



Multnomah Education Service District Request for Proposals on Community Preschool Placements

Multnomah Education Service District (District) is accepting proposals for Community Preschool Placements as described in this document.

This Request for Proposals process will be open until sufficient contracts for services have been awarded.

Proposals shall be submitted to District's Special Education Department, attn.: Pat Moffitt, MESD, 11611 NE Ainsworth Circle, Portland, OR 97220, phone: 503-2757-1685, fax: 503-257-1583, email: p_moffitt@mesd.k12.or.us.

Proposals need not be sealed, and they may be sent to District via mail or delivery in-person at the addresses/numbers listed above. District will reject Proposals received in any other format.

This Request for Proposals (RFP) is being conducted under the rules and requirements of an Intermediate Procurement for Personal Services as defined in Oregon Revised Statute 279B.070, and related Oregon Administrative Rules, as well as District's Policy and Procedures.

INSTRUCTION TO PROPOSERS

PROPOSALS, TO RECEIVE CONSIDERATION, MUST BE MADE IN ACCORDANCE WITH THE FOLLOWING INSTRUCTIONS, TERMS & CONDITIONS, AND SUCH PROPOSALS AND ANY CONTRACTS RESULTING THEREFROM SHALL BE SUBJECT TO ALL THE INSTRUCTIONS, TERMS & CONDITIONS HEREOF:

Multnomah Education Service District

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General Terms and Conditions

Proposal/Bid

The terms "offer," "quote," "bid" and "proposal" will be used interchangeably in this document, and will have the meaning normally associated with the word "proposal"; likewise, "Offeror," "Quoter" and "Bidder" will have the meaning normally associated with the word "Proposer".

"Confidential Information"

Application of the Oregon Public Records Law shall determine if any confidential information claimed by Proposer to be exempt is in fact exempt from disclosure as "Trade Secrets" (ORS 192.501 (2)). The Proposer shall designate in the proposal which material the Proposer deems to be "confidential information". In order to facilitate public inspection of the non-confidential portion of the proposal, material designated by the Proposer as confidential in the proposal shall be readily separable from the non-confidential portion of the proposal.

Investigation

Proposer shall make all investigations necessary to be informed regarding the item(s) and services to be furnished.

Taxes

Taxes, whether State or Federal, shall not be included in proposal prices. Our Employer Identification No. 93-6000828 indicates our tax exemption status as a political subdivision.

Prices

The prices submitted shall be firm during the contract period. If unit prices are requested, they shall be shown for each unit on which there is a Proposal. For discrepancies between unit prices and extended prices, unit prices shall prevail.

Payment Terms

All proposals shall be offered by the Proposer and shall be interpreted by District as "Net." District has procedures in place and makes every effort to make prompt payment.

Acceptance of Proposal Specifications, Terms and Conditions

Proposer acknowledges and accepts that the specifications, terms and conditions in the Request for Proposals and attached contract and no others will control any contract awarded unless Proposer expressly states in the Proposal, in whole or by reference, alternate terms or conditions which Proposer wishes District to consider. Any such alternate terms or conditions will constitute a variance and if material, may subject the proposal to rejection. Any referenced alternate terms or conditions shall be attached to the proposal.

Variations

All variations from the specifications, including packaging, size and weight, shall be noted in the Proposal in order to allow for the evaluation of that variance. The lack of notation makes a proposal subject to rejection.

Immaterial Variations

The District reserves the right to determine if any equipment, article, or material complies substantially in quality and performance with the specifications, is acceptable to the District, and if any variance listed in the proposal is material or immaterial.

Modifications

Proposals, once submitted, may be modified in writing if the modification is received in the office of the Proposal Coordinator prior to the time and date set for proposal closing. Any modifications shall be prepared on a company letterhead, signed by an authorized officer, and state that the new document supersedes or modifies the prior proposal. The first page of the document or the envelope containing any modifications to a proposal shall be marked as follows:

- Proposal Modification
- Proposal Title

Withdrawals

Proposals may be withdrawn by written notification on company letterhead, signed by an authorized person and received prior to the time and date set for proposal closing. Requests to withdraw proposals shall be marked as follows:

- Proposal Withdrawal
- Proposal Title

Addenda to Proposal Documents

Changes to proposal documents by the District shall be accomplished by addenda. Proposer shall acknowledge receipt of all addenda issued, either with the proposal, or separately, in writing, prior to the time and date set for proposal closing. Addenda shall be sent within a reasonable time to allow prospective Proposers to consider them in preparing their proposals.

ORAL INSTRUCTIONS OR INFORMATION CONCERNING THE REQUEST FOR PROPOSALS OR THE PROJECT GIVEN OUT BY OFFICERS, EMPLOYEES OR AGENTS OF THE DISTRICT TO PROSPECTIVE PROPOSERS SHALL NOT BIND THE DISTRICT AND SHALL NOT BE RELIED UPON.

Cost of Proposal Preparation

The Request for Proposals does not commit the District to pay any costs incurred by any Proposer in the submission of a proposal or in making necessary studies or designs for the preparation thereof, or for procuring or contracting for the item(s) to be furnished under the Request for Proposals.

Patents and Copyrights

The Successful Proposer agrees to protect, defend, and hold harmless the District against any demand for payment for wrongful or unauthorized use of any patented or copyrighted material, process, article or device that may enter into manufacture, construction or form a part of the work covered by the contract.

Special Conditions

Where special conditions are written in the specifications, these special conditions shall supersede any conditions which are listed under the "General Terms and Conditions" and which are inconsistent with the special conditions.

Permits and Licenses

The Successful Proposer shall obtain and shall include in his proposal the cost for all permits and licenses which may be required to perform the contract.

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Quantities

The District does not bind itself to purchase the full quantities provided in the Request for Proposals as estimates. The quantities shown are estimates, are not exact, and are given for the purpose of comparing proposals upon a uniform basis. Payment will only be made for quantities actually ordered, delivered and accepted, whether greater or less than the stated, estimated amounts.

Delayed Proposal Closing Time/Proposal Opening

The time and date set for the proposal closing and proposal opening will advance to the same time on the District's next business day in the event that weather or other contingency causes the District to be officially closed at the time and date set for the proposal closing and proposal opening.

Length of Offer

All proposals shall be irrevocable for at least sixty (60) calendar days after the proposal opening date and time.

Right to Reject Proposals

The District may reject any proposal not in compliance with all prescribed public bidding and proposal procedures and requirements, including its own rules, specifications and conditions, and may reject for good cause any or all proposals upon a finding of the District it is in the public interest to do so.

Right to Waive Irregularities

The District reserves the right to waive any irregularity not affecting substantial rights.

Modification of Proposal After Award

An offer to modify the proposal which is received from the Successful Proposer after award of contract which makes the terms of the proposal more favorable or advantageous to the District will be considered, and may thereafter be accepted. To be effective, every modification shall be made in writing on company letterhead, signed by an authorized officer.

Contract

All specifications, terms and conditions contained in the Request for Proposals shall be incorporated by reference and made a part of a contract awarded to the Successful Proposer.

Law of the State of Oregon

Any contract between the District and a Proposer shall be entered into within the State of Oregon, and the laws of said state, whether substantive or procedural, shall apply to the contract. In addition, the contract shall be subject to the policies and rules adopted by the Board of the District.

Failure to Execute Contract

Failure on the part of Proposer to whom the contract is awarded to execute the contract and to deliver the contract and any required performance bond shall be just cause for cancellation of the award, withdrawal of the contract and forfeiture of any required bid or proposal surety. The forfeited bid or proposal surety shall become the property of the District, not as penalty, but in liquidation of damages sustained. Award may then be made to the next lowest-ranked, responsive and responsible Proposer, or otherwise, as the District in its discretion may decide.

Notice of Assignment

There can be no assignment or transfer of any interest in any contract between the District and a Proposer without the prior written approval of the District.

Invoices

Invoices shall be submitted in duplicate (one copy to be marked "original") and shall contain the following information: Contract number or purchase order number (if any), item numbers, description of supplies or service by item, quantities, unit prices and extended totals. Invoices shall also state the unit or department to which the merchandise was shipped. Bill to: Multnomah Education Service District, 11611 NE Ainsworth Circle Portland, Oregon 97220-9017, or PO Box 301039, Portland, OR 97294-9039.

Discrimination

Proposer agrees not to discriminate against any client, employee or applicant for employment or for services because of race, religion, color, national origin, sex, sexual orientation or age with regard to, but not limited to the following: employment upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, selection for training, and rendition of services.

Failure to Perform

In the event that the successful Proposer fails to perform under a contract awarded, the successful Proposer shall be liable for all costs and damages incurred by the District in procuring and obtaining any similar equipment, article, material or service from other providers, and the contract awarded to the successful Proposer shall be in full force to the extent not terminated. The District reserves the right to terminate a contract awarded due to the successful Proposer's failure to perform. Termination by the District shall not affect any right, obligation or liability of the successful Proposer which accrued before such termination. In addition to the right to terminate due to the successful Proposer's failure to perform, the District reserves all its rights and remedies at law and in equity available due to the failure to perform.

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Part I: Background, Contract Requirements & Scope of Work

Background

Multnomah Education Service District is a public agency providing education services through cooperative programs and initiatives to school districts and students primarily in Multnomah County, Oregon.

MESD's Early Childhood Program (MESD) serves children three to five years of age with special education needs. Children receive services in a variety of settings. MESD is charged with providing special education services in the least restrictive setting and is interested in contracting with community preschool centers to provide opportunities for student participation. Our intent is to identify approximately two certified child care centers, as defined by the Child Care Division, in four geographic areas (SW/NW, SE, N/NE, E) in Multnomah County.

Services Sought

District is seeking proposals from individuals, firms, teams or consultants, hereafter called "Proposer(s)", with demonstrated experience in the provision of center-based community preschool services and proposes to engage the successful Proposer(s) for the services described in "Scope of Work" below.

Contract

As a result of award of this RFP, District will enter into a contract (Contract) with the Successful Proposer(s). A sample of District's standard contract for Independent Contractors is attached herein as Attachment A.

DO NOT SIGN THE ATTACHED CONTRACT AT THIS TIME. The contract is attached for your reference, only. If this RFP is awarded to you, the attached contract may be amended by District prior to contract execution, pursuant to your response or your status as an independent contractor.

Contract Modifications

Proposals shall contain either a statement that the terms and conditions of the draft Contract (Attachment A) are acceptable without modification, or a statement describing the modifications that Proposer would need to make to the draft contract prior to execution. Any proposed modifications to the contract will constitute a variance and if material, may subject the Proposal to rejection.

Period of Contract

District desires to enter into a Contract with the Successful Proposer for no more than two (2) years.

Conflict of Terms and Conditions

In the event of a conflict between the terms and conditions listed in this RFP and the terms and conditions listed in the fully executed Contract, the terms and conditions of the executed Contract shall prevail.

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Contract Administrator

District shall assign one person to administer the Contract. This person shall serve as Contract Administrator only after execution of the Contract. **DO NOT CONTACT THE CONTRACT ADMINISTRATOR REGARDING THIS RFP BEFORE THE EXECUTION OF THE CONTRACT.** The Contract Administrator will be Pat Moffitt, who can be contacted by phone at 503-257-1685, by fax at 503-257-1583, via email at p_moffitt@mesd.k12.or.us, or in person at MESD, Special Education Department, 11611 NE Ainsworth Circle, Portland, OR 97220.

Scope of Work

SERVICES SOUGHT

MESD is interested in contracting with certified child care centers to provide placements for children with early childhood special education needs within the typical preschool setting. MESD will contract with centers that have a minimum of three classrooms per site. Centers will offer a preschool environment, a developmentally appropriate program for children three to five, and have available morning and/or morning and afternoon sessions. Special education services will be provided onsite and integrated into the preschool time.

QUALIFICATIONS:

Licensure/Insurance/Standards:

- Hold and maintain licensure through the Oregon Child Care Division
- Complete application to ODE to be a qualified preschool provider (see attached and available on the ODE web page www.ode.state.or.us).
- Submission of 2008 Quality Indicators Report

Environment:

- Provide an age appropriate setting for preschool services.
- Meet ADA requirements for accessibility.
- Access to an outdoor play area which is age-appropriate
- Safe unloading and loading zone for cars and/or buses

Experience:

- Three to five years experience delivering quality preschool services

Personnel:

- Director of the site holds a bachelor's degree in Early Childhood Education or a related field.
- 65% of the Teachers have worked at the center for more than one year.
- Professional development is provided to center staff to meet or exceed the Oregon state standard of 15 clock hours per year.

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SCOPE OF WORK

Placements:

The center will provide preschool opportunities for up to 24 children receiving services from MESD. Placements at the center will be based on natural proportions. For example, only 2 to 3 children with disabilities will be placed in a classroom of 21 children. Children will be placed either two-days per week or three days per week (which equates to one five day per week preschool slot). Children will be scheduled to attend either morning or afternoon sessions based on preschool center availability. Centers that only provide morning sessions will support up to 15 children in three classrooms at the site. Centers with morning and afternoon sessions will support up to 30 children across three classrooms at the site.

Each Classroom:

Preschool Time	Monday	Tuesday	Wednesday	Thursday	Friday	Total Children Served
Morning Session	Child 1 Child 3	Child 2 Child 4	Child 1 Child 3	Child 2 Child 4	Child 1 Child 3	1 slot serving 2 children= \$75 per week
Afternoon Session	Child 5 Child 6	Child 7 Child 8	Child 5 Child 6	Child 7 Child 8	Child 6 Child 7	1 slot serving 2 children \$75 per week
Description of guaranteed payments under this contract: Ex. Center 1- 3 classroom with am and pm sessions: 8 children enrolled in 4 slots per class 4 slots per class times 3 classrooms equals 12 slots/24 children 12 slots @ 300.00 each per month equals \$3600.00 per month 12 slots equals 24 children Center 2- 3 classrooms am sessions only: 4 children enrolled in 2 slots per class 2 slots per class times 3 classes equals 6 slots/12 children 6 slots @ \$300.00 per month equals \$1800.00 per month 6 slots equals 12 children Center 3- 4 classrooms am sessions only: 4 children enrolled in 2 slots per class 2 slots per class times 4 classes equals 8 slots/16 children 8 slots @ \$300.00 per month equals \$2400.00 per month 8 slots equals 16 children						

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Selected centers will:

- provide developmentally appropriate curriculum.
- implement positive approaches to behavior.
- work cooperatively with MESD staff to implement special educational individual family service plans for children.
- collect data on the progress of children toward meeting their education goals.
- participate in team meetings to plan individual family service plans with parents and the MESD staff.
- provide information, resources, and/or training to parents.
- participate in trainings with MESD and other early childhood care and education providers.

MESD will:

- provide onsite 1:1/group consultation and training to preschool center staff to implement children's educational programs.
- coordinate the development, review, and monitoring of all special education programs for children with center based staff and parents.
- facilitate training on request for center-based staff on child development, curriculum, instructional strategies, positive approaches to behavior, and including children with disabilities in the typical setting.

Timeline for services:

Centers will provide placement opportunities for students based on their regular center calendar (July through June or September through June).

MESD will provide special education services to students and consultation to staff based on their school calendar July 1 through June with scheduled breaks. See attached calendar.

MESD will facilitate an orientation meeting prior to initiation of services each school year.

MESD will schedule quarterly meetings with center directors on site to discuss, problem solve, the current contract.

MESD will facilitate center-based parent visits by contacting the preschool director prior to enrollment of individual children.

MESD will schedule educational program reviews with the service team (including the regular preschool teacher) based on the due dates required for each student.

MESD will facilitate consultation to each classroom teacher through a technical assistance agreement developed by both programs.

MESD would pay the selected preschools the following fees for student placements:

- A set registration fee, based on the county average, of \$100.00 to register up to 24 students each year.
- Average preschool rate calculated to be \$5/hour for a three hour preschool session or \$15/session am and \$15/session pm. MESD would be placing 4 children in 2 preschool slots (see above table under expectations).
- Reimbursement per slot (two student placements) \$300.00 per month.

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- Based on the contract for the school year MESD will pay the center-based preschool for a guarantee of the agreed to number of slots monthly.

The child's educational program will state the number of hours and the number of days they are placed in the preschool for special education services. MESD may lawfully only pay for time spent providing special education services within the preschool environment to meet the specific needs of an individual child. Any additional time spent by the child in the preschool, in excess of the time on the education plan, will be considered child care, and the parent or other party, not MESD will be responsible for payment of the hours.

Part II: Proposal Preparation and Submittal

Single Point of Contact/Proposal Coordinator

There will be only one point of contact (Proposal Coordinator) during the proposal and procurement process and issuance of any subsequent Contract(s). This includes requests for change and clarification of this RFP, protests, the award process, or any other questions that may arise prior to the execution of the Contract. The Proposal Coordinator for this RFP is Pat Moffitt, Multnomah ESD Special Education Department, who can be contacted by phone at 503-257-1685, by fax at 503-257-1583, via email at pat_moffitt@mesd.k12.or.us, or in person at the Multnomah ESD Special Education Department, 11611 N.E. Ainsworth Circle Portland Oregon 97220.

Organization of Response

Proposals shall follow the format outlined in this RFP. District may reject as non-responsive at its sole discretion any Proposal or any part thereof that is incomplete, inadequate in its response, or departs in any substantive way from the required format. Proposal responses shall be organized in the following manner:

Overview of the Center: 40 points

- Description of the Center and organizational structure.
- Description of the philosophy, curriculum, discipline/behavior, schedule, resources and supports available to children and families.
- Description of the physical environment, including but not limited to, the number of classrooms, the ages of children served, outdoor play area, staffing ratio.
- Summary of the results of the Center's Quality Indicators Report and any plans for improvement.
- Number of year's in business. Describing the experience they have in providing quality preschool services and what makes them a qualified provider for this project. For example, history of providing services to children with disabilities.
- Description to include all minimum qualifications listed on page 5.

Personnel: 5 points

- Description of Center staff and their years of experience.
- Description of the Center's professional development plan for employees.

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Proposed Services: 40 points

- Capacity to provide placements within three classrooms at the site based on natural proportions.
- Opportunities for collaboration with MESD staff to enhance educational programs for students with and without disabilities. Including accessibility for onsite staff consultation and training.
- Ability of staff to monitor children’s educational programs and document progress.
- Participation of regular preschool teacher at annual and/or periodic reviews of individual family service plans for children placed in their classroom.
- Description of the Center’s costs and assurance of how the monies provided by MESD will support the children’s placements at the center for the school year.

Assurances: 5 points

- Attach a copy of Oregon Child Care Division licensure
- Attach a resume of Preschool Director
- Alternate or additional Contract terms and conditions, or a statement that the attached Contract is acceptable without modification

Attachments:

- A copy of the Center’s 2008 Quality Indicators Report
- Names and phone numbers of at least three families who have used the Center’s preschool services.
- A completed facsimile of the “Signature Form” found in this RFP or similar information in a comparable format indicating intent to be bound by the Proposal
- Alternate or additional Contract terms and conditions, or a statement that the attached Contract is acceptable without modification

Attachments

Supporting materials may be attached to the Proposal, either by inclusion or by reference when such materials are publicly available.

Part III: Proposal Evaluation

Evaluation Criteria and Scoring

Each proposal will be evaluated and scored based upon the criteria and maximum scores listed below:

	Criteria	Maximum Score
A.	Overview	40
B.	Personnel	5
C.	Proposed Services	40
D.	Assurances	5
E.	Attachments	5
F.	References	5
	Total Points Available	100

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Proposal Review and Selection

An evaluation review committee will be appointed to evaluate the proposals received. For the purpose of scoring proposals the committee members will evaluate each proposal in accordance with the criteria and point factors listed above. The evaluation committee may seek outside expertise, including but not limited to input from technical advisors to assist in evaluating proposals.

The successful Proposer shall be selected by the following process:

- An evaluation committee will be appointed to evaluate submitted proposals.
- The committee will score the written proposals based on the information submitted according to the evaluation criteria and point factors.
- A short list of Proposers, based on the highest scores, may be selected for oral interviews if deemed necessary. District reserves the right to increase or decrease the number of Proposers on the short list depending on the scoring and whether the Proposers have a reasonable chance of being awarded a contract.
- If oral interviews are determined to be necessary, the scores from the written proposals will be considered preliminary. Final scores, based on the same evaluation criteria, will be determined following the interviews.

Contract Award

District shall make award, if any, to the two highest scoring, responsive proposals from responsible Proposers in each of four geographic areas in Multnomah County.

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Your Proposal shall contain a completed facsimile of this "Signature Form" or similar information in a comparable format indicating intent to be bound by the Proposal.

Proposer's Information: (Who should district contact if there are questions about this proposal?)	Company Name:	
	Your Name:	
	Address:	
	City, State, Zip:	
	Phone:	Fax:
	eMail:	
Business Type:	<i>Check One:</i> ____ Individual ____ Partnership ____ Corporation**	
	Name of Partnership or Corporation:	
	**If Corporation, list the State of Incorporation:	
Signature:		Date:

Proposer's Daily Contact: (If you are awarded a contract, who would District contact for daily activities pursuant to the Contract?)	Name(s):	
	Phone:	Fax:
	eMail:	

Proposer's Contract Administrator: (If you are awarded a contract, who would District contact for questions or concerns regarding the administration of the Contract?)	Name(s):	
	Phone:	Fax:
	Email:	

PERSONAL SERVICES AGREEMENT
BETWEEN
MULTNOMAH EDUCATION SERVICE DISTRICT
AND

This Agreement is between Multnomah Education Service District, hereinafter “MESD” and _____, hereinafter “Provider” (and collectively “the Parties”).

The Parties mutually agree as follows:

Term of Agreement. The initial Agreement term shall be October 1, 2009 through September 30, 2009, when the Scope of Work concludes, or one or both Parties terminate this Agreement, whichever occurs first.

Summary of Work. Provider shall perform the work described in Exhibit 1 (Scope of Work) This is an Agreement for center-based community preschool services.

Payment for Work. No payments shall be made until this Agreement is fully executed by both Parties. Provider’s compensation shall not exceed \$[____]. Specific tasks are depicted in Exhibit 1 to be delivered by Provider at the time this Agreement is executed. Invoices shall not be issued prior to delivery of items/performance of service. Payment shall not be made prior to receipt of items/performance and invoice. Unless otherwise specified in the Scope of Work or solicitation document, Provider will submit invoices monthly for services rendered and MESD shall remit payment within 30 calendar days of receipt of invoice.

STANDARD TERMS AND CONDITIONS

1. **Relationship.** MESD and Provider intend that the relationship between the Parties to be at all times and for all purposes under this Agreement that of independent contractors. Provider represents and warrants that Provider meets the independent contractor standards in ORS 670.600.
2. **Subcontracts and Assignment.** Neither party shall subcontract or assign any part of the Agreement without the prior written approval of the other party. Any attempted assignment of this Agreement without the prior written approval of MESD shall be void.
3. **Early Termination.** This Agreement may be terminated as follows unless otherwise specified herein:
 - a) **Mutual:** MESD and Provider may terminate this Agreement at any time by written agreement.
 - b) **MESD’s Sole Discretion:** MESD in its sole discretion may terminate this Agreement for any reason on 30 calendar days’ written notice to Provider. MESD shall pay Provider for all work satisfactorily performed prior to the termination date.
 - c) **Breach:** Either party may terminate this Agreement in the event of a breach by the other party. To be effective, the party seeking termination must give the other party written notice of the breach and its intent to terminate. If the breaching party does not entirely cure the breach within 15 calendar days of the date of the notice, then the non-breaching party may terminate this

Agreement at any time thereafter by giving a written notice of termination. MESD shall pay Provider for all work satisfactorily performed prior to the termination date.

- d) Termination by either party shall not constitute a waiver of any claim either party may assert against the other party.
4. **Work Performed on MESD Property.** As required by schools and other MESD locations, each day Provider or Provider's employees, agents or officers are present on MESD property, Provider and Provider's employees, agents and officers must sign in at the location's main office to receive an in-school identification/visitor's badge. Provider and Provider's employees, agents and officers must display this badge on their person at all times while at any MESD school or other MESD location(s).
5. **Insurance.** Unless otherwise specified in a solicitation document (if any), at all times while providing services under this Agreement Provider shall maintain in force, at Provider's expense, insurance coverage at least equal to the value of this Agreement and the following insurance coverage(s):
- a) Workers' Compensation. As required by ORS 656.017, subject employers shall provide Workers' Compensation coverage in accordance with ORS Chapter 656 for all subject workers. Provider shall have this insurance unless exempt under ORS 656.027 or 656.126. Providers that are statutory subject employers shall submit a certificate of insurance to MESD showing proof of coverage. If Provider is not a subject employer, does not have coverage, and claims to be exempt, Provider shall complete a Workers' Compensation Exemption Certificate in lieu of providing the above certificate of insurance.
- b) Professional Liability/Errors & Omission ("E&O"). If Provider is performing services that require a state license, then Provider shall maintain professional liability/E&O insurance coverage of at least \$1,000,000 for each claim, incident, or occurrence, and at least \$2,000,000 annual aggregate coverage. This policy shall provide extended reporting period coverage for claims made within two years after this Agreement is completed or otherwise terminated according to its terms. If Provider is performing services that do not require a state license, then Provider does not have to maintain professional liability/E&O insurance.
- c) General Liability. Provider shall maintain general liability insurance coverage on an occurrence basis with a combined single limit of not less than \$250,000 for bodily/personal injury and property damage, with an annual aggregate limit of \$500,000. Provider's general liability insurance must include contractual liability coverage.
- d) Certificate(s) of Insurance. This Agreement is not binding and the Provider will not commence work until MESD receives certificate(s) of insurance (mailed from Provider's insurance carrier(s) directly to MESD) demonstrating that Provider meets all of the insurance requirements in this Section (Section 5 of this Agreement). Each certificate shall provide that there shall be no cancellation, termination, material change, or reduction of limits of the insurance coverage without 30 days deductible or retention level. For general liability coverage, the certificate shall also provide that MESD, its agents, officers, and employees are additional insureds with respect to Provider's services provided under this Agreement.
6. **Unsupervised Contact with Students and Criminal Background Checks.** Unsupervised contact with students means contact that provides the person opportunity and probability for personal communication or touch with students when not under direct MESD supervision. As required by ORS 181.534 and 326.603, Provider shall ensure that Provider's employees, officers and agents will

have no direct, unsupervised contact with students while at any MESD school or other MESD location(s). Provider will work with MESD to ensure compliance with this requirement. When unsupervised contact with students is required under a contract with MESD, before any work begins under the contract Provider shall ensure, at Provider's expense, that any person Provider assigns to perform services under the contract meets all State of Oregon and MESD criminal background check requirements.

7. **Access to Records.** Each party shall have access to the books, documents and other records of the other party which are related to this Agreement for the purpose of examination, copying and audit, unless otherwise limited by law.
8. **Confidentiality.** No reports, information, and/or data given to or prepared or assembled by the Parties under this Agreement shall be made accessible to any individual or organization by either party without the prior written approval of the other party.
9. **FERPA Re-disclosure.** The Parties recognize that the Family Educational Rights and Privacy Act (FERPA) imposes strict penalties for improper disclosure or re-disclosure of confidential student information including but not limited to denial of access to personally identifiable information from education records for at least five (5) years (34 CFR 99.33(e)). Therefore, consistent with the requirements of FERPA, personally identifiable information obtained by the Parties in the performance of this Agreement may not be re-disclosed to third parties without the written consent of the students' parent/guardian, and must be used only for the purposes identified in this Agreement.
10. **Compliance with Applicable Law.** Each party shall comply with all federal, state, and local laws applicable to public contracts and to the work done under this Agreement and all regulations and administrative rules established pursuant to those laws.
11. **Indemnity and Hold Harmless.** The Provider accepts responsibility for liability arising out of the performance of this Agreement. The Provider shall hold harmless, and indemnify MESD from any and all liability, settlements, loss, costs and expenses (including attorneys' fees) in connection with any action, suit or claim resulting or allegedly resulting from the negligent acts, omissions, activities or services of Provider, or Provider's agents, employees, or officers provided pursuant to this Agreement. MESD liability is subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260-30.300).
12. **Licenses.** At all times during the term of this Agreement Provider represents that it has any currently required licenses, certifications or other evidence of the necessary skills, abilities and professional knowledge needed to carry out the terms of this Agreement.
13. **Waiver, Severability.** Waiver of any default or breach under this Agreement by MESD does not constitute a waiver of any subsequent default or a modification of any other provision(s) of this Agreement. If any term or provision of this Agreement 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 Agreement did not contain the particular term or provision held invalid.
14. **Remedies.** In case of Provider's breach and in addition to the provisions of Sections 15 and 16 of this Agreement, MESD shall be entitled to any other available legal and equitable remedies. In case of MESD's breach, Provider's remedy shall be limited to termination of this Agreement and receipt of payments to which Provider is entitled.

15. **Attorney Fees.** The Parties agree that 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 in the metropolitan Portland, Oregon area for the type of legal services performed.
16. **Liquidated Damages.** In the event that Provider fails to perform any or all of its obligations under this Agreement, Provider shall pay liquidated damages of \$500.00 or ten percent (10%) of the contracted service(s) price, whichever is less.
17. **Notices.** All notices or demands of any kind required or desired to be given by MESD or Provider must be 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.
18. **Governing Law.** The provisions of this Agreement shall be construed in accordance with the laws of the State of Oregon. Any legal action involving any question arising under this Agreement must be brought 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. PROVIDER AGREES TO THE JURISDICTION OF THESE COURTS.
19. **Merger Clause.** There are no covenants, promises, agreements, conditions, or understandings between the Parties, either oral or written, other than those contained in this Agreement and its attachment(s). All attachment(s) hereto together constitute the entire agreement between the Parties (listed in order of precedence): (1) This Agreement, (2) Exhibit 1 (Scope of Work), (3) MESD RFP/RFQ/ITB (if any), and (4) Provider Proposal/Quote/Response/Offer.
20. **Force Majeure.** Neither MESD nor Provider shall be held responsible for delay or default caused by any contingency beyond their control, including, but not limited to war or insurrection, strikes or lockouts by the Parties’ own employees, walkouts by the Parties’ own employees, fires, natural calamities, riots or demands or requirements of governmental agencies other than MESD.
21. **Ownership of Work Product.** Any and all goods and services developed for MESD pursuant to this Agreement are intended as works made for hire. Works made for hire are the exclusive property of MESD. Provider hereby irrevocably assigns to MESD all of its right, title, and interest in and to any and all of the work product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Provider forever waives any and all rights relating to the work product including any and all rights arising under Title 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or modification.
22. **Representations.** Provider represents and warrants to MESD 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.
23. **Provider Duties.** Provider is responsible for the following:
 - a) Verification of Eligibility to Work. Provider agrees to verify that any and all staff assigned to provide service(s) to MESD are authorized to work in the United States. Provider agrees that any

and all staff assigned to provide service(s) to MESD will be continuously authorized to work in the United States for the duration of any assignment. Provider will immediately notify MESD and terminate the employment of any staff it determines or discovers is not authorized to work in the United States. Provider will provide MESD with a copy of the complete and signed Form I-9, upon request, for any staff assigned to provide service(s) to MESD prior to assignment at MESD's workplace. Provider assumes full responsibility for compliance with any and all United States Department of Labor and United States Citizenship and Immigration Services statutes and regulations governing the ability of Provider to employ third parties, including but not limited to, third parties who are not citizens or lawful permanent residents of the United States.

- b) **Qualifications**. Provider warrants that employees assigned to perform service(s) under this Agreement will have the required qualifications and Licenses to perform their normal professional duties. Upon request, Provider will provide MESD with additional information concerning Provider's employees' qualifications and expertise to assist MESD in conforming with internal rules and policies. Provider's employees will comply with all Federal and State rules and regulations
 - c) **Employment Policies Training**. Provider will at all times maintain and distribute to all staff employment policies that are consistent with current Federal and State labor and employment laws. Provider is responsible for ensuring that all staff are aware of its employment policies and are provided discrimination and harassment training which includes specific information about how an employee is to report discrimination or harassment. Provider will, upon request, provide MESD with documentation evidencing such training.
24. **Modification**. No waiver, consent, modification or change in the terms of this Agreement shall bind either party unless in writing signed by both Parties. A written waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.
25. **Responsibility for Taxes and Withholding**. Provider shall be responsible for all federal or state taxes applicable to compensation paid to Provider under this Agreement. MESD will not withhold from such compensation any amount(s) to cover Provider's federal or state tax obligations. Provider is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation paid to Provider under this Agreement.
26. **Funding**. This Agreement is subject to availability of appropriated funds. If payment for work under this Agreement extends into the MESD's next fiscal year, MESD's obligation to pay for work under this Agreement is subject to future budget appropriations. MESD reserves the right to adjust the work provided for in this Agreement or terminate this Agreement if there are insufficient or no appropriations to fund this Agreement. Agreements funded pursuant to a grant or grants are at all times subject to availability of grant funds.
27. **Employee Removal**. Provider will immediately remove any Provider employee, agent or officer from all MESD schools and locations in cases where MESD determines, in its sole discretion, that removal of the employee, agent or officer is in MESD's best interest.
28. **Provisions Required by Statute:**
- a) **Payment of Laborers**. In addition to applicable federal and local laws, ORS 279B.220 requires that Provider:

- i. Make payment promptly, as due, to all persons supplying to the Provider labor or material for the performance of the work provided for in this Agreement.
 - ii. Pay all contributions or amounts due the Industrial Accident Fund from the Provider or subcontractor incurred in the performance of this Agreement.
 - iii. Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.
 - iv. Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
- b) **Payment for Medical Care.** Pursuant to ORS 279B.230, Provider shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Provider, of all sums that the Provider agrees to pay for the services and all moneys and sums that the Provider collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.
- c) **Worker's Compensation Compliance.** Pursuant to ORS 279B.230, all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- d) **Hours of labor.** Pursuant to ORS 279B.020(5), 279B.235(3), 279B.235(5), and 279C.540(6), for Provider's employees subject to Oregon employment laws:
- i. **Maximum Hours.** Employees shall be paid at least time and a half for all overtime worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater, and for work performed on New Year's Day (January 1), Memorial Day (last Monday in May), Independence Day (July 4), Labor Day (first Monday in September), Thanksgiving Day (fourth Thursday in November) and Christmas Day (December 25).
 - ii. **Exemption.** The requirements of Section 28(d)(i) of this Agreement do not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.
 - iii. **Notice to Employees.** Provider must give notice in writing to its employees who perform work on this Agreement, either at the time of hire or before commencement of work on this Agreement, 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.

PROVIDER UNDERSTANDS THAT:

- (1) Payment for service(s) rendered will be withheld until MESD is furnished with a Provider Social Security Number or Federal Tax ID Number.
- (2) Willfully falsifying certification may subject the Provider to legal action.

(3) This Agreement is not binding, and the Provider will not commence work, until the MESD receives the following documents:

- i. A completed copy of this Agreement with all signature blocks completed below;
- ii. A completely filled out W-9 form; and
- iii. Certificate(s) of insurance (mailed from Provider's insurance carrier(s) directly to MESD) demonstrating that Provider meets all of the insurance requirements in Section 5 of this Agreement.

Multnomah Education Service District
Attn: _____

11611 NE Ainsworth Circle
Portland, OR 97220-9017
(503) 257-_____
NUMBER

Company Name

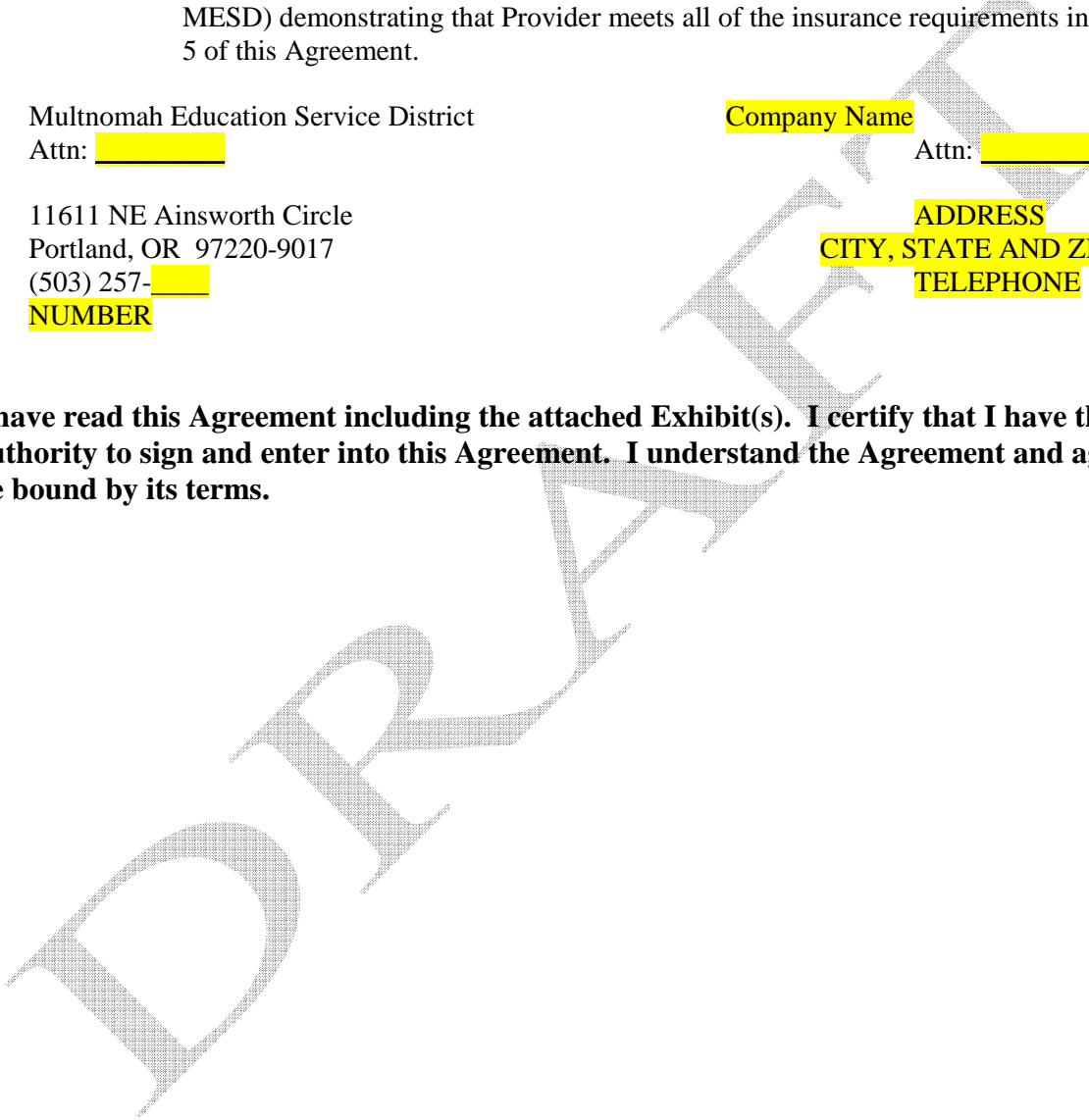
Attn: _____

ADDRESS

CITY, STATE AND ZIP CODE

TELEPHONE

I have read this Agreement including the attached Exhibit(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.



THIS CONTRACT IS NOT VALID UNTIL ALL SIGNATORY APPROVALS ARE COMPLETED

Ron Hitchcock, Superintendent

Provider, Title

Date

Date

**EXHIBIT 1
SCOPE OF WORK**

1) Provider Qualifications:

- a. Provider represents and warrants that it meets the following qualifications:
 - i) Provider is approved by the Oregon Department of Education (ODE) as a “qualified private preschool provider”. Provider shall submit proof of such approval to MESD before services begin under this Agreement.
 - ii) Provider holds and will maintain licensure through the Oregon Child Care Division throughout the entire duration of this Agreement.
 - iii) Provider successfully meets every Provider qualification listed in MESD’s Request for Proposals.
 - iv) Provider meets all applicable Americans with Disabilities Act requirements, including those for accessibility.

2) Provider Duties:

- i) Placements.
 - (1) Slots. A “slot” is defined as one five-day-per-week, three-hour-per-day placement in one of Provider’s classrooms (ex: 8:30 a.m. to 11:30 a.m. Monday-Friday in Classroom A), which shall be available to MESD students for the entire duration of this Agreement. MESD shall have the ability, at MESD’s discretion, to interchange MESD’s students in

its slots. "MESD student" is defined as a child placed in Provider's Preschool by MESD pursuant to this Agreement. Provider guarantees MESD the following slots:

(a) **Morning session slots:**

- (i) 2 slots in classroom A Monday- Friday from 8:30 a.m. to 11:30 a.m.
- (ii) 2 slots in classroom B Monday- Friday from 8:30 a.m. to 11:30 a.m.

(b) **Afternoon session slots:**

- (i) 2 slots in classroom A Monday- Friday from 1:00 p.m. to 4:00 p.m.

(2) Natural Proportions. Placements of MESD students will be based on the following natural proportions: In all classrooms with MESD students, only 5-15% of the total students in the classroom shall be students with disabilities. For example, in a classroom with twenty-one (21) students total (including MESD students and non-MESD students), only one to three of those students (including MESD students and non-MESD students) shall be students with disabilities.

(3) Provider represents and warrants MESD students will receive special education services throughout their entire slot time. No slots under this Agreement will consist of non-special educational activities/services, such as nap time, unstructured free time, etc.

- ii) Provide developmentally appropriate curriculum.
- iii) Implement positive approaches to behavior.
- iv) Work cooperatively with MESD staff to implement special education Individual Family Service Plans (IFSP's) for MESD students.
- v) Collect data on the progress of MESD students to monitor individual student progress toward their educational goals.
- vi) Participate in annual IFSP team meetings with parents and MESD staff to review and update educational programs.
- vii) Provide information, resources, and/or training to the parents of MESD students to address identified needs.
- viii) Participate in trainings with MESD and other early childhood care and education providers as determined by MESD's Project Coordinator and Preschool Director.

3) MESD Duties:

- a. Provide onsite consultation and training to Provider's staff to implement MESD childrens' educational programs.
- b. Coordinate the development, review, and monitoring of all special education programs for students with Provider's staff, MESD, and parents of MESD students.
- c. Facilitate training on request for Provider's staff on child development, curriculum, instructional strategies, and positive approaches to behavior, including children with disabilities in the typical setting.
- d. MESD will provide special education services to MESD students and consultation to Provider's staff based on Provider's school calendar, which is **Month day, year** through **Month day, year** with scheduled breaks. See calendar attached as Exhibit 2.
- e. MESD will facilitate an orientation meeting between MESD and Center staff prior to initiation of services each school year.
- f. MESD will schedule quarterly meetings with Provider's directors to discuss this Agreement.
- g. MESD will facilitate visits by parent(s) of MESD students by contacting Provider's preschool director prior to enrollment of individual MESD student(s).
- h. MESD will schedule educational program reviews with the IFSP Team (including Provider's regular preschool teacher) based on the due dates required for each student's IFSP. The Service Team consists of MESD and preschool staff. The purpose of the service team is to provide the services to address goals on the IFSP.

Attachment A: Draft of MESD Contract _____

- i. MESD will facilitate consultation to each of Provider’s classroom teacher(s) through a technical assistance agreement developed by both Parties.
- j. MESD will pay Provider the following fees for MESD student placements:
 - i) A one-time flat registration fee of \$100.00 per student not to exceed 24 students.
 - ii) \$5.00/hour for a three-hour preschool slot (i.e. \$15/day for each three-hour morning slot and \$15/day for each three-hour afternoon slot). MESD shall have the ability to interchange MESD students within each slot. For example, one slot could be shared by two (2) MESD students in the following manner: MESD Student A attends M/W/F and MESD Student B attends Tu/Th.
- k. MESD will pay Provider on a monthly basis for the number of slots guaranteed in Section (2)(i)(1)(a)-(b) of this Scope of Work.

This is a draft contract and specific terms may be negotiated. Each proposer must indicate any changes to this draft contract it requires and/or wishes MESD to consider.

DRAFT