washington shall govern this Agreement.

**X. VERBAL AGREEMENTS:**

This written agreement constitutes the mutual agreement of the District and ESD 123 in whole. No alteration or variation of the terms of this Agreement, and no oral understandings or agreements not incorporated herein, unless made in writing between the parties hereto, shall be binding.

**XI. SUSPENSION AND DEBARMENT**

District hereby certifies, by signing this agreement, it is not on the Excluded Parties List Report, that they, nor their Principals, are presently debarred, suspended, proposed for debarment, or declared ineligible, or voluntarily excluded for the award of contracts by any Federal governmental agency or department. (Principals, for purposes of this certification, mean officers; directors; owners; partners; and persons having primary management or supervisory responsibilities within a business entity). District shall provide immediate written notice to ESD 123 if, at any time during the term of this Agreement, including any renewals hereof, it learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

**XII. NONDISCRIMINATION:**

The District and ESD 123 shall comply with applicable local, state and federal law and guidelines prohibiting discrimination on the basis of race, religion, creed, color, national origin, age, honorably-discharged veteran or military status, sex, sexual orientation, gender expression or identity, marital status, the presence of any sensory, mental or physical disability, or the use of a trained dog guide or service animal by a person with a disability.

**XIII. BACKGROUND CHECKS:**

The District and ESD 123 shall comply with applicable law regarding background checks for employees, volunteers, and contractors who provide services to students pursuant to this Agreement, including but not limited to the requirements specified in RCW 28A.400.303 and RCW 28A.400.330.

**XIV. RECORDS:**

The District and ESD 123 shall maintain compliance with all provisions of the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; 34 CFR Part 99.

Pursuant to Washington State's Public Records Act (PRA), chapter 42.56 RCW, all records and documents related to the services or activities under this Agreement must be available for public inspection and copying upon request unless any record or document, or a portion of the record or document, falls within a specific exception to the PRA.

**XV. Insurance Coverage**

ESD 123 shall maintain the following minimum amount of insurance coverage: 1) general liability including (a) bodily injury (including death) and property damage in the amount of no less than \$1,000,000 per occurrence and \$1,000,000 aggregate and (b) Professional Liability coverage in the amount of no less than \$1,000,000 per occurrence and \$1,000,000 and (c) sexual molestation/physical abuse coverage in the amount of \$1,000,000 per occurrence and \$2,000,000 aggregate.