

INTERLOCAL COOPERATION AGREEMENT REGARDING BUSINESS SERVICES

THIS INTERLOCAL COOPERATION AGREEMENT (“Agreement”) is made by and between the South Kitsap School District No. 402, a Washington quasi-municipal corporation (“District”), and the Olympic Educational Service District 114, a Washington quasi-municipal corporation (“OESD”) (each a “Party” and collectively, the “Parties”).

RECITALS:

WHEREAS, the Interlocal Cooperation Act, as amended and codified in Chapter 39.34 RCW, provides for interlocal cooperation between public agencies;

WHEREAS, Monica Hunsaker (“Employee”) formerly was employed by the OESD as its Assistant Superintendent of Finance and Operations, and the OESD released Employee from her employment contract such that she could be employed by the District as its Assistant Superintendent of Business and Operations;

WHEREAS, Employee has knowledge and expertise related to certain OESD business operations, such as production and oversight of annual fiscal year closing statements; oversight of grants and grant reporting requirements; reconciliation of budgets and required forms, and any fiscal-related supports and preparations, and general resolution of any identified discrepancies as they emerge.

WHEREAS, the OESD desires for Employee to perform a maximum of 100 hours of services during the 2022-2023 school year, and the District desires to make Employee available to provide such services while Employee remains an employee of the District for the following tasks:

Assistance/Training for HCA claim

GASB 68 Liability Calculation

OPEB Liability Calculation

Assist with questions as needed

Employee will not be responsible for incorrect data sent for HCA claim processing or any incorrect financial statement reporting. Employee will be responsible for ensuring the GASB 68 and OPEB Liability are calculated correctly and will supply this data to the Director of Business Services to prepare the financial statements for year end

NOW, THEREFORE, in consideration of the mutual promises and agreements herein, the District and the OESD agree as follows:

- Purpose:** The purpose of this Agreement is to enable the Employee to perform a maximum of 100 hours of direct and/or consultative business services to the administration of the OESD during the 2022-2023 school year while remaining an employee of the District.

2. District Responsibilities:

- a. At such dates and times as the Parties mutually agree, Employee will perform tasks determined by the OESD Superintendent or designee including, without limitation, (the "Services") as listed in the RECITALS above. The Services may be performed in person or remotely as determined by the OESD Superintendent in consultation with the District Superintendent.
- b. Upon completion of the major tasks outlined in this agreement, OESD Superintendent will be notified.
- c. At such times as Employee is performing the Services, she will be subject to and comply with all relevant OESD policies and procedures and will be under the direction of the OESD Superintendent.
- d. The standard of care for the Services will be the skill and care used by members of the same profession performing similar services and practicing under similar circumstances at the same time and in the same locale and in accordance with the federal, state, and local laws and regulations that are applicable to the performance of the Services and which are in effect on the date of this Agreement.
- e. The District will remain responsible for paying to Employee those wages and benefits agreed between Employee and the District, for paying all taxes due as a result of that employment relationship, and making all withholdings and deductions arising from that employment relationship, except for when work is done outside of working hours. Work performed while outside of working hours will be pre-approved by OESD Superintendent and compensated by OESD to Employee at the rate Employee would have been compensated if employed at OESD for the 22-23 fiscal year.
- f. The District will remain responsible for evaluation and correction of the Employee.

3. OESD Responsibilities:

- a. The OESD will provide a suitable physical location for Employee to perform the Services.
- b. The OESD will furnish Employee with access to computer devices, electronic networks, phone systems, and other resources reasonably necessary for Employee to perform the Services as directed.
- c. The OESD Superintendent will supervise Employee's performance of the Services. The OESD Superintendent will inform the District of any nonperformance or noncompliance in delivery of the Services by Employee. OESD supervision of District personnel will not create an employment relationship between the OESD and District personnel.
- d. OESD will post a copy of this Agreement on its website in accordance with RCW 39.34.040.

- 4. Effective Date:** This Agreement will become effective on the date last signed by the authorized representatives of the Parties.

5. **Duration:** The Term of this Agreement will be September 1, 2022, through August 31, 2023, unless terminated by the Parties pursuant to Section 6.
6. **Termination:** If a Party breaches any provision of this Agreement, and if such breach is not cured within fifteen (15) days after receiving written notice from the nonbreaching Party specifying such breach in reasonable detail, the nonbreaching Party will have the right to terminate or suspend this Agreement by giving written notice thereof to the other Party. Without limiting the foregoing, in the event that the Employee separates from employment with the District during the Term of this Agreement, this Agreement will terminate.
7. **Administration of Agreement:** This Agreement will be administered by the Superintendent of the District and the Superintendent of the OESD, or their respective designees. No separate legal or administrative entity will be created pursuant to this Agreement.
8. **Manner of Financing:** No monetary consideration will be exchanged between the Parties as a result of this Agreement.
9. **Disposition of Property:** The acquisition, holding, or disposing of real and personal property is not anticipated pursuant to this Agreement. Real and personal property furnished in furtherance of this Agreement by either Party will remain the property of that Party unless otherwise agreed in writing between the authorized representatives of the Parties.
10. **Confidentiality.** In performance of this Agreement, the District and/or the Employee may have access to confidential information of the OESD including, but not limited to, information exempt from disclosure under the Washington Public Records Act, Chapter 42.56 RCW. Upon termination or expiration of this Agreement or conclusion of the Services, whichever is earlier, Employee will return to the OESD or destroy all records of the OESD generated or obtained during performance of the Services that are in the possession of Employee or the District. Neither Employee nor the District will disclose to any third party any information regarding or records of the OESD generated or obtained during the performance of the Services unless required by law and after reasonable written notice to the OESD.
11. **Family Educational Rights and Privacy Act (FERPA) Compliance.**
 - a. Under this Agreement, the Employee may have access to personally identifiable information contained in education records of OESD students that is protected from disclosure under the federal Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, and its implementing regulations, 34 C.F.R. § 99.1 *et seq.* Under 34 C.F.R. § 99.31(a), the OESD is permitted to disclose such information to Employee without first obtaining parental consent, subject to the requirements of FERPA, its implementing regulations, and this Agreement.
 - b. The Employee will access and use personally identifiable information from OESD student records only for purposes of the Services contemplated by this Agreement.
 - c. The Employee will not disclose OESD student education records or personally identifiable information contained therein to any individual other than representatives of the OESD who have legitimate interests in the information unless required by law. Employee will take reasonable electronic and/or physical

measures to secure and protect student data in her possession or control against unauthorized access or disclosure.

12. Non-Discrimination. In provision or receipt of the Services pursuant to this Agreement, the Parties will not discriminate with respect to race, creed, religion, color, national origin/language, age, honorably-discharged veteran or military status, sex, sexual orientation, gender expression or identity, marital status, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability. The Parties will comply with all federal, state, and local laws, regulations, and ordinances prohibiting discrimination applicable to provision of the Services, including, but not limited to: the Washington Law Against Discrimination, Chapter 49.60 RCW; Chapter 28A.640 RCW; Chapter 28A.642 RCW; and Chapter 392-190 WAC.

13. Indemnification and Hold Harmless.

a. **By the District.** The District will indemnify and hold harmless the OESD and its elected officials, officers, employees, and agents (the "OESD Indemnified Parties") from and against all third-party claims, suits, actions, losses, damages, liabilities, judgments, costs, demands, penalties, and expenses (including attorney's fees arising therefrom) of any nature whatsoever ("Claims") arising out of, in connection with, or incident to the execution of this Agreement or the District's performance or failure to perform any aspect of this Agreement; provided, however, that if such Claims are caused by or result from the concurrent negligence of the District and/or its officers, employees, or agents and the OESD Indemnified Parties, the District will be required to indemnify and hold harmless the OESD Indemnified Parties only to the extent of the negligence of the District or its officers, employees, or agents; and provided further, that nothing herein will require the District to indemnify or hold harmless the OESD Indemnified Parties from any Claims arising from the sole negligence of the OESD Indemnified Parties.

b. **By the OESD.** The OESD will indemnify and hold harmless the District and its elected officials, officers, employees, and agents (the "District Indemnified Parties") from and against all third-party Claims arising out of, in connection with, or incident to the execution of this Agreement or the OESD's performance or failure to perform any aspect of this Agreement; provided, however, that if such Claims are caused by or result from the concurrent negligence of the OESD and/or its officers, employees, or agents and the District Indemnified Parties, the OESD will be required to indemnify and hold harmless the District Indemnified Parties only to the extent of the negligence of the OESD or its officers, employees, or agents; and provided further, that nothing herein will require the OESD to indemnify or hold harmless the District Indemnified Parties from any Claims arising from the sole negligence of the District Indemnified Parties.

14. Insurance and Risk of Loss.

a. The District will obtain and keep in full force and effect during the term of this Agreement liability insurance coverage applicable to the activities of the Employee in performing the Services as set forth in this section. The insurance required by this Agreement will be issued by an insurance company or companies authorized

to do business within the State of Washington. All insurance will be written on an occurrence basis and will name the OESD as an additional insured.

- i. **General Liability:** The District will provide a general liability insurance policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activities, but in any event with limits of not less than \$1,000,000 per occurrence and \$3,000,000 general aggregate.
- ii. **Automobile Liability:** In the event that Services delivered pursuant to this Agreement involve the use of vehicles, either owned or used by the District, automobile liability insurance will be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

15. **Relationship of the Parties.** Nothing contained in this Agreement will be construed to create the relationship of employer and employee, principal and agent, partnership or joint venture, or any other fiduciary relationship between the Parties, or between one Party and the employees, agents, or independent contractors of the other Party. The employees, agents, or independent contractors of one Party do not have authority to act as an agent for, or on behalf of, the other Party, to represent the other Party, or to bind the other Party in any manner. The personnel of each Party will be and remain employees, agents, or independent contractors of that Party.
16. **Taxes.** All payments or obligations accrued because of payroll taxes, unemployment contributions, and any other taxes, insurance, or other expenses for the District or its personnel will be the sole responsibility of the District. The OESD will not withhold or pay federal, state, or local taxes of any kind whatsoever—including, but not limited to, income taxes or payroll taxes—on behalf of the District or its employees. The District understands and agrees that it is responsible to pay, according to law, all applicable federal, state, and local taxes related to Employee's employment, and that the OESD is not withholding or paying any portion of the District's taxes.
17. **Background Checks.** In the event that any of the District's employees or applicants for employment will have regularly scheduled unsupervised access to children in performance of this Agreement, the District will require a record check through the Washington State Patrol criminal investigation system under RCW 43.43.830-.834, RCW 10.97.030, and RCW 10.97.050, and through the Federal Bureau of Investigation, before either hiring the applicant or allowing the previously hired employee to work at OESD facilities. The records check will include a fingerprint check using a complete Washington State criminal identification fingerprint card. If an applicant has had a records check within the previous two (2) years, the District may waive the records check requirement for that applicant. The District will pay all costs of the requirements set forth in this provision.
18. **Crimes Against Children.** In accordance with RCW 28A.400.330, the District will prohibit any of its employees from working at a public school who has or may have contact with children at a public school of the OESD during the course of his or her employment and who has pleaded guilty to or been convicted of any crime enumerated in RCW 28A.400.322, as now or hereafter amended. Any failure to comply with this section will be grounds for the OESD to immediately terminate the Agreement.
19. **Assignment and Contracting:**

- a. Neither the Agreement, nor any of the rights or obligations arising under the Agreement, may be assigned by either Party without the other Party's prior written consent. Subject to the foregoing, the Agreement will be binding upon, enforceable by, and inure to the benefit of, the Parties and their successors and assigns.
- b. Except as agreed to in writing, the District will not substitute personnel. Any substitution of personnel by the District without the OESD's written permission will constitute a material breach of this Agreement.
- c. Neither Party will enter into any subcontract for any of the services contemplated under this Agreement without obtaining prior written approval of the other Party. In no event will the existence of a subcontract operate to release or reduce the liability one Party to the other Party for any breach in the performance of its duties under this Agreement. This section does not prohibit the District from entering into employment contracts with the Employee who will perform the Services.

20. Dispute Resolution: Any claim, dispute, or other matter in question between the Parties arising out of or related to this Agreement will be subject to mediation as a condition precedent to binding dispute resolution, unless provided otherwise herein.

- a. The Parties will cooperate in good faith and attempt to resolve any dispute that arises prior to mediation.
- b. The Parties will endeavor to resolve claims, disputes, and other matters in question between them by mediation which, unless the Parties mutually agree otherwise, will be administered by the American Arbitration Association in accordance with its rules in effect on the date of this Agreement.
- c. A request for mediation will be made in writing, delivered to the other Party, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation will proceed in advance of binding dispute resolution proceedings, which will be stayed pending mediation for a period of thirty (30) days from the date of filing, unless stayed for a longer period by agreement of the Parties or court order.
- d. The request for mediation must: (1) be in writing; (2) state the disputed issue(s); (3) state the Party's understanding of the relative positions of the Parties; and (4) state each Party's name, address, and contact number.
- e. The Parties will share the mediator's fee and any filing fees equally. The mediation will be held within the boundaries of the OESD, unless another location is mutually agreed upon. Agreements reached in mediation will be enforceable as settlement agreements in any court having jurisdiction thereof.
- f. If the Parties do not resolve a dispute through mediation pursuant to this section, the Parties may pursue any lawful method of binding dispute resolution, including but not limited to litigation in the Superior Court for the State of Washington in and for Kitsap County.

- g. Nothing in this Agreement will be construed to limit the Parties' choice of a mutually acceptable alternative dispute-resolution method in addition to or instead of the procedure outlined above.

21. COVID-19 Safety Compliance:

- a. The District will ensure that all of its personnel working at OESD facilities strictly follow all District COVID-19 safety protocols as they currently exist and are from time to time amended.
- b. Should the District have reasonable cause to believe that any of its personnel who has worked at an OESD facility has COVID-19, the District will immediately (1) exclude that worker from OESD property, and (2) inform the OESD.
- c. The District will exclude from working on the OESD's real property any of its officers or employees who are not fully vaccinated against COVID-19 while Governor Jay Inslee's Proclamation 21-14.5 (as currently exists or subsequently amended) remains in effect. The District agrees that it will comply with Section 4 of Proclamation 21-14.5, including, without limitation, by providing a signed declaration in substantially the form prescribed in RCW 5.50.050 declaring that the District has met the requirements of Section 4 at such times as the OESD may request.

22. General Provisions:

- a. **Governing Law and Forum:** In the event that any Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties agree that any such action or proceeding will be brought in a court of competent jurisdiction in Kitsap County, Washington. The laws of the State of Washington will apply to this Agreement, with the exception of its choice-of-law rules.
- b. **Severability:** If any provision of the Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The District and the OESD agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.
- c. **Non-waiver:** Any failure by a Party to enforce strict performance of any provision of the Agreement will not constitute a waiver of the Party's right to subsequently enforce such provision or any other provision of the Agreement.
- d. **Notices:** All notices and other communications under the Agreement must be in writing and must be given by registered or certified mail, postage prepaid, delivered by hand, or sent by email. The following representatives of the Parties have been designated to receive notice. The Parties will notify in writing the other Party regarding changes to their representatives.
 - i. **South Kitsap School District:** Tim Winter, Superintendent, 2689 Hoover Avenue Southeast, Port Orchard, Washington 98366, winter@skschools.org.

- ii. **Olympic Educational Service District 114:** Aaron Leavell, Superintendent, 105 National Avenue North, Bremerton, Washington 98312, aleavell@oesd114.org.
- d. **Counterparts:** The Agreement may be signed in counterparts, each of which will be deemed an original, and all of which, taken together, will be deemed one and the same document.
- e. **Modifications:** Modifications to this Agreement may be made only by written instrument properly signed by the authorized representatives of both Parties.
- f. **Survival:** The District and the OESD expressly intend and agree that the terms of Sections 13 and 20 will survive the expiration or termination of this Agreement for any reason.
- g. **No Third-Party Beneficiaries:** This Agreement is made and entered into for the sole benefit of the District and the OESD. No third party will be deemed to have any rights under this Agreement, and there are no third-party beneficiaries to this Agreement.
- h. **Integrated Agreement:** This Agreement, together with the attachments and addenda, if any, represents the entire and fully integrated Agreement between the Parties and supersedes all prior negotiations, representations, or agreements, either written or oral.

The Parties executing this Agreement below hereby certify they have the authority to sign this Agreement on behalf of their respective Parties. The Parties agree to the terms and conditions of this Agreement as shown by the signatures below.

SOUTH KITSAP SCHOOL DISTRICT NO. 402

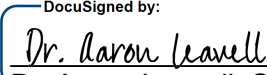
DocuSigned by:


 Tim Winter, Superintendent
 South Kitsap School District

10/24/2022

 Date

OLYMPIC EDUCATIONAL SERVICE DISTRICT 114

DocuSigned by:


 Dr. Aaron Leavell, Superintendent
 Olympic Educational Service District 114

10/24/2022

 Date