

Arlington Public Schools

“Providing the means to accomplish dreams”

<u>Supportive Information Sheet</u>
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Subject: **AGREEMENT WITH NW ESD 189 FOR E-RATE SERVICES 2008-2009**

Action

Page(s): Nine (9), including cover

Submitted by: Mark Ehrhardt, Director of Technology

Date: October 27, 2008

Background Information:

Northwest ESD 189 manages a cooperative service program to provide E-Rate management services to member districts. E-Rate application filing, documentation, and processing are currently managed by the District Technology Director. The amount of time and technical expertise required to obtain the funds has increased during each year of the program.

Administrative Consideration:

Participation in the ESD189 E-Rate service will allow our staff to spend more time assisting students and staff. The ESD will retain 15% of our reimbursed funds. For the 2007-08 school year, this would have been \$8234. They will also manage all of the filing so that we receive our reimbursements in a timely manner and ensure that we apply for all the funds that are available to us.

Superintendent’s Recommendation:

That the Board approves the 2008-2009 Northwest ESD 189 E-Rate Services Agreement.

**AGREEMENT FOR E-RATE SERVICES
2008-2009 SCHOOL YEAR**

Between

**Northwest Educational Service District No. 189
1601 "R" Avenue
Anacortes, Washington 99221
(hereinafter referred to as the "NWESD")**

And

**Arlington School District
315 North French Avenue
Arlington, Washington 98223
(hereinafter referred to as the "District")**

I. PURPOSE AND FORMATION

This Agreement stipulates the promises and conditions by which the NWESD provides E-Rate services to the District. Both the NWESD and District recognize this is a mutual arrangement for the benefit of both parties.

The conditions and stipulations of this Agreement to which the parties hereto agree have been entered into by appropriate action of the District's Board of Directors.

The purpose of this Agreement is for the NWESD to provide assistance to the District so that the District may meet its obligations for the efficient and effective filing for Universal Service Reimbursements or Discount according to provisions delineated in Title 28A Revised Code of Washington (RCW); resultant regulations delineated in the Washington Administrative Code (WAC); and the written policies and procedures of the District.

II. DURATION

This Agreement shall be effective September 1, 2008, through August 31, 2009, and shall be automatically renewed for additional September 1 through August 31 terms thereafter unless the District provides written notice of its election to terminate the Agreement by April 15, 2009, or April 15 of any year thereafter for any subsequent term, or unless the Agreement is terminated or dissolved in accordance with paragraphs VI and/or VII herein. Failure to provide notice by April 15 makes all fees due and owing for the subsequent term subject to the provision of services under this Agreement and invoicing by the NWESD.

III. ORGANIZATION AND GOVERNANCE

The NWESD's Board of Directors is authorized as the legal and administrative entity to manage the Agreement according to the policies and procedures adopted by the NWESD's Board of Directors.

The District shall inform the NWESD of the District's liaison individual for day-to-day contact on the services provided under terms of this Agreement. Said liaison shall be the sole authority for authorizing services provided pursuant to this Agreement.

IV. FINANCE AND BUDGET

The NWESD shall prepare applications and appropriate forms and/or training for all services provided to the District. The Agreement will be established in the term prior to the term for which the Agreement is effective, except for the first term, wherein the budgeted amount is developed in conjunction with this Agreement.

The budget developed by the NWESD shall be based on the actual costs, regardless of form, of the services and indirect costs. The reimbursement rate(s) shall be established for each term of the Agreement. In those instances wherein the District requests additional service(s), the NWESD shall evaluate and determine whether there is expertise or capability to provide the additional service(s).

The District hereby agrees to pay to the NWESD, upon receipt of invoice from the NWESD, fifteen percent (15%) of the E-rate discounts received in one of the following methods (select one):

- Pre-payment based upon an estimate based upon the average of the district's telecommunications expenses the prior year. Adjustments will be made to the actual E-rate discounts received, once they are known. If the actual E-rate discounts received are less than the estimate, the NWESD will refund the difference. If the actual E-rate discounts received are more than the estimate, the District will make a supplemental payment to the NWESD upon receipt of a second invoice.
- Payment upon receipt of E-rate discounts. The NWESD invoice shall be equal to the fifteen percent (15%) fee, plus six percent (6%) annual interest on this fee.

V. DISPUTES

Disputes shall be resolved by a three-member committee. The representatives shall be selected by NWESD and the District, each selecting one representative. Thereafter, the NWESD's representative and the District's representative shall select an impartial third party who shall serve as the third member of the Dispute Resolution Committee. Decisions of the Dispute Resolution Committee shall be limited by the articles contained in this Agreement and shall be binding on the parties without any further right of appeal.

VI. TERMINATION

There is a mutual recognition by both the NWESD and District that there will be consequent damages to the NWESD by the District in the event of premature withdrawal (by failure to give the appropriate notice required in Section II for termination), by failure to pay for services provided at the rates established for each term, or by failure to perform or abide by the duties stipulated in Section IX.

Premature withdrawal, failure to pay for services provided, or failure to perform the duties stipulated in Section IX constitutes a breach of this Agreement and is grounds for termination of the services to the District by the NWESD. All fees owed are due and payable in full within thirty days (30) of receipt of a final invoice from the NWESD.

VII. DISSOLUTION

The NWESD reserves the right to dissolve this Agreement and to terminate performance of any duties called for in this Agreement when in its judgment the service requirements of the District cannot be adequately provided, the expertise for the service requirements does not exist in the NWESD, or the volume of service is beyond the capacity of the NWESD.

In the event of dissolution, all assets acquired by the NWESD from any monetary source or assets donated and placed in service during the life of this Agreement remain the property of the NWESD. In the event of dissolution, any real or property assets acquired or donated by the District from any monetary source other than the reimbursement fee authorized in this Agreement and placed in service during the life of this Agreement remain the property of the District.

VIII. RESPONSIBILITIES OF THE NWESD

The responsibilities of the NWESD under this Agreement are as follows:

1. Employ professional, technical and clerical staff with appropriate training, experience, and/or certificate(s) to provide listed and/or requested E-Rate services.
2. Assign staff to specific tasks and supervise the performance of staff in responding to the listed and/or requested services.
3. Provide services listed in this Agreement and/or additional requested services in conformance with the adopted operational and personnel policies of the NWESD.
4. Schedule and budget appropriate time for full service including travel time to the District's site in the initial term of this Agreement.
5. Determine the appropriate alternate site location for the performance of listed and/or requested services.
6. Provide advice, consult, coordinate, analyze, review, and file appropriate applications and/or conduct workshops as agreed to with the intent of insuring the District's compliance with all statutory, regulatory, and procedural requirements of the universal service mechanisms for schools in regards to the following processes:
 - a. annual E-Rate applications 470 and 471 for telecommunications services the initial year and expanded to include other eligible services subsequent years, as determined practical;
 - b. as needed submit Form 500 and SPIN change requests;
 - c. annual 486 notifications to claim funds for the District;
 - d. annual or quarterly 472's for all service providers enabling the District to obtain reimbursements;
7. Supervise staff in the data input for all related applications and forms.
8. Review and process, when necessary, all related materials including telephone bills, contracts and agreements the district has entered into with service providers, free and reduced lunch discount calculations for current and previous years, and maintain unofficial annual records of all pertinent E-Rate documentation.
9. Provide data input for and creation of applications, and preparation of all related reports.
10. Provide other E-Rate management activities as mutually agreed upon and deemed appropriate and accomplishable in the contracted time period.
11. Perform or supervise the performance of the technical aspects of processing E-Rate applications and reimbursement processes related to obtaining discounts or reimbursement checks from eligible service providers.

12. As requested by the District, advise, consult, coordinate, analyze, review and/or monitor E-Rate management functions with the intent of assisting the District in its efforts to comply with regulatory requirements for the following purposes:
 - a. applying for eligible services (telecommunications services the initial year and expanded to include other eligible services subsequent years, as determined practical);
 - b. calculating a discount that is substantiated by an accurate accounting of the district's students who are eligible for free or reduced lunch;
 - c. compliance with universal service fee requirements;
 - d. assisting with any appeals regarding funding requests commitment decisions;
 - e. contacting service providers when necessary to verify they have received notice from SLD of the District's funding commitments;
 - f. tracking all applications to verify each step of the process has been completed; and
 - g. performing other E-Rate management activities as mutually deemed appropriate, agreed upon and accomplishable in the contracted time period.

IX. RESPONSIBILITIES OF THE DISTRICT

The responsibilities of the District under this Agreement are as follows:

1. Recognize and accept full responsibility and accountability for schools and library division (SLD) previous and current funding commitments to the District and comply with District and SLD policies and procedures, federal, state and local government statutes and regulations; and use this Agreement as a tool for the provision of professional and technical assistance by the NWESD.
2. Assign sufficient personnel to accomplish the technical aspects of assisting transactions related to obtaining the necessary information to file all applications in a timely manner.
3. Authorize and notify the NWESD of who will be responsible for reviewing, approving, and signing all appropriate applications and notifications forwarded to SLD.
4. Provide accurate and complete information to the NWESD prior to filing applications, and upon request, so when District's applications are audited by SLD's Program Integrity Team, available and accurate documentation can be provided within the seven (7) day time restriction.
5. Pay to the NWESD, upon receipt of invoice, the fees established pursuant to this Agreement.
6. Certify that the District has an approved technology plan.
7. Retain for five years any and all records that apply to all applications and forms submitted to SLD.
8. Prepare and award bids and forward information to NWESD by deadlines established by NWESD, based on SLD's timelines.
9. Sign and complete the *Delegation of Agent* letter to the NWESD so that forms may be processed electronically on behalf of the District.
10. Make payment for additional consultant services, pursuant to mutually agreed upon rates and terms, in addition to the E-rate services delineated in this Agreement (e.g., as specifying internal connections, editing tech plans, etc.).

X. ASSIGNMENT

Neither party may assign this Agreement.

XI. WAIVER AND SEVERABILITY

No provisions of this Agreement or the right to receive reasonable performance of any act called for by its terms shall be deemed waived by a breach thereof as to a particular transaction or occurrence. If any term or condition of this Agreement or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other terms, conditions, or applications. To this end the terms and conditions of this Agreement are declared severable.

XII. ACKNOWLEDGMENT

The parties acknowledge that they have read and understand this Agreement, including any supplements thereto, and do agree in every particular. The parties further agree that this Agreement, together with all appendices, constitutes the entire Agreement between the parties and supersedes all communications written or oral heretofore related to the subject matter of this Agreement. This Agreement may be modified or amended by written mutual consent of the collective parties signing this Agreement.

XIII. APPLICABLE LAW

The laws of the State of Washington shall govern this Agreement. Venue for any legal action shall be proper only in Skagit County.

XIV. INDEMNIFICATION

Any and all claims which hereafter arise on the part of any and all persons as a direct or indirect result of NWESD's employees' or agents' negligent performance or negligent failure to perform duties pursuant to this Agreement shall be the NWESD's sole obligation, and the NWESD shall defend, pay costs of defense, indemnify and hold harmless the District or District's employees and agents in full for any and all such negligent acts or negligent failures to act on the part of the NWESD or NWESD's employees or agents.

Any and all claims which hereafter arise on the part of any and all persons as a direct or indirect result of the District's employees' or agents' negligent performance or negligent failure to perform duties pursuant to this Agreement shall be the District's sole obligation, and the District shall defend, pay costs of defense, indemnify and hold harmless the NWESD or NWESD's employees and agents in full for any and all such negligent acts or negligent failures to act on the part of the District or District's employees or agents.

XV. DISBARMENT/SUSPENSION ASSURANCES

The parties to this Agreement certify, and each relies thereon in execution of this Agreement, that their entity nor its Principals are presently debarred, suspended, proposed for debarment, or declared ineligible, or voluntarily excluded for the award of contracts by any Federal governmental agency or department. "Principals", for the purposes of this certification, mean officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of

subsidiary, division, or business segment; and similar positions). Further, each party agrees to provide the other(s) immediate written notice if, at any time during the term of this Agreement, including any renewals hereof, it learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances. Each party's certification via the execution of this Agreement is a material representation of fact upon which each party has relied in entering into this Agreement. Should either party determine, at any time during this Agreement, including any renewals hereof, that this certification is false, or should it become false due to changed circumstances, it may terminate this Agreement in accordance with the terms and conditions therein.

IN WITNESS WHEREOF, the parties have executed this Agreement consisting of six pages.

ARLINGTON DISTRICT

EDUCATIONAL SERVICE DISTRICT 189

Kristine McDuffy, Superintendent (date)

Gerald W. Jenkins, Superintendent (date)



Dr. Jerry Jenkins, Superintendent
Northwest Educational Service District 189
1601 R Avenue
Anacortes, WA 98221

Dear Dr. Jenkins,

By this letter I authorize Eric Chambers, the Northwest Educational Service District 189 (NWESD) e-rate program manager, to submit FCC Form 470, FCC Form 471, FCC Form 486, FCC Form 479, FCC BEAR form, and other necessary e-rate information/forms to the Schools and Libraries Division (SLD) of the Universal Services Administration Company (USAC) on behalf of Arlington Public Schools No. 16 and to act as our authorized representative relative to the e-rate reimbursement program.

I understand that, in submitting these forms on our behalf, Eric Chambers is making certifications for our district and/or school(s). Thus, by signing this *Letter of Agency* I make the following certifications regarding the Arlington Public Schools No. 16:

- (a) I certify that all of the schools with the district are all schools under the statutory definition of elementary and secondary schools found in the No Child Left Behind Act of 2001, 20 U.S.C. §§ 7801(18) and (38), that do not operate for-profit businesses and do not have endowments exceeding \$50 million.
- (b) I certify that all of the schools have secured access, separately or through this program, to all of the resources, including computers, training, software, internal connections, maintenance, and electrical capacity, necessary to use the services purchased effectively. I recognize that some of the aforementioned resources are not eligible for support. I certify that to the extent that the Billed Entity is passing through the non-discounted charges for the services requested under this *Letter of Agency*, that the entities I represent have secured access to all of the resources to pay the non-discounted charges for eligible services from funds to which access has been secured in the current funding year.
- (c) I certify that our schools are covered by written technology plan(s) that covers all 12 months of the funding year, and that has been or will be approved by a state or other authorized body, or an SLD-certified technology plan approver, prior to the commencement of service. The plan(s) is(are) written at the following level(s): an individual technology plan for using the services requested in this application; and/or higher-level technology plan(s) for using the services requested in this application; or no technology plan needed; applying for basic local, cellular, PCS, and/or long distance telephone service and/or voice mail only.
- (d) I certify that the services the school, library or district purchases at discounts provided by 47 U.S.C. § 254 will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value, except as permitted by the rules of the Federal Communications Commission (Commission or FCC) at 47 C.F.R. § 54.500(et seq.).
- (e) I certify that our Arlington Public Schools No. 16 has complied with all program rules and I acknowledge that failure to do so may result in denial of discount funding and/or cancellation of funding commitments. I acknowledge that failure to comply with program rules could result in civil or criminal prosecution by the appropriate law enforcement authorities.

- (f) I acknowledge that the discount level used for shared services is conditional, for future years, upon ensuring that the most disadvantaged schools and libraries that are treated as sharing in the service, receive an appropriate share of benefits from those services.
- (g) I certify that I will retain required documents for a period of at least five (5) years after the last day of service delivered. I certify that the district will retain all documents necessary to demonstrate compliance with the statute and Commission rules regarding the application for, receipt of, and delivery of services receiving schools and libraries discounts, and that if audited, I will make such records available to the Administrator. I acknowledge that I may be audited pursuant to participation in the schools and libraries program.
- (h) I certify that I am authorized to order telecommunications and other supported services for the eligible entity(ies) covered by this *Letter of Agency*. I certify that I am authorized to make this request on behalf of the eligible entity(ies) covered by this *Letter of Agency*, that I have examined this Letter, that all of the information on this Letter is true and correct to the best of my knowledge, that the entities that will be receiving discounted services under this Letter pursuant to this application have complied with the terms, conditions and purposes of the program, that no kickbacks were paid to anyone and that false statements on this form can be punished by fine or forfeiture under the Communications Act, 47 U.S.C. §§ 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. § 100 1 and civil violations of the False Claims Act.
- (i) I acknowledge that FCC rules provide that persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the schools and libraries support mechanism are subject to suspension and debarment from the program. I will institute reasonable measures to be informed, and will notify USAC should I be informed or become aware that I or any of the entities, or any person associated in any way with my entity and/or the entities, is convicted of a criminal violation or held civilly liable for acts arising from their participation in the schools and libraries support mechanism.
- (j) I certify, on behalf of the entities covered by this *Letter of Agency*, that any funding requests for internal connections services, except basic maintenance services, applied for in the resulting FCC Form 471 application are not in violation of the Commission requirement that eligible entities are not eligible for such support more than twice every five funding years beginning with Funding Year 2005 as required by the Commission's rules at 47 C.F.R. § 54.506(c).
- (k) I certify that, to the best of my knowledge, the non-discount portion of the costs for eligible services will not be paid by the service provider. I acknowledge that the provision, by the provider of a supported service, of free services or products unrelated to the supported service or product constitutes a rebate of some or all of the cost of the supported services.
- (l) I certify that I am authorized to sign this *Letter of Agency* and, to the best of my knowledge, information, and belief, all information provided to the Northwest Educational Service District for E-rate submission is true.

Dr. E. Kristine McDuffy, Superintendent
Arlington Public Schools No. 16

(Date Signed)