

CONTRACT

Contract No. 10120213

between

NORTHEAST WASHINGTON EDUCATIONAL SERVICE DISTRICT 101

(hereinafter referred to as NEWESD 101)

4202 South Regal Street
Spokane, Washington 99223

And

CONAGRA BRANDS, INC.

(hereinafter referred to as Contractor)

801 Dye Mill Road
Troy, Ohio 45373
Federal Identification #47-0248710
Unified Business Identifier #602729300

In consideration of the promises and conditions contained herein, NEWESD 101 and Contractor do mutually agree as follows:

I. DUTIES OF THE CONTRACTOR

A. The general objective(s) of this contract is/are as follows:

Contractor shall process USDA Foods into end products and ship as directed to Washington (WA) State warehouse locations for distribution to Local Education Agencies (LEAs).

OSPI Food Distribution will allocate the USDA Foods to be used in the manufacturing process.

B. In order to accomplish the general objective(s) of this contract, Contractor shall perform the following specific duties to the satisfaction of the NEWESD 101's designee, Abby Miller:

- Contractor will process USDA bulk foods into the following processed end products:

Description	Product Code	Case Weight (pounds)		FFS cost per case	Serving size	Servings per case	Cost per serving	Donated Food Value (lbs per case)
		Net	Gross					
Breakfast Pizza	77387-12708	31.92	35.80	\$32.31	2.66 oz	192	\$0.1683	3.42
Individual Pizzas	77387-12444	21.38	23.32	\$27.02	5.05 oz	60	\$0.4503	5.40
Cheese Filled Breadstick	77387-12602	23.16	25.28	\$23.51	1.93 oz	192	\$0.1225	12.11

- Contractor will ensure timely delivery of above products to US Foods warehouse.
- Contractor will comply with all contractual agreements in place with US Foods.

II. CONDITIONS OF COMMENCEMENT OF PERFORMANCE AND SCHEDULE OF PERFORMANCE

No costs shall be incurred under this Contract until fully executed and subsequent to the termination date.

The schedule of performance of Contractor's duties is as follows:

July 1, 2020 or date of execution, whichever is later, through June 30, 2021.

III. DUTIES OF THE NEWESD 101

- A. Based on projected usage data for districts contracted with NEWESD 101 the estimated value of this contract is \$8,000. Payment for satisfactory performance shall not exceed this amount at a rate greater than 10% unless the parties mutually agree to a higher amount prior to the commencement of any work, which will cause the maximum payment to be increased.

Maximum consideration for this entire contract shall not exceed \$8,800.

Funds for the payment of this contract are provided by member districts and our distributor US Foods.

Payment methods and frequency shall be established between the Contractor and US Foods.

Districts that receive direct shipments must make payments based on invoices submitted by the Contractor for actual costs incurred to date based on receipts or other documentation and acceptance of services provided. The invoice(s) shall include the contract number, the quantity of cases at contracted price, description of product

delivered, delivery location and the payment amount expected. Districts must mail or electronically transfer payments with thirty (30) calendar days of the receipt of product.

Invoice(s) will be paid only after approval by the NEWESD 101's distributor or district.

IV. RENEWAL

NEWESD 101 has the right to renew this contract in whole or in part for four (4) additional contract years through 2021-2022, 2022-2023, 2023-2024, 2024-2025 by giving notice on or before April 1 to the Contractor, unless an emergency exists, and/or special circumstances require a partial term extension. If NEWESD 101 provides such notice to the Contractor, the Contractor shall be obligated to enter into a contract with the same fiscal obligations as the previous contract year, provided that NEWESD 101 and Contractor shall negotiate any revision of additional services or goals beyond those encompassed in the previous contract.

V. CONTRACT MANAGEMENT

The following shall be the contact persons for all communications and billings regarding the performance of this contract.

Contractor	NEWESD 101
Chuck Gentile Senior Bid Manager 801 Dye Mill Road Troy, Ohio 45373 Phone: (937) 440-2959 Fax: (937) 339-1024 Email: chuck.gentile@conagra.com	Abigail Miller Regional Child Nutrition Specialist NEWESD 101 4202 South Regal Street Spokane Washington 99223 Phone: 509-789-3557 Email: abmiller@esd101.net

VI. INCORPORATION OF ATTACHMENTS AND ORDER OF PRECEDENCE

Each of the attachments listed below is by this reference hereby incorporated into this contract. In the event of an inconsistency in this contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable Federal and State of Washington statutes and regulations
- Special Terms and Conditions as contained in this basic contract instrument
- Attachment A – Contract for Services, General Terms and Conditions
- Attachment B – Request for Proposals with any formal RFP amendments that change scope of work, etc.
- Attachment C – Contractor's Proposal
- Any other provision, term or material incorporated herein by reference or otherwise incorporated.

VII. APPROVAL

This contract shall be subject to the written approval of the NEWESD 101's authorized representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

We the undersigned agree to the terms of the foregoing contract.

CONAGRA BRANDS, INC.

**NORTHEAST WASHINGTON
EDUCATIONAL SERVICE DISTRICT 101**

Signature

Title

Signature, Assistant Superintendent

CHUCK GENTILE

3/27/2020

Mick Miller

3/31/2020

Print Name

Date

Print Name

Date

Who certifies that he/she is the Contractor identified herein, OR a person duly qualified and authorized to bind the Contractor so identified to the foregoing Agreement.

Non-profit organization? Yes* No

*If yes, under what IRS section?

Please attach a copy.

EXHIBIT C: GENERAL TERMS AND CONDITIONS

Contract for Services GENERAL TERMS AND CONDITIONS

1. **Access to Data.** In compliance with Chapter 39.26 RCW, the Contractor shall provide access to data generated under this Contract to the NEWESD 101 and contracted districts at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.
2. **Alterations and Amendments.** This Contract may be amended only by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.
3. **Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, also referred to as the "ADA" 28 CFR Part 35.** The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.
4. **Assignment.** Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of the NEWESD 101.
5. **Assurances.** The NEWESD 101 and the Contractor agree that all activity pursuant to this Contract will be in accordance with all applicable current federal, state and local laws, rules and regulations.
6. **Attorney's Fees.** In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney's fees and costs.
7. **Audit Requirements.** If the Contractor is a Subrecipient of federal awards as defined by the Office of Management and Budget (OMB) CFR, Part 200, Subpart F, and expends seven hundred and fifty thousand dollars (\$750,000) or more in federal awards (does not apply to contracts for goods and services) from all federal sources in any fiscal year beginning on or after December 26, 2014, the Contractor shall procure at their expense a single or program specific audit for that year. The Contractor shall incorporate OMB CFR, Part 200, Subpart F audit requirements into all contracts between the Contractor and its Subcontractors who are Subrecipients of federal awards. The Contractor shall comply with any future amendments to OMB and any successor or replacement Circular or regulation.
8. **Budget Revisions.** Any monetary amount budgeted by the terms of this Contract for various activities and line item objects of expenditure may be revised without prior written approval of NEWESD 101, so long as the revision is no more than ten percent (10%) of the original line item amount and the increase in an amount is offset by a decrease in one or more other amounts equal to or greater than the increase. Member districts with commodity balances may order any item from the contractor that has a

NPA and the contractor has provided pricing to the NEWESD 101. All other budget revisions exceeding ten percent (10%) shall only be made with the prior written approval of the NEWESD 101.

- 9. Certification Regarding Debarment, Suspension, and Ineligibility.** The Contractor certifies that neither it nor its principals are debarred, suspended, proposed for debarment, or voluntarily excluded from participation in transactions by any federal department or agency. The Contractor further certifies that they will ensure that potential subcontractors or any of their principals are not debarred, suspended, proposed for debarment, or voluntarily excluded from participation in covered transactions by any federal department or agency.

"Covered transactions" include procurement contracts for goods that are expected to equal or exceed twenty-five thousand dollars (\$25,000). Contractor may do so by obtaining a certification statement from the potential subcontractor or subrecipient or by checking online at the System for Award Management (SAM), Excluded Parties List. The Contractor shall immediately notify the NEWESD 101 if, during the term of this contract, Contractor becomes debarred. The NEWESD 101 may immediately terminate this Contract by providing Contractor written notice if Contractor becomes debarred during the term of this Contract.

The Contractor also certifies that neither it nor its principals are debarred, suspended, or proposed for debarment from participation in transactions by any state department or agency. The Contractor further certifies that they will ensure that potential subcontractors or any of their principals are not debarred, suspended, or proposed for debarment from participation in covered transactions by any state department or agency.

- 10. Certification Regarding Lobbying.** The Contractor certifies that Federal-appropriated funds will not be used to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress or an employee of a member of Congress in obtaining any Federal contract, grant or any other award covered by 31 USC 1352. Contractor must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Contractor shall require its subcontractors to certify compliance with this provision. Add 2 CFR 200.326(i)

- 11. Certification Regarding Wage Violations.** The Contractor certifies that within three (3) years prior to the date of execution of this Contract, Contractor has not been determined by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of RCW Chapters 49.46, 49.48, or 49.52.

The Contractor further certifies that it will remain in compliance with these requirements during the term of this Contract. Contractor will immediately notify the NEWESD 101 of any finding of a willful violation entered by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction entered during the term of this Contract.

- 12. Change in Status.** In the event of substantive change in the legal status, organizational structure, or fiscal reporting responsibility of the Contractor, Contractor agrees to notify the NEWESD 101 of the change. Contractor shall provide notice as soon as practicable, but no later than thirty (30) days after such a change takes effect.
- 13. Confidentiality.** The Contractor acknowledges that all of the data, material and information which originates from this Contract, and any student assessment data, material and information which will come into its possession in connection with performance under this Contract, consists of confidential data owned by the NEWESD 101 or confidential personally identifiable data subject to the federal Family Educational Rights and Privacy Act or other privacy laws, and that disclosure to or use by third parties would be damaging. The Contractor, therefore, agrees to hold all such material and information in strictest confidence, not to make use thereof other than for the performance of this Contract, to release it only to authorized employees and agents requiring such information and not release or disclose it to any other party. The Contractor agrees to release such information or material only to employees and agents who have signed a written agreement expressly prohibiting disclosure.
- 14. Covenant Against Contingent Fees.** The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agent maintained by the Contractor for the purpose of securing business. The NEWESD 101 shall have the right, in the event of breach of this clause by the Contractor, to annul this Contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fees.
- 15. Disputes.** In the event that a dispute arises under this Contract, it shall be determined by a Dispute Board in the following manner: (1) The NEWESD 101 shall appoint a member to the Dispute Board; (2) the Contractor shall appoint a member to the Dispute Board; (3) the NEWESD 101 and the Contractor shall jointly appoint a member to the Dispute Board; (4) the Dispute Board shall evaluate the dispute and make a determination of the dispute; and, the determination of the Dispute Board shall be final and binding on the parties hereto.
- 16. Entire Agreement.** This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.
- 17. Ethical Conduct.** Neither the Contractor nor any employee or agent of the Contractor shall participate in the performance of any duty or service in whole or part under this Contract in violation of, or in a manner that violates any provision of the Ethics in Public Service law at Chapter 42.52 RCW, RCW 42.17A.550, RCW 42.17A.555, and RCW 41.06.250 prohibiting the use of public resources for political purposes.
- 18. Force Majeure.** Neither party shall be liable for any delay in or impairment of performance resulting in whole or in part from fire, floods or other catastrophes, acts of God, severe weather conditions; strikes, lockouts or labor disruptions; war, riots,

embargo delays, raw material market conditions, the inability to procure supplies or raw materials; or shortages of transportation equipment, fuel or labor; or any other circumstance or cause beyond the reasonable control of the party. Additionally, manufacture, shipment and delivery are subject to any prohibition, restriction, priority allocation regulation or condition imposed by or on behalf of the United States of America or any other governmental body with appropriate jurisdiction which may prevent or interfere with fulfillment of any order.

19. Governing Law and Venue. This Contract shall be construed and interpreted in accordance with the laws of the State of Washington and the venue of any action brought hereunder shall be in Superior Court for Pierce County.

20. Indemnification. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless the NEWESD 101 and all officials, agents, and employees of the NEWESD 101, from and against all claims for injuries or death arising out of or resulting from the performance of this Contract. "Claim" as used in this Contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom. Additionally, "claims" shall include but not be limited to, assertions that the use or transfer of any software, book, document, report, film, tape or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, or otherwise results in an unfair trade practice or in unlawful restraint of competition.

Contractor expressly agrees to indemnify, defend, and hold harmless the NEWESD 101 for any and all claims, costs, charges, penalties, demands, losses, liabilities, damages, judgments, or fines out of or incident to Contractor's or subcontractor's performance or failure to perform the Contract. Each party to this Contract shall be responsible for its own acts and/or omissions and those of its officers, employees and agents. No party to this Contract shall be responsible for the acts and/or omissions of the entities or individuals not a party to this contract. For the avoidance of doubt, Contractor shall not be responsible for damage or liability resulting from (i) a product becoming adulterated or misbranded after such product has left Contractor's control, (ii) the NEWESD 101's refusal to cooperate with Contractor in the investigation or defense of a claim covered hereunder, (iii) Contractor agreeing to settle a claim covered hereunder without Contractor's written consent, or (iv) products being resold by the NEWESD 101 other than in the ordinary course of business.

Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless NEWESD 101 and its agents, employees, or officials.

21. Independent Capacity of the Contractor. The parties intend that an independent Contractor relationship will be created by this Contract. The Contractor and his/her employees or agents performing under this Contract are not employees or agents of the NEWESD 101. The Contractor will not hold himself/herself out as nor claim to be an officer or employee of the NEWESD 101 by reason hereof, nor will the Contractor make any claim or right, privilege, or benefit which would accrue to such employee under law. Conduct and control of the work will be solely with the Contractor.

22. Insurance.

a. **Worker's Compensation Coverage.** The Contractor shall at all times comply with all applicable worker's compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the fullest extent applicable. This requirement includes the purchase of industrial insurance coverage for the Contractor's employees, as may now hereafter be required of an "employer" as defined in Title 51 RCW. Such worker's compensation and occupational disease requirements shall include coverage for all employees of the Contractor, and for all employees of any subcontract retained by the Contractor, suffering bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Contract. Satisfaction of these requirements shall include, but shall not be limited to:

- 1) Full participation in any required governmental occupational injury and/or disease insurance program, to the extent participation in such a program is mandatory in any jurisdiction;
- 2) Purchase worker's compensation and occupational disease insurance benefits to employees in full compliance with all applicable laws, statutes, and regulations, but only to the extent such coverage is not provided under mandatory governmental program in "a" above, and/or;
- 3) Maintenance of a legally permitted and governmentally approved program of self-insurance for worker's compensation and occupational disease.

Except to the extent prohibited by law, the program of the Contractor's compliance with worker's compensation and occupational disease laws, statutes, and regulations in 1), 2), and 3) above shall provide for a full waiver of rights of subrogation against the NEWESD 101, its directors, officers, and employees.

If the Contractor, or any subcontractor retained by the Contractor, fails to effect and maintain a program of compliance with applicable worker's compensation and occupational disease laws, statutes, and regulations and the NEWESD 101 incurs fines or is required by law to provide benefits to such employees, to obtain coverage for such employees, the Contractor will indemnify the NEWESD 101 for such fines, payment of benefits to Contractor or subcontractor employees or their heirs or legal representatives, and/or the cost of effecting coverage on behalf of such employees. Any amount owed the NEWESD 101 by the Contractor pursuant to the indemnity may be deducted from any payments owed by the NEWESD 101 to the Contractor for the performance of this Contract.

b. **Automobile Insurance.** In the event that services delivered pursuant to this Contract involve the use of vehicles, owned or operated by the Contractor, automobile liability insurance shall 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.

- c. **Business Automobile Insurance.** In the event that services performed under this Contract involve the use of vehicles or the transportation of clients, automobile liability insurance shall be required. If Contractor-owned personal vehicles are used, a Business Automobile policy covering a minimum Code 2 "owned autos only" must be secured. If the Contractor's employees' vehicles are used, the Contractor must also include under the Business Automobile policy Code 9, coverage for "non-owned autos." The minimum limits for automobile liability is:

\$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

- d. **Public Liability Insurance.** The Contractor shall at all times during the term of this Contract, at its cost and expense, carry and maintain general public liability insurance, including contractual liability, against claims for bodily injury, personal injury, death, or property damage occurring or arising out of services provided under this Contract. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns or servants. The limits of liability insurance, which may be increased from time to time as deemed necessary by the NEWESD 101, with the approval of the Contractor (which shall not be unreasonably withheld), shall not be less than as follows:

Each Occurrence	\$1,000,000
General Aggregate Limits (other than products completed operations)	\$2,000,000
Products-Completed Operations Limit	\$2,000,000
Personal and Advertising Injury Limit	\$1,000,000
Fire Damage Limit (any one fire)	\$ 50,000
Medical Expense Limit (any one person)	\$ 5,000

- e. **Additional Insured.** The NEWESD 101 shall be specifically named as an additional insured on all policies except for liability insurance on privately-owned vehicles, and all policies shall be primary to any other valid and collectible insurance. The NEWESD 101 may waive this requirement at its discretion. Policies and certificates of insurance shall include the contract reference number.
- f. **Proof of Insurance.** Certificates and or evidence satisfactory to the NEWESD 101 confirming the existence, terms and conditions of all insurance required above shall be delivered to the NEWESD 101 within five (5) days of the Contractor's receipt of Authorization to Proceed.
- g. **General Insurance Requirements.** Contractor shall, at all times during the term of the Contract and at its cost and expense, buy and maintain insurance of the types and amounts listed above. Failure to buy and maintain the required insurance may result in the termination of the Contract at the NEWESD 101's option. By requiring

insurance herein, NEWESD 101 does not represent that coverage and limits will be adequate to protect Contractor and such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to the NEWESD 101 in this Contract.

Contractor shall include all subcontractors as insureds under all required insurance policies or shall furnish proof of insurance and endorsements for each subcontractor. Subcontractor(s) must comply fully with all insurance requirements stated herein. Failure of subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

23. Licensing and Accreditation Standards. The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary to the performance of this Contract.

24. Limitation of Authority. Only the NEWESD 101 or the NEWESD 101's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this Contract is not effective or binding unless made in writing and signed by the NEWESD 101.

25. Non-Discrimination. The Contractor shall comply with all the federal and state nondiscrimination laws, regulations and policies, which are otherwise applicable to the NEWESD 101. Accordingly, no person shall, on the ground of sex, race, creed, religion, color, national origin, marital status, families with children, age, veteran or military status, sexual orientation, gender expression, gender identity, disability, or the use of a trained dog guide or service animal, be unlawfully excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any activity performed by the Contractor and its agents under this Contract. The Contractor shall notify the NEWESD 101 immediately of any allegations, claims, disputes, or challenges made against it under non-discrimination laws, regulations, or policies, or under the Americans with Disabilities Act. In the event of the Contractor's noncompliance or refusal to comply with this nondiscrimination provision, this Contract may be rescinded, cancelled or terminated in whole or part, and the Contractor may be declared ineligible for further contracts with the NEWESD 101.

26. Commodity accounts of member districts. Contractor shall refund to NEWESD 101 member districts the full amount of any commodity balance left at the contractor due to production or other contractor issues such that member districts are unable to buy products to bring down their diverted commodities prior to June 30th of each year. If Contractor fails to make a prompt refund, NEWESD 101 districts may charge Contractor one percent (1%) per month on the amount due until paid in full.

27. Payments. No payments in advance or in anticipation of services or supplies to be provided under this Contract shall be made by either the NEWESD 101 awarded distributor or a member district. All payments to the Contractor are conditioned upon (1) Contractor's submission of a properly executed and supported voucher for payment, including such supporting documentation of performance and supporting

documentation of costs incurred or paid, or both as is otherwise provided for in the body of this Contract under Duties of the NEWESD 101.

All expenses necessary to the Contractor's performance of this Contract not specifically mentioned in the Contract shall be borne in full by the Contractor.

28. Public Disclosure. Contractor acknowledges that the NEWESD 101 is subject to the Washington State Public Records Act, Chapter 42.56 RCW, and that this Contract shall be a public record as defined in 42.56 RCW. Any specific information that is claimed by the Contractor to be confidential or proprietary must be clearly identified as such by the Contractor. To the extent consistent with chapter 42.56 RCW, the NEWESD 101 shall maintain the confidentiality of all such information marked confidential or proprietary. If a request is made to view the Contractor's information, the NEWESD 101 will notify the Contractor of the request and the date that such records will be released to the requester unless Contractor obtains a court order enjoining that disclosure. If the Contractor fails to obtain the court order enjoining disclosure, the NEWESD 101 will release the requested information on the date specified.

29. Publicity. The Contractor agrees to submit to the NEWESD 101 all advertising and publicity matters relating to this Contract which in the NEWESD 101's judgment, NEWESD 101's name can be implied or is specifically mentioned. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of the NEWESD 101.

30. Registration with Department of Revenue. The Contractor shall complete registration with the Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

31. Records Maintenance. The Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Contract, shall be subject at all reasonable times to inspection, review or audit by the NEWESD 101, personnel duly authorized by the NEWESD 101, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

32. Right of Inspection. The Contractor shall provide right of access to its facilities to the NEWESD 101 or any of its officers at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract on behalf of the NEWESD 101. All inspections and evaluations shall be performed in such a manner that will not unduly interfere with the Contractor's business or work hereunder.

33. Severability. The provisions of this Contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Contract.

34. Site Security. While on NEWESD 101 member district or distributor premises, Contractor, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

35. Subcontracting. Neither the Contractor nor any subcontractor shall enter into subcontracts for any of the work contemplated under this Contract without obtaining prior written approval of the NEWESD 101. Contractor is responsible to ensure that all terms, conditions, assurances and certifications set forth in this Contract are included in any and all Subcontracts. In no event shall the existence of the subcontract operate to release or reduce liability of the Contractor to the NEWESD 101 for any breach in the performance of the Contractor's duties. This clause does not include contracts of employment between the Contractor and personnel assigned to work under this Contract.

If, at any time during the progress of the work, the NEWESD 101 determines in its sole judgment that any subcontractor is incompetent, the NEWESD 101 shall notify the Contractor, and the Contractor shall take immediate steps to terminate the subcontractor's involvement in the work. The rejection or approval by the NEWESD 101 of any subcontractor or the termination of a subcontractor shall not relieve the Contractor of any of its responsibilities under the Contract, nor be the basis for additional charges to the NEWESD 101.

36. Taxes. All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

37. Termination for Convenience. Except as otherwise provided in this Contract, the NEWESD 101 or NEWESD 101's Designee may, by ten (10) days written notice, beginning on the second day after the mailing, terminate this Contract in whole or in part. The notice shall specify the date of termination and shall be conclusively deemed to have been delivered to and received by the Contractor as of midnight the second day of mailing in the absence of proof of actual delivery to and receipt by the Contractor. If this Contract is so terminated, the NEWESD 101 shall be liable only for payment required under the terms of the Contract for services rendered or goods delivered prior to the effective date of termination.

38. Termination for Default. In the event the NEWESD 101 determines the Contractor has failed to comply with the conditions of this Contract in a timely manner, the NEWESD 101 has the right to suspend or terminate this Contract. The NEWESD 101 shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within thirty (30) days, the Contract may be terminated. The NEWESD 101 reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds

during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by the NEWESD 101 to terminate the Contract. In the event of termination, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover Contract and all administrative costs directly related to the replacement Contract, e.g., cost of the competitive bidding, mailing, advertising and staff time. The termination shall be deemed to be a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of the NEWESD 101 provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

39. Termination Due to Funding Limitations or Contract Renegotiation, Suspension.

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion of this Contract, with the notice specified below and without liability for damages:

- a. At NEWESD 101's discretion, the NEWESD 101 may give written notice of intent to renegotiate the Contract under the revised funding conditions.
- b. At NEWESD 101's discretion, the NEWESD 101 may give written notice to Contractor to suspend performance when NEWESD 101 determines there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow Contractor's performance to be resumed.
 - (1) During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.
 - (2) When NEWESD 101 determines that the funding insufficiency is resolved, it will give the Contractor written notice to resume performance, and Contractor shall resume performance.
 - (3) Upon the receipt of notice under b. (2), if Contractor is unable to resume performance of this Contract or if the Contractor's proposed resumption date is not acceptable to NEWESD 101 and an acceptable date cannot be negotiated, NEWESD 101 may terminate the Contract by giving written notice to the Contractor. The parties agree that the Contract will be terminated retroactive to the date of the notice of suspension. NEWESD 101 shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the retroactive date of termination.
- c. NEWESD 101 may immediately terminate this Contract by providing written notice to the Contractor. The termination shall be effective on the date specified in the termination notice. NEWESD 101 shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. No penalty shall accrue to NEWESD 101 in the event the termination option in this section is exercised.

d. For purposes of this section, "written notice" may include email.

40. Termination Procedure. Upon termination of this Contract the NEWESD 101, in addition to other rights provided in this Contract, may require the Contractor to deliver to the NEWESD 101 awarded distributor or member districts any property specifically produced or acquired for the performance of such part of this Contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The NEWESD 101 awarded distributor or member districts shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the NEWESD 101 and the amount agreed upon by the Contractor and the NEWESD 101 for (a) completed work and services for which no separate price is stated, (b) partially completed work and services, (c) other property or services which are accepted by the NEWESD 101, and (d) the protection and preservation of the property, unless the termination is for default, in which case the NEWESD 101 shall determine the extent of the liability. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause for this Contract. The NEWESD 101 may withhold from any amounts due to the Contractor such sum as the NEWESD 101 determines to be necessary to protect the NEWESD 101 against potential loss or liability.

The rights and remedies of the NEWESD 101 provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law under this Contract.

After receipt of a notice of termination, and except as otherwise directed by the NEWESD 101, the Contractor shall:

- a. Stop work under this Contract on the date and to the extent specified, in the notice;
- b. Place no further orders or subcontractors for materials, services or facilities except as may be necessary for completion of such portion of the work under the Contract that is not terminated;
- c. Assign to the NEWESD 101, in the manner, at the times, and to the extent directed by the NEWESD 101, all rights, title, and interest of the Contractor under the orders and subcontracts in which case the NEWESD 101 has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the NEWESD 101 to the extent the NEWESD 101 may require, which approval or ratification shall be final for all the purposes of this clause;

- e. Transfer title to the NEWESD 101 and deliver, in the manner, at the times and to the extent as directed by the NEWESD 101, any property which, if the Contract had been completed, would have been required to be furnished to the NEWESD 101;
- f. Complete performance of such part of the work not terminated by the NEWESD 101; and
- g. Take such action as may be necessary, or as the NEWESD 101 may direct, for the protection and preservation of the property related to this Contract which, in is in the possession of the Contractor and in which the NEWESD 101 has or may acquire an interest.

41. Treatment of Assets. Except as otherwise provided for in the Contract, the ownership and title to all real property and all personal property purchased by the Contractor in the course of performing this Contract with monies paid by the NEWESD 101 member districts shall vest in the NEWESD 101 member district, except for supplies consumed in performing this Contract. The Contractor shall (1) maintain a current inventory of all the real and personal property; (2) label all the property NEWESD 101 and, (3) surrender property and title to the NEWESD 101 member district without charge prior to settlement upon completion, termination or cancellation of this Contract.

Any property of the NEWESD 101 member districts furnished to the Contractor shall, unless otherwise provided herein, or approved by the NEWESD 101, be used only for the performance of the Contract.

The Contractor shall be responsible for any loss or damage to property of the NEWESD 101 member districts which results from the negligence of the Contractor which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.

If any property is lost, destroyed, or damaged, the Contractor shall notify the NEWESD 101 and take all reasonable steps to protect the property from further damage.

All reference to the Contractor under this clause shall include Contractor's employees, agents and subcontractors.

42. Waiver. A failure by either part to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this agreement. Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing and signed by personnel authorized to bind each of the parties.

Appendix A

NEWESD 101 school districts.

The following school districts are included in this contract.

Central Valley School District
Colville School District
East Valley School District,
Ephrata School District
Inchelium School District
Loon Lake School District
Mary Walker School District
Medical Lake School District
Newport School District
Northport School District
North Franklin School District
Orient School District
Pasco School District
Pateros School District
Pullman School District
West Valley School District

Additional school districts may be added to this contract only with the mutual consent of both NEWESD 101 and the Contractor.