

CONTRACT FOR NWESD 189 SERVICES

BETWEEN

Northwest Educational Service District 189
(Hereinafter referred to as NWESD)

AND

Arlington Public Schools
(Hereinafter referred to as District)

1601 R Ave, Anacortes, WA 98221

315 N French Ave

(360) 299-4000

FAX (360) 299-4070

Arlington, WA 98223

Contract Order No: RN-ASD#16-2016-17

NWESD Account Code: 6401

In consideration of the promises and conditions contained herein, NWESD and the District do mutually agree as follows:

I. PURPOSE

The purpose of this Contract is to provide technical assistance to employees of the District in the area of data communications networks and related components.

II. RESPONSIBILITIES OF NWESD

In accordance with this Contract, the NWESD shall:

- 1) Provide tools, equipment, and training for District personnel for the timely delivery of preventative, diagnostic, and problem resolution support to information systems which are integral components to the data communications infrastructure (Network).
- 2) Provide personnel to deliver on-site or remote Network troubleshooting, repair, and other support services related to the Network. It is recognized that this may involve a team approach of NWESD and District personnel.

III. RESPONSIBILITIES OF DISTRICT

In accordance with this Contract, the District agrees to:

- 1) Designate a primary District contact that will be authorized to direct NWESD staff and make day-to-day decisions regarding the District's contracted time.
- 2) Provide timely, accurate, and complete information when requested by NWESD staff.
- 3) Provide adequate access to systems and servers that are necessary to complete assigned tasks.

If the District requests onsite support, the District also agrees to:

- 1) Provide services, staff, workspace and access to the District's data communications infrastructure necessary for NWESD staff to meet the requirements of the Contract.
- 2) Provide adequate access to District facilities to perform requested work. Keys and security information may be requested by NWESD if it is determined that that level of access is required.

IV. TERM OF THE CONTRACT

This Contract will begin September 1, 2016 and end August 31, 2017. The District agrees to continue participation in the Contract for each consecutive fiscal year following August 31, 2017 unless the District provides written notice of termination prior to the May 31 proceeding the August 31 of termination period. Termination is limited to August 31 of the identified year. Termination is further specified in the Termination section of this Contract.

V. CONTRACT OBLIGATION

For the performance of the work as set forth in the "Responsibilities of NWESD"; the District shall pay a fee of \$170/month for the equivalent of 0 days/month on-site network specialist support and 2 hr/month remote network support services. Additional consultant time which is deemed over-and-above that which is provided for the basic fee will be at the rate of ninety dollars (\$90) per on-site contact hour and eighty-five dollars (\$85) per remote contact hour.

In addition, NWESD shall receive reimbursement estimated not to exceed a daily amount of \$143 for travel and other expenses as identified below or authorized in advance by the District as reimbursable. NWESD shall receive reimbursement for travel expenses at current NWESD travel reimbursement rates. NWESD will provide a detailed breakdown of authorized expenses, identifying what was expended and when. Anticipated expenses include:

- 1) Ferry fares
- 2) Lodging and subsistence necessary during periods of required travel

VI. PAYMENT PROVISIONS

All payments to the NWESD shall:

- 1) Be paid within thirty (30) days of receipt of invoice
- 2) Payments after thirty (30) days may be assessed an interest charge of one and one half percent (1.5%) per month.
- 3) Include reference to the invoice number on the payment
- 4) Be made to:
Northwest Educational Service District
Fiscal Department: Cashier
1601 R Avenue
Anacortes WA 98221

VII. CONTRACT MANAGERS:

<u>NWESD Contract Manager</u>	<u>District Contract Manager</u>
Name: Kyle Bunker	Name: Mark Ehrhardt
Address: 1601 R Avenue Anacortes WA 98221	Address: 315 N French Ave Arlington, WA 98223
Phone: 360.299.4061	Phone: 360-618-6211
Fax: 360.299.4004	Fax:
Email Address: kbunker@nwesd.org	Email Address: mehrhardt@esd.wednet.edu

VIII. NONDISCRIMINATION/ANTI-HARASSMENT

In performing its obligations under this contract, the NWESD shall comply with the NWESD, state and federal guidelines and regulations regarding nondiscrimination and harassment involving any employee/student on the basis of race, color, sex, religion, ancestry, national origin, creed, marital status, age, sexual orientation, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or use of a trained dog or service animal by a person with a disability in employment, services, or any other regards.

IX. GOVERNING LAW/VENUE

The terms of this Contract shall be construed and interpreted in accordance with the laws of the state of Washington, without regard to conflicts of laws principles. In the event that legal action or arbitration is commenced to resolve a dispute related to this Contract, the venue of such action or arbitration shall be in Skagit County, Washington.

X. INDEMNIFICATION/HOLD HARMLESS

The District indemnifies and shall defend and hold the NWESD, its employees, agents and representatives, harmless from and against all third-party claims, actions, liens, suits or proceedings asserted against the NWESD that are related to the District's obligations or performance under this Contract. The District shall timely reimburse the NWESD for all costs, expenses, damages, losses, liabilities or obligations, including reasonable attorney's fees, incurred by the NWESD as a result of such third-party claims, actions, liens, suits or proceedings.

XI. DISPUTE RESOLUTION

If a dispute regarding this contract arises between the District and the NWESD, then the District will appoint someone to represent it, the NWESD will appoint someone to represent it, and those two parties will appoint someone as a third representative. Decisions will be made by a vote of the majority of the representatives. The dispute committee shall be limited to resolving issues pursuant to this Contract, and its decision(s) shall be final.

XII. TERMINATION

This Contract may be terminated by the NWESD at any time, without reason, upon written notification thereof to the District. The notice shall specify the date of termination and shall be conclusively deemed to have been received by the District as of midnight of the second day following the date of its posting in the United States mail addressed as first noted herein. In the event of termination by the NWESD, the NWESD shall be entitled to an equitable proration of the total compensation provided herein for uncompensated services that have been performed as of the date of termination, and to the reimbursement of expenses incurred as of the date of termination, but solely to the extent such expenses are reimbursable under this Contract.

XIII. OTHER ASSURANCES

In performing its obligations under this Contract, each party shall promptly comply with all laws, ordinances, orders, rules, regulations and requirements of the federal, state, county or municipal governments or any of their departments, bureaus, boards, commissions or officials concerning the subject matter of this Contract (the "Laws"). This provision applies to Laws currently existing or applicable to a party's duties under this Contract during the term of this Contract.

XIV. ASSIGNMENT

Neither this contract nor any interest therein may be assigned by the District without first obtaining the written consent of the NWESD.

XV. DEFAULT

The District shall be in default of this Contract upon the occurrence of any of the following:

- 1) Any covenant, representation or warranty made by the District was false or misleading when made or subsequently becomes so;
- 2) The District fails to perform any of its obligations under the Contract, and unless otherwise specifically stated elsewhere in this Contract, such failure continues for thirty (30) calendar days after the District receives a notice to cure from the NWESD or its designee;
- 3) The District files a petition in bankruptcy or other similar proceeding, makes any assignment for the benefit of creditors, or is the subject of an involuntary bankruptcy petition, receivership or other insolvency proceeding; or
- 4) After the termination of the Contract, the District continues to use any of the NWESD's intellectual property.

XVI. BREACH/DEFAULT WAIVER

No delay or failure on the part of the NWESD to exercise any rights under the Contract shall operate as a waiver of the NWESD's contractual rights. Also, the NWESD's waiver or acceptance of a partial, single or delayed performance of any term or condition of the Contract shall not operate as a continuing waiver or a waiver of any other breach of a Contract term or condition. No waiver shall be binding unless it is in writing and signed by the party waiving the breach.

XVII. REMEDIES FOR DEFAULT

If the District is in default of this Contract, the NWESD may pursue any or all of the following remedies, which may be cumulative:

- 1) Immediately terminate the Contract;

- 2) Injunctive relief without proof of actual damage and without posting a bond pending resolution by court action or arbitration;
- 3) Liquidated damages to protect against the immeasurable damage to the NWESD's business and goodwill of \$50.00 for each day that the District improperly or without permission uses the NWESD's intellectual property;
- 4) Consequential and incidental damages to the NWESD from the District default; and
- 5) Recover reasonable attorneys' fees and costs for any arbitration or litigation brought to enforce the NWESD's rights under this Contract.

XVIII. SEVERABILITY

If any provision of this contract is determined to be invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted and the balance of the contract shall remain enforceable.

XIX. HEADINGS

The headings of each section of this Contract are provided only to aid the reader. If there is any inconsistency between the heading and the content of the paragraph or the context of the contract, the content or context will prevail.

XX. INTEGRATION/MODIFICATION

This Contract constitutes a fully integrated document containing the full, final and binding agreement of all parties signatory and all persons claiming by or through a signator, and supersedes all other negotiations, offers or counteroffers relating to the subjects treated in this Contract. The Parties may amend this Contract only upon a writing bearing the actual signatures of the names of all the Parties or their respective, authorized representatives.

XXI. NOTICES

Any notice given under this Contract shall be in writing from one party to another, given only by one of the following methods: (i) personal delivery, (ii) United States first class and certified mail, return receipt requested, with postage prepaid to the recipient's business address provided on the front page of this Contract; or (iii) e-mail to the recipient's email address given in the Contract Managers section of this Contract. Notice shall be deemed to occur in the case of the use of the mail, when the notice is postmarked. Notice shall be deemed received on the date of personal delivery, on the second day after it is deposited in the mail or on the day sent by e-mail. A party may change the place notice is to be given by a notice to the other party. For efficiency, the parties agree that documents sent by electronic means shall be considered and treated as original documents.

XXII. FORCE MAJEURE

A party to this Contract is not liable to the other party for failing to perform its obligations if such failure is a result of Acts of God (including fire, flood, earthquake or other natural disaster), war, government sanction/order/regulation, riot, terrorist attack, labor dispute, or other similar contingency beyond the reasonable control of the parties. Force Majeure does not include computer events, such as denial of service attacks or those that may occur as a result of a third party. Each party shall have backup computer systems to allow it to continue to perform its obligations under the Contract. If a party asserts Force Majeure as an excuse for failure to perform its contractual obligations, then it must prove that it took reasonable steps to minimize delay or damages caused by foreseeable events, that it substantially fulfilled all non-excused obligations and that the other party was timely notified of the likelihood of or actual occurrence of such an event.

XXIII. COPYRIGHTS

The NWESD reserves all right, title and interest in and to the copyrights it owns, unless otherwise expressly granted to the District under the Contract. Nothing in the Contract shall be construed to convey any right, title or interest in or to the NWESD's copyrighted works to the District beyond the use expressly permitted by the Contract. The District shall have no claim, right, title or interest in or to the goodwill associated with the NWESD's copyrighted works, now or in the future. The District shall never contest any aspect of the NWESD's intellectual property rights in and to the NWESD's copyrighted works, the goodwill associated with those works or the validity of any license to use those works granted under this Contract. Further, the District shall reasonably assist the NWESD in protecting and maintaining copyrights owned by the NWESD, including without limitation furnishing samples, signing declarations or providing notice or testimony of infringement of which the District becomes aware. As to any copyrighted works that the District owns, the District represents and warrants that it exclusively owns its copyrighted works; there are no claims, judgments or settlements related to its copyrighted works; and its copyrighted works do not infringe any third-party's rights.

XXIV. OWNERSHIP OF WORK PRODUCTS

If the NWESD develops any product or concept for the District under this Contract, then all correspondence, papers, documents, reports, files, film work products (inclusive of intellectual concepts and properties), and all copies thereof that are received or developed by the NWESD or the NWESD employee(s) and agent(s) in the course of performing the NWESD's contractual duties, or as incident thereto, shall, immediately upon receipt, preparation, or development, become the exclusive property of the NWESD in perpetuity for any and all purposes. The District will be granted rights to use and modify the product or concept in perpetuity. All items described above shall be provided to and left with NWESD.

XXV. SIGNATURES/APPROVALS

The undersigned represent and warrant that they are authorized to enter into this contract on behalf of the parties.

GW Jenkins
Superintendent

6/20/16
Date

E. Kristine McDuffy
Superintendent

Date

GW Jenkins
Print Name

Dr E. Kristine McDuffy
Print Name

Northwest Educational Service District 189

Arlington Public Schools

Reviewed:

NWESD Director, TS *TL*

Please return to:
Tammy Lee, Administrative Assistant
Northwest Educational Service District 189
1601 R Avenue
Anacortes WA 98221