



Multnomah Education Service District
Request for Proposals on
Event Production Services

Multnomah Education Service District (District) is accepting proposals for Event Production Services as described in this document.

Proposals will be received until

2:00 p.m., Pacific Daylight Savings Time
Friday, March 2nd, 2012

at District's Helensview School, attn.: Jerelyn Carlson, 8678 NE Sumner Street, Portland, OR 97220, phone: 503-262-4150, fax: Helensview School 503.257.1158, email: jcarlson@mesd.k12.or.us.

Proposals need not be sealed, and they may be sent to District via email, fax, 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 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

Request for Proposals on Event Production Services

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.

Services Sought

District is seeking proposals from individuals, firms, teams or consultants, hereafter called “Proposer(s)”, with demonstrated experience in Event Production 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 1 event (1 day).

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.

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 Kris Persson, who can be contacted by phone at 503.262.4150, by fax at 503.257.1158, via email at kpersson@mesd.k12.or.us, or in person at Helensview School – 8678 NE Sumner Street, Portland, OR 97220.

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Scope of Work

Duration: 6:00am to 10:15pm on Wednesday, June 6th, 2012

Multnomah ESD is searching for Event Production Services to provide audio, video, and lighting equipment and services for Helensview School's 2012 graduation ceremony. The ceremony will be held in the 15,500 sq. ft. John Q. Hammons Conference Center at the Holiday Inn, Portland Airport. Staging for the event measures 48' x 24' x 24'. Capacity for the event is 1,400. Ceremony will include music by a band of 5-10 musicians. Proposal must include sufficient cabling and microphones for the band.

Essential Duties:

1. Submit a firm itemized quote for the services mentioned in this RFP. Quote must include all equipment, transportation, and labor costs associated with the delivery, set up, monitoring, clean up, and haul away of the equipment.
2. Work with Helensview staff and Holiday Inn staff prior to the event and throughout the day of the event to ensure a professional and smooth ceremony.
3. Deliver and set up professional audio, video, and lighting equipment to provide sufficient sound and stage lighting for the facility mentioned above. Set up must be completed between 6:00am and 9:00am Wednesday, June 6th, 2012.
4. The caliber and power of the equipment should include the following (or equal system):
 - a. Audio: 4 x Nexo PS 15, 2 x EAWSB 1000, Subs, Amps, Mixers, 4 x monitors and amps, Mic DI Kit, 5 wireless and podium mics.
 - b. Video: 2 x video projectors, 2 x HD video cameras with camera operators, video recorder, back up recorder, switcher and all necessary cabling.
 - c. Lights: 10 par cans for front and backlight and all necessary cabling
 - d. Necessary Labor to complete delivery, set up, monitoring, recording, break down, and transport removal of the equipment.
5. Support and facilitate a professional ceremony by independently monitoring and adjusting audio, lighting, and video equipment throughout the morning rehearsal, throughout the day, and throughout the evening ceremony (7:00pm – 9:30pm).
6. Provide a minimum of 2 camera operators to videotape ceremony and provide digital copy of the ceremony to Helensview School no later than 1 week following the event (Wednesday, June 13th, 2012).
7. Break down and remove all audio, video, and lighting equipment after event. Conference Center must be empty by 10:15pm, Wednesday, June 6th.

Qualifications and Experience:

1. Minimum of 10 years experience in event production (events must include audio, lighting, and video production).
2. Minimum of 5 years experience in large scale audio, lighting, and video event production (events with attendance exceeding 1,000 people).
3. Minimum of 5 years experience with large scale concert production (events with attendance exceeding 1,000 people).
4. Experience working with schools and/or government agencies recommended.
5. Must be licensed and insured in the state of Oregon.

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Part II: Proposal Preparation and Submittal

Pre-Submittal Meeting

There will be no pre-submittal meeting or site visit scheduled for this RFP.

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 Kris Persson, Multnomah ESD's Helensview School, who can be contacted by phone at 503.262.4150, by fax at 503.257.1158, via email at kpersson@mesd.k12.or.us, or in person at the Multnomah ESD's Helensview School, 8678 NE Sumner Street, Portland, OR 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:

- Cover Letter
- Description of Proposer or Proposer's business
- History of Proposer's relevant experience, preferably toward similar services focused around other school or public agencies
- Resumes of Proposer's staff who will be assigned to this project
- Details of how the Proposer will provide the services described in this RFP
- An estimated timeline for completion of the proposed services, or Proposer's plan to comply with the timeline specified by District in the Scope of Work
- Company names, contact names and phone numbers of at least three clients who have utilized services/products of a similar nature. If possible, provide references that include school districts or other governmental organizations.
- Proposed cost(s) for the services, including a firm cost-structure breakdown and a listing of expenses which will require reimbursement, and a listing of any other costs that the Proposer may charge District.
- 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.

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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.	Cover Letter	0
B.	Experience and Capabilities	50
C.	Ability to meet timelines	20
D.	Proposed costs	10
E.	Appropriateness of proposed methodology in providing services	20
F.	References	0
	Total Points Available	100

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 highest-scored, responsive and responsible Proposer.

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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: <small>(Who should district contact if there are questions about this proposal?)</small>	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: <small>(If you are awarded a contract, who would District contact for daily activities pursuant to the Contract?)</small>	Name(s):	
	Phone:	Fax:
	eMail:	

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

PERSONAL SERVICES AGREEMENT
BETWEEN
MULTNOMAH EDUCATION SERVICE DISTRICT
AND
PROVIDER'S FULL NAME IN CAPS

This Agreement is between Multnomah Education Service District, hereinafter "MESD" and **Provider's full name**, hereinafter "Provider" (and collectively "the parties").

The parties mutually agree as follows:

Term of Agreement. The initial Agreement term shall begin on the date it has been fully executed by all parties or **Month DD, YYYY**, whichever is later. Unless extended or terminated in accordance with its terms, this Agreement shall terminate on **Month DD, YYYY** or when MESD accepts Provider's completed performance, whichever occurs first.

Summary of Work. Provider shall perform the work described in Exhibit 1 (Scope of Work). This Agreement is for **finish with one COMPLETE sentence summarizing what the contract is for (i.e. "This Agreement is for civil engineering design services for the separation of utilities at Arata Creek School at the Edgefield Children's Campus)."**

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 described in Exhibit 1 (Scope of Work) to be delivered 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** shall 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.** This Agreement does not establish an agency relationship between MESD and Provider and both entities affirm that each is an independent contractor.
2. **Subcontracts and Assignment; Successors and Assigns.** Neither party shall subcontract or assign any part of this 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. The provisions of this Agreement are binding and inure to the benefit of the parties, their respective successors, and permitted assigns, if any.
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 mutual written agreement.
 - b) **MESD's Sole Discretion.** MESD in its sole discretion may terminate this Agreement for any reason by giving 30 calendar days written notice to Provider.
 - c) **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 party seeking termination wants the other party to take/complete in order to cure the material breach, and of 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/takes to cure the material breach before the 15 calendar days to cure expires. If the breaching party does not entirely 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 timeline to cure.

- d) Termination by either party shall not constitute a waiver of any claim either party may assert against the other party under the terms of this Agreement. MESD shall not be liable for indirect 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 party for all work satisfactorily performed prior to the termination date.
4. **Work Performed on MESD Property.** At all times when Provider or Provider's employees, agents, subcontractors, or officers are present on MESD property or other location(s) for the purpose of providing service(s) under this Agreement, Provider and Provider's employees, agents, subcontractors, and officers must sign in at the location's main office to receive an in-school/building identification/visitor's badge and display the badge on their person at all times.
5. **Insurance.** Unless otherwise specified in a solicitation document (if applicable), or otherwise amended pursuant to the terms of this Agreement, 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 (unless exempt under ORS 656.027 or 656.126) and shall submit a certificate of insurance to MESD showing proof of coverage. If Provider claims to be exempt, Provider shall complete and provide a Workers' Compensation Exemption Certificate on a form provided by MESD in lieu of providing a 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 \$3,000,000 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 at least \$2,000,000 for bodily/personal injury and property damage, with an annual aggregate limit of at least \$3,000,000. 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 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 named 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, subcontractors, 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 this Agreement 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 disclosed or 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.** Provider shall defend, save, hold harmless, and indemnify MESD and its officers, employees, agents, and volunteers 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 activities of Provider or its officers, employees, subcontractors, or agents under this Agreement. MESD's 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 and all 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. **Severability.** 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 paragraphs 11, 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 for services performed prior to the effective termination date.
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.** At MESD's sole discretion, where Provider does not fully perform all of its obligations under this Agreement in a timely manner by the termination date listed on page one of this Agreement or later termination date if properly extended according to the terms of this Agreement ("termination date"), Provider may be responsible for liquidated damages in the amount of \$50 per calendar day that passes beyond the termination date. It is mutually understood and agreed that Provider's failure to fully perform in a timely manner will result in damages and inconvenience sustained by MESD; that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damage set forth herein is the nearest and most exact measure of damage for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or a forfeiture for Provider's breach. MESD may deduct any assessed liquidated damages from any payments otherwise due to Provider.

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.** This Agreement and all rights, obligations, and disputes arising out of it shall be governed by Oregon law without regard to any conflict of law provisions. All disputes and litigation arising out of this Agreement shall be brought and conducted in the Circuit Court of Multnomah County, Oregon. 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). This Agreement and its attachment(s) hereto together constitute the entire agreement between the parties (listed in order of descending precedence): (1) This Agreement less exhibits, (2) Exhibit 1 (Scope of Work), (3) MESD RFP/RFQ/ITB (if applicable), and (4) Provider Proposal/Quote/Response/Offer (if applicable).
20. **Force Majeure.** Neither MESD nor Provider shall be held responsible for delay or default caused by any contingency beyond its 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 employees, officers, subcontractors, and agents assigned to provide service(s) to MESD under this Agreement are authorized to work in the United States. Provider agrees that any and all employees, officers, subcontractors, and agents assigned to provide service(s) to MESD will be continuously authorized to work in the United States for the duration of any assignment. Provider shall immediately notify MESD and terminate the employment of any employee it determines or discovers is not authorized to work in the United States. 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 its employees, officers, subcontractors, and agents 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', officers', subcontractors', and agents' qualifications and expertise to assist MESD in conforming with internal rules and policies. Provider's employees, officers, subcontractors, and agents 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. **Nonwaiver.** The waiver by MESD of any breach, violation, or default of a provision of this Agreement will not operate as a waiver of any subsequent breach, violation, or default of that or of any other provision.
25. **Responsibility for Taxes and Withholding.** Provider shall be responsible for all federal and/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 MESD appropriated funds. If payment for work/service under this Agreement extends into the MESD's next fiscal year, MESD's obligation to pay for work/service under this Agreement is subject to future budget appropriations. MESD reserves the right to adjust the work/service provided for in this Agreement or terminate this Agreement by giving at least three (3) calendar days written notice to Provider if there are insufficient or no appropriations to fund this Agreement. Agreements funded pursuant to a grant or other outside source are at all times subject to the availability of the grant or other outside source.
27. **Employee, Agent, Subcontractor, Officer Removal.** Provider will immediately remove any Provider employee, agent, subcontractor, or officer from performing any service(s) under this Agreement upon receipt of notification that MESD determined, in MESD's sole discretion, that removal of the employee, agent, subcontractor, or officer is in MESD's best interest.
28. **Provisions Required by Statute:**
 - a) **Payment of Laborers.** Provider shall comply with ORS 279B.220 relating to the payment(s) of laborers.
 - b) **Payment for Medical Care.** Provider shall comply with ORS 279B.230 relating to payment(s) for medical care.
 - c) **Hours of labor.** Provider shall comply with Oregon employment laws ORS 279B.020(5), 279B.235(3), 279B.235(5), and 279C.540(6), relating to hours of labor (i.e. maximum hours, exemption, notice to employees).
29. **Handwritten Revisions.** Handwritten revisions made to this Agreement, which are not initialed and dated by both parties, shall be deemed to have been rejected.
30. **Joint Authorship.** Provider has reviewed this Agreement and negotiated for change to any language that Provider found vague. Accordingly, anyone constructing and/or interpreting this Agreement shall not construe any of its terms strictly against either party.
31. **Headings.** The headings of this Agreement are not intended to be used as tools of construction and are provided for convenience only.
32. **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.
33. **Time Is of the Essence.** Time is of the essence in all terms, provisions, covenants, and conditions contained in this Agreement and its attachments.
34. **Variations, Modifications, and Amendments.** This Agreement shall not be varied, modified, or amended except by an express writing containing the terms of the variation, modification, or amendment that has been signed by all parties.

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 (a) A completed copy of this Agreement with all signature blocks completed below; (b) A completely filled out W-9 form; and (c) 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 Agreement.

Multnomah Education Service District
 Attn: _____
 11611 NE Ainsworth Circle
 Portland, OR 97220-9017
 (503) 257-_____

Provider Full Name
 Attn: _____
 ADDRESS
 City, State and Zip Code
 Telephone number

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 AGREEMENT IS NOT VALID UNTIL ALL SIGNATORY APPROVALS ARE COMPLETED

 MESD Signer, MESD Title

 Provider Signer, Provider Title

 Date

 Date

EXHIBIT 1
SCOPE OF WORK

DRAFT