MEDFORD SCHOOL DISTRICT 549C
PROFESSIONAL SERVICES CONTRACT

Contract Number: *(If needed)*

This contract is between the Medford School District 549C, hereafter called the District, and NAME OF CONTRACTOR, hereafter called the Contractor.

A. Effective Date and Duration – This contract shall become effective on START DATE OF CONTRACT. Unless earlier terminated or extended, this contract shall expire when the Contractor's completed performance has been accepted by the District or on END OF CONTRACT DATE. However, such expiration shall not extinguish or prejudice the District's right to enforce this contract with respect to: (i) any breach of a Contractor warranty; or (ii) any default or defect in Contractor performance that has not been cured.

B. Statement of service to be provided by the Contractor –

_____
_____
_____
_____
_____

C. Consideration

1. The District agrees to pay the Contractor for all work performed under this contract and shall not exceed the maximum sum of $ AMOUNT OF CONTRACT.

2. Interim payments may be made to the Contractor following the District's review and approval of billings submitted by the Contractor. The Contractor will also submit copies of other billings for work performed under the contract when such bills are to be paid by other parties. These other billings are not subject to the maximum compensation amount set forth above.

3. The Contractor shall not submit billings for, and the District will not pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this contract, the amendment must be fully effective before the Contractor performs work subject to the amendment. No payment will be made for any services performed before the beginning date or after the expiration date of this contract. This contract will not be amended after the expiration date.

4. The Contractor shall submit monthly billings for work performed. The billings shall describe all work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The billings also shall include the total amount billed to date by the Contractor prior to the current invoice. The Contractor will specifically note in the billing when one-third and two-thirds of the

maximum contract amount, including expense reimbursement, has been expended. Billings shall be sent to the supervising District representative.

5. The Contractor acknowledges and agrees that the District selected the Contractor, and is entering into this contract, because of the special qualifications of the Contractor's key personnel. In particular, the District through this contract is engaging the expertise, experience, judgment, and personal attention of key personnel. The Contractor's key personnel shall not delegate performance of the management powers and responsibilities he/she is required to provide under this contract to another (other) Contractor employee(s) without first obtaining the written consent of the District. Further, the Contractor shall not re-assign or transfer the key person (personnel) to other duties or positions such that the key personnel are no longer available to provide the District with his/her (their) expertise, experience, judgment, and personal attention, without first obtaining the District's prior written consent to such re-assignment or transfer. In the event the Contractor requests that the District approve a re-assignment or transfer of the key personnel, the District shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the key person (personnel).

6. In order to provide a safe environment for the education of students in the District's care, and in accordance with District policies GCDA/GDDA and GCDA/GDDA-AR, the Contractor agrees that the Contractor and any personnel of the Contractor shall be required to undergo a nationwide criminal background check prior to providing any services under this Contract. In addition, in the event that the Contractor and/or any personnel of the Contractor may come into direct, unsupervised contact with students in the course of providing services under this Contract, then the Contractor and any such personnel of the Contractor shall be required to undergo a fingerprint check. The Contractor shall be responsible for the costs of such background checks and any fingerprint processing fees. The District shall be provided with fingerprint results for the Contractor and any personnel of the Contractor who may come into direct, unsupervised contact with students in the course of providing services under this Contract. If a positive criminal history is reported for the Contractor or any Personnel of the Contractor, the District shall make a final determination as to whether that particular individual will be allowed to provide services under this Contract. The Contractor also acknowledges and agrees that, during the term of this Contract, the Contractor will notify the person executing this Contract on behalf of the District, in writing, of any arrest, indictment, conviction, no contest or guilty plea, or other adjudication of the Contractor and/or any personnel of the Contractor for any felony or any other offense listed in ORS 342.143 or any offense that is substantially equivalent to any of the crimes listed in ORS 342.143. The Contractor agrees to provide such notification within seven (7) calendar days. The requirement of this paragraph shall not apply if the District determines, in its sole discretion, that the Contractor and any personnel of the Contractor will not have more than limited contact with students. In making such determination, the District shall be entitled to consider, among other circumstances deemed relevant by the District, the length of time the Contractor and the Contractor's personnel will be on school grounds, whether students will be in proximity with the site where the Contractor and the Contractor's personnel will be providing

services, and whether the Contractor and the Contractor's personnel will be providing services alone or under the supervision of other District personnel. The Contractor acknowledges and agrees that a criminal history record and, if applicable, fingerprint check acceptable to the District, in its sole discretion, is a condition of this Contract. The Contractor will immediately remove any personnel from any District property or sites in cases where the District determines, in its sole discretion that removal of such personnel is in the District's best interest.

D. Amendments – The terms of this contract shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by the parties. Contract work may be extended by written amendment signed by the parties.

E. Contract Provisions for Personal Services

1. Independent Contractor

i. The Contractor shall perform the work required by this contract as an independent contractor. Although the District reserves the right (a) to determine (and modify) the delivery schedule for the work to be performed and (b) to evaluate the quality of the completed performance, the District cannot and will not control the means or manner of the Contractor's performance. The Contractor is responsible for determining the appropriate means and manner of performing the work.

ii. The Contractor represents and warrants that the Contractor:
   a. is not an employee of the Medford School District and
   b. meets the specific independent contractor standards of ORS 670.600, as certified on the Independent Contractor Certification Statement attached as Exhibit B and by this reference made a part hereof. The Contractor is not an "officer", "employee", or "agent" of the District.

2. Subcontracts and Assignments; Successors in Interest – The Contractor shall not enter into any subcontracts for 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 District. The provisions of this contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns, if any.

3. No Third Party Beneficiaries – The District and the Contractor are the only parties to this contract and are the only parties entitled to enforce its terms. Nothing in this contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this contract.

4. Termination

i. This contract may be terminated at any time by mutual consent of both parties, or by the District upon 30 days' notice, in writing and delivered by certified mail or in person.

ii. In addition, the District may terminate or modify this contract, in whole or in part, effective upon delivery of written notice to the Contractor, or at such latter date as may be established by the District, under any of the following conditions:
    a. If the District funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services;
    b. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible of the funding proposed for payments authorized by this contract; or
    c. If any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this contract is for any reason denied, revoked, suspended or not renewed.

iii. Time is of the essence of the Contractor's performance of each and every obligation and duty under this contract. The District, by written notice to the Contractor of default or breach, any at any time terminate the whole or any part of this contract:
    a. If the Contractor fails to provide services called for by this contract within the time specified herein or any extension thereof; or
    b. If the Contractor fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms, and after receipt of written notice from the District, fails to correct such failures within 10 business days or such other period as the District may authorize or require.
    c. The rights and remedies of the District provided in subsection c, above, are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

iv. Termination or modification of this contract pursuant to subsections **i** or **ii**, above, shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination or modification. However, upon receiving a notice of termination (regardless whether such notice is given pursuant to subsections **i**, **ii**, or **iii** of this section **4**), the Contractor shall immediately cease all activities under this contract, unless expressly directed otherwise by the District in the notice of termination. Further, upon termination, the Contractor shall deliver to the District all contract documents, information, works-in-progress and other property that are or would be deliverables had the contract been completed.

5. Records Maintenance; Access – The Contractor shall maintain full fiscal records relating to this contract in accordance with generally accepted accounting principles. In addition, the Contractor shall maintain any other records pertinent to this contract in such a manner as to clearly document the Contractor's performance hereunder. The Contractor acknowledges and agrees that the Medford School District and their duly authorized representative shall have access to such fiscal records and to all other books, documents, papers, plans and writing of the Contractor that are pertinent to this contract for the purpose of performing examinations and audits, and making excerpts and transcripts. All such fiscal records, books, documents, papers, plans, and writings shall be retained by the

Contractor and kept accessible for a minimum of three (3) years, except as required longer by 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.

6. **Compliance with Applicable Law** – The Contractor shall comply with all federal, state, and local laws and ordinances applicable to the work under this contract, including, without limitation, the provisions of ORS 279C. Without limiting the generality of the foregoing, the Contractor expressly agrees to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) The Americans with Disabilities Act of 1990 (Pub L No. 101-336), and all regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

7. **Foreign Contractor** – If the Contractor is not domiciled in or registered to do business in the State of Oregon, the Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this contract.

8. **Governing Law; Venue** – This contract shall be governed by and construed in accordance with the laws of the State of Oregon. Any claim, action, or suit between the District and the Contractor that arises out of or relates to performance of this contract shall be brought and conducted solely and exclusively within the Circuit Court of Jackson County for the State of Oregon. Provided however, that if any such claim, action, action, or suit may be brought only in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

9. **Indemnity** – The Contractor shall defend, save, hold harmless, and indemnify the Medford School District, their officers, employees, agents and members, from all claims, suits, or actions of whatsoever nature resulting from or arising out of the activities of the Contractor or its officers, employees, subcontractors, or agents under this contract.

10. **Insurance** – the Contractor shall provide insurance as indicated on Exhibit A, attached hereto and by this reference made a part hereof.

11. **Ownership of Work Product** – All work products of the Contractor that result from this contract ("the work products") are the exclusive property of the District. In addition, if any of the work products contain intellectual property of the Contractor that is or could be protected by federal copyright, patent, or trademark laws, the Contractor hereby grants the District a perpetual, royalty-free fully paid-up, nonexclusive and irrevocable license to copy, reproduce, deliver, publish, perform, dispose of, use and re-use, in whole or in part, and to authorize others to do so, all such work products, including but not limited to databases, templates, materials, training manuals and other training materials and any other information, designs, plans, or works provided or delivered to the District or produced by the Contractor under this contract.

12. **Force Majeure** – Neither the District nor the Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, or war where such cause was beyond, respectively, the District's or the Contractor's reasonable control. The Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this contract.

13. **Severability** – The parties agree that 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 to be invalid.

14. **Waiver** – The failure of the District to enforce any provision of this contract shall not constitute a waiver by the District of that or any other provision.

15. **Execution and Counterparts** – This contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

16. **Use of Chemicals** – With respect to chemicals used during the course of the Work, the Contractor will implement and enforce a program to inventory and properly store and secure all chemicals that may be used or present at the District site, maintain available for inspection all material data safety sheets, and comply with all regulations required by law for the storage, use, and disposal of chemicals. This program will incorporate and include the District's Hazard Communication Program and be subject to approval of and modification by the District. The program must provide for notification of all personnel of potential chemical hazards. Review of these hazards must be included in the Contractor's safety training program. The Contractor shall submit to the District a list of all Hazardous Materials to be brought by the Contractor or its Subcontractors onto the District's property, including the purpose for their use on the Project.

17. **Recycling** – As required by ORS 279.555, in the performance of this contract the Contractor shall use, to the maximum extent economically feasible, recycled paper.

18. **Other Requirements** – In addition to Exhibits A and B, other requirements, if any, are attached as Attachment A and by this reference made a part, hereof.

19. **Merger Clause – THIS CONTRACT AND ATTACHED EXHIBITS CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. THE CONTRACTOR, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE,**

HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

CONTRACTOR DATA AND CERTIFICATION

Name (tax filing): _____

Address: _____

Citizenship, if applicable: Non-resident alien _____yes _____no

Business Designation (check one):

_____Corporation _____Partnership Federal Tax ID**#**_____-_____

_____Sole Proprietorship _____Governmental/Non-Profit Federal Tax ID#_____-_____OR SSN_____-_____-_____

Above payment information must be provided prior to contract approval. This information will be reported to the Internal Revenue Service (IRS) under the name and taxpayer I.D. number submitted. (See IRS 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject the contractor to 31 percent backup withholding.

Certification: I, under penalties of perjury, do hereby certify that (a) the number shown on this form is my correct taxpayer ID (or I am waiting for the number to be issued to me) and (b) I am not subject to backup withholding because (i) I am exempt from backup withholding or (ii) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified me that I am no longer subject to backup withholding.

I, the undersigned also (a) agree to perform the work required by Exhibit A in accordance with the terms and conditions (listed on the front and back side hereof and made part of this contract by reference); (b) certify under penalty of perjury that I/my business am not/is in violation of any Oregon tax laws; and (c) certify I am an independent contractor as defined in ORS 670.600.

I, the undersigned, being first duly sworn, hereby certify under penalty of perjury that I am authorized to act on behalf of _____ [insert Proposer's name] and to the best of my knowledge, _____[insert Proposer's name] is not in violation of any Oregon Tax Laws. For purposes of this Certificate, "Oregon Tax Laws" are those laws and programs listed in ORS 305.380(4), namely ORS Chapters 118, 314, 316, 317, 318, 320, 321 and 323 and Sections 10 to 20, Chapter 533, Oregon Laws 1981, as amended by Chapter 16, Oregon Laws 1982 (first special session); the elderly rental assistance program under ORS 310.630 to 310.706; and any local tax laws administered by the Oregon Department of Revenue under ORS 305.620. I will continue to comply with the tax laws of this state, or a political subdivision of this state, during the term of the public contract, and provide that my failure to comply with the tax laws, of this state or a political subdivision of this state, before I have executed the public contract or during the term of the public contract is a default for which the contracting the District may terminate the public contract, and seek damage and other relief available, under the terms of the public contract or under applicable law.

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Contractor's Authorized Agent: _____

Signature/Title Date

_____

Print Name

Contractor: _____

Contact Person:_____

Address: _____

Address: _____

Phone: _____

Email Address: _____

Medford School District: _____

Signature/Title Date

Medford School District549C
815 S. Oakdale Ave.
Medford, OR 97501

EXHIBIT A
INSURANCE REQUIREMENTS

During the term of this contract, the Contractor shall maintain in force at its own expense, each insurance noted below:

1. **Required by District of contractors with one or more workers, as defined by ORS 656.027**.

Workers' Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers.

2. **_X_ Required by District ___Not Required by District.**

Professional Liability insurance with a combined single limit, or the equivalent, of not less than $200,000, $500,000, $1,000,000, or $2,000,000 each claim, incident or occurrence. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this contract.

3. **X Required by District ___Not Required by District.**

General Liability insurance with a combined single limit, or the equivalent, of not less than $250,000, $500,000 $1,000,000 or $2,000,000 each occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this contract. It shall provide that the Medford School District are Additional Insured but only with respect to the Contractor's services to be provided under this Contract;

4. **X Required by District ___Not Required by District.**

Automobile Liability insurance with a combined single limit, or the equivalent, of not less than Oregon Financial Responsibility Law (ORS 806.060), $200,000, $500,000, or $1,000,000 each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.

5. **Notice of cancellation or change.** There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days written notice from the Contractor or its insurer(s) to Medford School District;

6. **Certificates of insurance.** As evidence of the insurance coverages required by this contract, the Contractor shall furnish acceptable insurance certificates to Medford School District prior to its issuance of a Notice to Proceed. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the District. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

EXHIBIT B

CERTIFICATION STATEMENT FOR CORPORATION OR INDEPENDENT CONTRACTOR
(Contractor complete A or B below.)

A. CONTRACTOR IS A CORPORATION.

CORPORATION CERTIFICATION: I, undersigned, authorized to act on behalf of entity designated below, hereby certify under penalty of perjury that entity is a corporation.

Signature_____ **Date**_____**Entity** _____

B. CONTRACTOR IS INDEPENDENT.

Contractor certifies he/she meets the following standards:

1. I am registered under ORS chapter 701 to provide labor or services for which such registration is required.
2. I have filed federal and state income tax returns in the name of my business or a business Schedule C as part of the personal income tax return, for the previous year, for labor or services performed as an independent contractor in the previous year.
3. I represent to the public that the labor or services are to be provided by my independently established business as four (4) or more of the following circumstances exist. **(Please check four or more of the following:)**

___ A. The labor or services are primarily carried out at a location that is separate from my residence or is primarily carried out in a specific portion of my residence, which is set aside as the location of the business.
___ B. Commercial advertising or business cards are purchased for the business, or I have a trade association membership;
___ C. Telephone listing is used for the business that is separate from the personal residence listing.
___ D. Labor or services are performed only pursuant to written contracts.
___ E. Labor or services are performed for two or more different persons within a period of one year.
___ F. I assume financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

Contractor Signature: _____ **Date:**_____

C. DISTRICT APPROVAL.

ORS 670.600 Independent contractor standards. As used in various provisions of ORS chapters 316, 656, 657 and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent contractor" if the standards of this section are met. **State District certifies the contracted work meets the following standards:**

1. The Contractor is free from direction and control over the means and manner of providing the labor or services, subject only to the specifications of the desired results.
2. The Contractor is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local ordinances.
3. The Contractor furnishes the tools or equipment necessary for the contracted labor or services.
4. The Contractor has the authority to hire and fire employees to perform the labor or services.
5. Payment to the Contractor is made upon completion of the performance or is made on the basis of a periodic retainer.

District Signature: _____ **Date:** _____