

**EDUCATOR ADVANCEMENT COUNCIL  
INTERGOVERNMENTAL AGREEMENT**

**DATED: ~~March 20, 2018~~**  
**UPDATED: November 26, 2019**

**AN INTERGOVERNMENTAL AGREEMENT  
FOR THE EDUCATOR ADVANCEMENT COUNCIL**

This Intergovernmental Agreement creates a governance framework for the Educator Advancement Council (EAC). It is prepared by and among the Oregon Department of Education; the Early Learning Division, the Oregon Teacher Standards and Practices Commission; High Desert Education Service District; and Beaverton School District, each referred to individually herein as a "Party" and collectively as the "Parties", effective on the Effective Date as described herein.

**RECITALS**

1. ORS 190.003 through 190.118 encourages intergovernmental cooperation in the interest of furthering economy and efficiency and authorizes units of local government, state government agencies, and Tribes to enter into agreements to perform any of their respective functions or activities and to form new intergovernmental entities responsible to and acting on behalf of the parties.
2. Each party to this Agreement is an agency of the State of Oregon or a local government recognized under Oregon statutes and all are authorized by law to participate in this intergovernmental agreement.
3. By Executive Order 16-08 (March 29, 2016), the Governor created the Council on Educator Advancement and charged the council with making recommendations related to a coherent, transparent, and accountable governance model for the programs and practices outlined in ORS 342.950 and the associated fund outlined in ORS 342.953. Recommendation 10 is to “Establish a statewide Intergovernmental Council to coordinate and connect regional networks in support of professional learning priorities, blending of funding sources and management of innovation funds.”
5. Senate Bill 182, passed by the 2017 State Legislature, requires that the EAC function through an intergovernmental agreement, as provided by ORS 190.003 to 190.130. The intergovernmental agreement shall outline the governance framework and the administrative details necessary for the efficient and effective implementation of the duties of the EAC.
6. The Parties intend that the EAC will function separate and distinct from the Council on Educator Advancement established through Executive Order 16-08, the State Board of Education, or any other existing governmental entity, but that the new entity will continue to work cooperatively and collaboratively with the State Board of Education, State of Oregon agencies, educator stakeholders, and others, in furtherance of objectives in Senate Bill 182.
7. Coordinating this system is a complex undertaking that no single agency, authority, or organization can accomplish on its own; rather, a collaboration of many government agencies, nonprofit agencies, and the private sector is necessary to achieve Oregon’s goals and objectives for educator advancement.
8. The Intergovernmental Agreement was initially signed March 20, 2018.
9. The Intergovernmental Agreement was amended by the EAC as follows:
  - a. On May 2, 2018, the EAC adopted Amendment #1 to this Agreement, which amended Article 3, section 3.d and Article 6, section 8;
  - b. On April 26, 2019, the EAC adopted Amendment #2, which amended see Article 3. Section 3.c.v.

**NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE RECITALS AND THE MUTUAL COVENANTS AND AGREEMENTS HEREIN, THE PARTIES AGREE AS FOLLOWS:**

## **ARTICLE 1 - DEFINITIONS**

**Definitions.** As used in this Agreement, the following terms when capitalized shall have the following meanings:

- a. “Administrative Agent”: An entity or person designated by the EAC to provide administrative support services at the direction of the EAC.
- b. “Agreement”: This Intergovernmental Agreement creating a governance framework for the Educator Advancement Council (EAC).
- c. “EAC”: The Educator Advancement Council established by Senate Bill 182 (codified at ORS 342.940 and 342.943) and this intergovernmental agreement.
- d. “Board”: The governing and decision-making body of the EAC.
- e. “Participating Entities”: Educational public and private entities who are not a Party to this Agreement and who have a representative appointed to fill a Director seat as described in Article 3.

## **ARTICLE 2 - WARRANTIES AND REPRESENTATIONS OF THE PARTIES**

- 1. Warranties of the Parties; Term.** Each Party warrants and represents that it has the legal authority to enter into this Agreement. The Term of this Agreement is perpetual and the EAC shall continue to exist indefinitely from year to year unless terminated and dissolved as provided herein.
- 2. Limitation of Financial Obligations of the Parties.** No Party to this Agreement or Participating Entity shall be responsible or liable for the financial decisions or obligations of the EAC or any project(s) undertaken by it, nor for any expenses or liabilities thereof, except as that Party or Participating Entity explicitly agrees in writing and as otherwise authorized by law.
- 3. Authorizing Ordinances.** Each Party certifies that it has undertaken the necessary public procedures and, if applicable, has passed an ordinance, in accordance with ORS 190.085, which authorizes the signatories to this Agreement to act on behalf of the Party in executing this Agreement. The Parties further agree that, if required, they will file with the Secretary of State, within 30 days after the effective date of this Agreement, a copy of the adopted ordinance and statement of information as specified in ORS 190.085(2). Any copies of documents filed pursuant to ORS 190.085(2) shall also be furnished to and be retained by the EAC.

## **ARTICLE 3**

### **EDUCATOR ADVANCEMENT COUNCIL – GOVERNANCE FRAMEWORK**

- 1. Creation of the EAC.** Pursuant to Senate Bill 182 (codified at ORS 342.940 and 342.943) and this intergovernmental agreement, the EAC is hereby created as of the Effective Date of this Agreement.
- 2. Purposes of the EAC.** The purposes of the EAC, generally, are described in section 2 of Senate Bill

182 (2017), as codified at Oregon Revised Statutes (ORS) 342.940 and 342.943 and are incorporated herein by this reference.

**3. Governing Body.** The EAC shall be governed by the Board consisting of at least 21 members selected in accordance with the requirements of Senate Bill 182 and this Agreement, who shall each have one vote. The Board is divided into two classes of Directors: “Standing Directors” and “Rotating Directors.” The rights and responsibilities of the two classes are further described below.

a) Standing Directors.

- i) Each Standing Director shall have one vote and shall serve for an unlimited term at the pleasure of their respective state agencies.
- ii) Standing Directors shall have the all authority necessary to govern the EAC, including but not limited to the authority to: work with the Governor’s Office to appoint the Rotating Directors, attend all EAC meetings, place items on the EAC agenda, participate in any discussion or debate on any matter before the EAC, and to vote on any matter before the EAC.
- iii) Each Standing Director may designate a temporary surrogate who may act on behalf of the Standing Director. Each temporary surrogate designated by a Standing Director shall have and exercise all of the powers conferred on that Standing Director under this Agreement.
- iv) The Standing Directors shall have the sole and exclusive authority to vote on the following matters:
  - 1) The appointment of Rotating Directors;
  - 2) The dissolution of the EAC;
  - 3) The ratification or remand to the Board for further consideration of any EAC decision concerning the allocation or expenditure of state funds; and
  - 4) The ratification or remand of Strategic Plans or statewide plans adoption.
- v) The Standing Directors shall include one representative appointed from each of the following state agencies:

Seat 1: The Oregon Department of Education

Seat 2: The Oregon Early Learning Division

Seat 3: The Oregon Teacher Standards and Practices Commission

Seat 4: The Oregon Higher Education Coordinating Commission

b) Rotating Directors.

- i) Each Rotating Director shall have one vote.
- ii) Except as provided in Article 3, section 3.c below, each Rotating Director shall serve a two-year term which may be renewed by the Standing Directors for one additional two-year term.
- iii) Rotating Directors shall have all authority necessary to govern the EAC, including but not limited to: the authority to attend all EAC meetings, place items on the EAC agenda, participate in any discussion or debate on any matter before the EAC, and to vote on those matters before the EAC not committed to the exclusive voting authority and privilege of the

Standing Directors pursuant to Article 3, section 3.a.. For those matters committed to the exclusive voting authority and privilege of the Standing Directors, Rotating Directors shall have the authority to participate in any Board discussion and debate before the Standing Directors' vote occurs.

- iv) Each Rotating Director may designate a temporary surrogate who may act on behalf of the Rotating Director. Each temporary surrogate designated by a Rotating Director shall have and exercise all of the powers conferred on that Rotating Director under this Agreement.
- v) The Rotating Directors shall include representatives from the below entities and organizations:

Seat 5	Oregon public elementary school; representative shall be a practicing teacher
Seat 6	Oregon public middle school; representative shall be a practicing teacher
Seat 7	Oregon public high school; representative shall be a practicing teacher
Seat 8	Oregon public K12 school; representative shall be a practicing educator
Seat 9	Oregon public K12 school; representative shall be a practicing educator
Seat 10	Oregon public K12 school; representative shall be a practicing educator
Seat 11	Oregon public K12 school; representative shall be a practicing administrator
Seat 12	Oregon Education Service District; representative shall be a practicing Superintendent
Seat 13	Oregon School District; representative shall be a practicing Superintendent
Seat 14	School District; representative shall be a Board Member
Seat 15	Early learning; representative shall be a practicing provider or professional
Seat 16	Professional education association
Seat 17	Postsecondary institution educator preparation program
Seat 18	Nonprofit organization, education-focused
Seat 19	Philanthropic organization, education-focused
Seat 20	Federally recognized tribe of this state
Seat 21	Community-based organization representing families and students, education and equity-focused

c) Appointment of Rotating Directors; Vacancies; Staggered Terms.

- i) Rotating Directors shall be appointed by the Standing Directors in the manner set forth in this subsection below.
- ii) The Standing Directors shall fill all vacant Rotating Director positions within 120 days. If the Standing Directors fail to fill a Rotating Director position within 120 days from the vacancy, the Board shall fill the vacancy at the next scheduled Board meeting or at a later date to be specified and agreed upon by the Board. In the event that no qualified candidates are identified for a vacant seat, Standing Directors shall provide a report on the status of its search for candidates at each Board meeting until the vacant seat is filled.
- iii) Upon execution of this Agreement, all state agency Parties shall become Standing Directors, the High Desert Education Service District's designated representative shall fill Seat 12 for a two (2) year term, and the Beaverton School District's representative shall fill Seat 13 for a two (2) year term. Upon completion of those initial two (2) year terms, the Rotating Directors

for Seats 12 and Seat 13 may be selected for additional terms in accordance with the procedures described in this Article 3, section 3.c.iii-iv of this Agreement.

- iv) The Standing Directors shall develop and widely distribute and make widely available an application form to the types of entities described in Article 3, section 3.b above. Such form shall request qualifying information from the entities who desire to have a representative appointed to a Rotating Director seat, including but not limited to: the name of the proposed Rotating Director appointee, the Rotating Director seat that the applicant seeks, proof of the insurance required under Article 6, and the proposed appointee's qualifications for that seat.

Once the completed applications have been submitted, the Standing Directors shall appoint [*seven (7)*] **six (6)** of the Rotating Director positions for an initial one-year term and [*eight (8)*] **eleven (11)** of the Rotating Directors for an initial two-year term. After the expiration of the initial Rotating Director terms, new Rotating Directors shall be limited to two (2) terms of two (2) years each and, if selected, shall be selected for any subsequent term using the same appointment process described herein. **Unless otherwise specified at the time of appointment, and unless appointed to an initial one-year term, a Rotating Director's term shall end on June 30 of the calendar year two years after the year of that Rotating Director's appointment.**

Appointment of Additional Directors. Subject to the EAC membership requirements in ORS 342.940 and 342.943, a majority of the Board may propose to increase or decrease the number of Directors at any time. Any new Directors proposed under this Article 3, section 4.d shall be subject to the applicable quorum, voting, and appointment processes in Article 3.

- i) If the Board increases the number of Directors, the Board may select a new Rotating Director or a non-voting, ex-officio Director ("Ex-Officio Director") to fill that new seat.
- ii) An Ex-Officio Director appointed by the Board in accordance with this section shall exercise the same authority, and shall be subject to the same duties and limitations, as a Rotating Director described Article 3, section 3.b, except that:
  - (1) Ex-Officio Directors shall not have any voting authority and may not vote on matters before the Council; and
  - (2) Ex-Officio Directors may not place items on the EAC agenda.
- i) If the Board increases the number of Directors, the Board may select a new Rotating Director or a non-voting, ex-officio Director ("Ex-Officio Director") to fill that new seat.
- ii) An Ex-Officio Director appointed by the Board in accordance with this section shall exercise the same authority, and shall be subject to the same duties and limitations, as a Rotating Director described Article 3, section 3.b, except that:
  - (1) Ex-Officio Directors shall not have any voting authority and may not vote on matters before the Council; and
  - (2) Ex-Officio Directors may not place items on the EAC agenda.

**5. Officers.** There shall be a Board Chair ("Chair") and a Board Vice Chair ("Vice Chair"), who shall be selected pursuant to the voting requirements provided in Article 3, section 10 herein. The Board may, subject to the voting requirements provided in Article 3 herein, establish other Officer positions from time to time.

**6. Chair.** The Chair shall be selected from the Board Directors seated at the time of the vote who will remain on the Board for at least one (1) year from the date of selection. The Chair of the Board shall serve for a term of one (1) year from the date of selection. Once appointed, the Chair shall:

- a) Serve as the primary contact person for communicating with and providing oversight to the Administrative Agent;
- b) Preside over EAC meetings; and
- c) In coordination with the Administrative Agent or other duly-appointed EAC staff, set the agenda for those meetings.

Subject to the requirements of Senate Bill 182, the Board, by adopting EAC bylaws, may confer additional powers on the Chair, may provide for a longer Chair term, or may provide a process for the removal of the Chair.

**7. Vice Chair.** The Vice Chair shall be a Director seated at the time of the vote who will remain on the Board for at least one (1) year from the date of selection. The Vice Chair of the Board shall serve for a term of one (1) year from the date of selection. Once appointed, the Vice Chair shall:

- a) Fulfill the role of the Chair in the event that the Chair is unable to attend a Board meeting; and
- b) Oversee financial management of the Board in coordination with the Administrative Agent.

Subject to the requirements of Senate Bill 182, the Board, by adopting EAC bylaws, may confer additional powers on the Vice Chair, may provide for a longer Vice Chair term, or may provide a process for the removal of the Vice Chair.

**8. General Powers and Duties of EAC.** The EAC shall have all powers and duties provided under ORS 190.003 to 190.110, as more particularly described in Senate Bill 182 (codified at ORS 342.940 and 342.943) and this Agreement, and as otherwise authorized by law, including but not limited to (i) adopting such rules and internal management policies as it deems necessary in furtherance of the purposes of this Agreement and Senate Bill 182; (ii) providing for such agents and employees as it deems necessary; (iii) contracting for the acquisition of goods and services; and (iv) acquiring and holding tangible and intangible assets as needed to achieve the purposes of the EAC.

**9. Meetings.** The Board shall meet at least four (4) times per year. The Board Chair or the Administrative Agent, or both shall provide at least 30 days' written notice to all Board members regarding all regular meetings. For emergency or otherwise unscheduled meetings, the Board Chair or Administrative Agent, or both shall provide at least 48 hours advance written notice to all Board members. All Board Directors may submit matters to the Administrative Agent or to the Board Chair for inclusion on the meeting agenda. Meetings of the Board, the Standing Directors, and any subcommittee with the authority to make decisions on behalf of the Board or to recommend actions to the Board, shall be conducted in accordance with the provisions of the Oregon Public Meetings Law, ORS 192.610 to 192.710. The Board shall hold regular meetings on a schedule determined by the Board. In accordance with the Public Meetings Law, special or emergency meetings may be called by the Chair or Vice Chair of the Board. Meetings may include participation by telephone conference call or other electronic communication means. The quorum requirements described in this Agreement apply to all meetings of the EAC, including any emergency meetings.

## 10. Quorum, Voting, and Consensus.

- a) **General Quorum Requirement.** Except as otherwise provided in this Agreement, the quorum necessary to meet and conduct any business of the EAC, except for business subject to the exclusive voting authority and privilege of the Standing Directors pursuant to Article 3, section 3.a, shall be three (3) Standing Directors and ten (10) Rotating Directors.
- b) **Special Quorum Requirement for Article 3.a Meetings.** The quorum necessary to meet and conduct any business which is subject to pursuant to Article 3, section 3.a shall be three (3) Standing Directors and three (3) Rotating Directors.
- c) **Temporary Quorum Rule.** If the seated Director membership is less than the required quora described in Article 3, sections 10.a and 10.b, a Temporary Quorum Rule shall apply. The Temporary Quorum Rule allows the seated Directors to meet, deliberate, and vote solely on the appointment of additional Directors or to appoint a Chair and Vice-Chair. The Temporary Quorum established under this section shall consist of one (1) Director more than a majority of the currently-seated Directors. Nothing in this subsection shall be interpreted to amend or affect the exclusive voting authority and privilege of the Standing Directors pursuant to Article 3, section 3.a.
- d) **Voting.**
  - i) **Voting Generally.** All EAC votes, except for those votes excepted immediately below, shall require a majority of those Directors present and constituting a quorum.
  - ii) **Voting Exception for Article 3.a Standing Director Voting.** Non-dissolution votes which are subject to the exclusive voting authority and privilege of the Standing Directors pursuant to Article 3, section 3.a shall require a majority of all Standing Directors.
  - iii) **Voting Exception for Votes to Dissolve the EAC.** Votes to dissolve the EAC or otherwise terminate this IGA, which are subject to the exclusive voting authority and privilege of the Standing Directors pursuant to Article 3, section 3.a shall require a unanimous vote of all Standing Directors in accordance with Article 3, section 10.b's quorum requirement.
  - iv) **Voting Exception for Certain Votes to Amend the IGA.** This Agreement may not be amended, supplemented or modified in a manner that is not in compliance with ORS Chapter 190, Senate Bill 182, or otherwise applicable law. Votes to amend this Agreement shall generally require a majority of all Directors present and constituting a quorum, except that Board votes to amend the following sections shall require a majority vote of all Directors present and constituting a quorum which must include an affirmative, unanimous vote of all Standing Directors:
    - (1) Any changes to Article 3, section 3(a);
    - (2) Any increase in the number of Standing Directors necessary for a quorum described in Article 3, section 10.b;
    - (3) Any changes to the termination provisions in Article 4;
    - (4) Any changes to Article 6, section 5;
    - (5) Any changes to Article 6, section 8;



- (6) Any changes to Article 6, section 9; and
- (7) Any changes to Article 6, section 12.

- e) The Board shall strive for consensus decision-making on all decisions and will foster a collaborative approach to problem solving. When a matter is initially considered, every Board Director present at the meeting shall signal his or her position on the matter. The Board will then discuss the matter presented and will, if possible, attempt to reach a unanimous consensus regarding the matter. If after good faith efforts to reach a unanimous consensus, the Board cannot do so, the Board may decide to: a) delegate an issue to a working group for further exploration; or b) decide the matter by a majority “yes or no” vote in compliance with the voting authority described in this Agreement. Voting on matters before the EAC is an obligation of the Directors and abstentions are not authorized unless the Director has declared either a potential or actual conflict of interest.
- f) All Directors are encouraged to voice and have recorded their views. If any Director sees the need to stand in the way of consensus on a decision, he/she will explain his/her concern with the proposed decision to the Board, and the Board will make every attempt to understand the concern and the underlying interests. Any consensus reached shall be confirmed by a formal vote of the Board in accordance with the voting requirements described in this Agreement.

**11. Additional Protocols.** Additional protocols for officers, meetings, and the conduct of business shall be established by the Board through the adoption of bylaws or rules. In the event of a conflict between the adopted bylaws and this Agreement, this Agreement shall prevail.

**12. Rulemaking; Bylaws; and Procedural Subcommittee.** The EAC shall establish a subcommittee to draft rules and bylaws for the EAC (“Procedural Subcommittee”). The Procedural Subcommittee shall be subject to the requirements of the Oregon Public Meetings Law, ORS 192.610 to 192.710.

- a) **Composition of Procedural Subcommittee.** The Procedural Subcommittee shall consist of two (2) Standing Directors selected by the Standing Directors and two (2) Rotating Directors selected by the Rotating Directors.
- b) **Powers of Procedural Subcommittee.** The Procedural Subcommittee shall draft rules and bylaws for consideration and adoption by the Board pursuant to the voting authority and quorum requirements provided in Article 3, section 10. Before a rule may be presented to the Board for adoption, the Procedural Subcommittee must approve the rule or bylaw a majority of the members of the Procedural Subcommittee present and constituting a quorum.
- c) **Quorum Requirements.** The quorum necessary to meet, conduct any business of the Procedural Subcommittee or vote to approve rules or bylaws for consideration and adoption by the Board shall be all members of the Procedural Subcommittee.
- d) **Adoption of Rules and Bylaws.** Following approval of rules or bylaws by the Procedural Subcommittee for consideration by the Board, the Board may:
  - i) Adopt the approved rules or bylaws in accordance with the quorum and voting requirements in Article 3, section 10; or
  - ii) Vote to remand the rules or bylaws to the Procedural Subcommittee for further revision.

**13. Board Compensation.** The Board Directors shall not be compensated by the EAC but may be reimbursed, as provided by EAC bylaws and to the extent allowed by Oregon state law.

**14. Public Records.** The EAC shall comply with the Oregon Public Records Act, ORS 192.410 to 192.505.

**15. Budgeting, Accounting, and Audits.**

- a) The EAC shall operate on a Fiscal Year beginning on July 1 and ending on June 30 of each year, and the Board, working with the Administrative Agent, shall biannually prepare and adopt a budget for EAC operations for the next Fiscal Biennium. The EAC shall adopt a schedule for its budget process. The budget process shall be as provided in Senate Bill 182 and Oregon law.
- b) The EAC, with assistance from its Administrative Agent, shall maintain an independent budget control procedure and provide budget reports at its regular meetings. These reports shall show expenditures, receipts and such further information as the EAC shall direct, either by internal management policy or by direction from the Chair.
- c) The EAC shall be subject to audit by the Oregon Secretary of State.

**16. Administrative Agent.** As authorized by law, the EAC shall appoint a person or entity to serve as the Administrative Agent for the EAC. Once appointed, the Administrative Agent shall be responsible for duties as determined and assigned by the Board. Administrative support services to be provided by the Administrative Agent may include: (i) providing public notices; (ii) maintaining public records; (iii) receiving funds and making payments; (iv) assisting the EAC in complying with applicable public contracting requirements or other state laws; (v) maintaining financial records; (vi) preparing budget reports; (vii) providing related clerical support; and (viii) other administrative support functions as explicitly agreed by the Administrative Agent and EAC. The Administrative Agent may, in consultation with the Board, establish Advisory Groups to assist Board objectives. Such groups shall report directly to the Administrative Agent.

**17. Limitation of Powers.** The Parties and the Participating Entities (including any respective employees, agents, heirs and assigns acting within their proper scope of authority) to this intergovernmental agreement are not liable for the debts, liabilities, and obligations of the EAC. The EAC's powers and authority are also limited as described herein.

**ARTICLE 4**  
**WITHDRAWAL, TERMINATION OF MEMBERSHIP,**  
**SALE OF ASSETS AND DISSOLUTION**

**1. Voluntary Dissolution of the EAC.** Notwithstanding anything in this Agreement to the contrary, this Agreement may be terminated and the EAC dissolved by a unanimous vote of the Standing Directors taken in compliance with the applicable quorum requirements described in Article 3, section 10 herein. Prior to dissolution, the Parties shall agree on a plan for the disposition, division and distribution of any assets acquired by the EAC and the assumption of any outstanding indebtedness or known liabilities of the EAC by the Parties. Unless modified by the plan, the dissolution shall be effective only after all debts and obligations are paid or provision for payment is made.

**2. Voluntary Withdrawal by Any Party.** Unless otherwise prohibited by law, any Party may elect to terminate its participation in this Agreement and withdraw from the EAC by giving written notice of its desire to terminate to all other remaining Parties, and stating a date for termination which shall be not less than 60 days from the date of notice. Within 30 days following receipt of such notice, the Parties shall amend the Agreement as necessary to reflect the change in membership in the EAC.

**3. Termination by Operation of Law.** This Agreement shall terminate by operation of law if the authority necessary to create and operate the EAC is repealed or otherwise ceases to exist.

**ARTICLE 5 - NOTICES**

**1. Providing Notice.** Any notice herein required or permitted to be given shall be given in writing and shall be effective as to a Party when delivered to the Party at the address set forth in Exhibit 1. Notices shall be considered delivered either upon actual receipt if delivered personally or by fax or e-mail, or at the end of the third business day after the date of deposit in the United States mail, postage prepaid, certified, return receipt requested addressed to the Party as set forth in Exhibit 1.

**2. Notice List.** The EAC shall maintain a list for notification of the Parties and Participating Entities under this Agreement. The Parties shall notify the EAC of any change of address or title for receipt of notices under this Agreement.

**ARTICLE 6 - GENERAL PROVISIONS**

**1. Entire Agreement.** This Agreement and any authorized addenda or exhibits embody the entire agreement and understanding between and among the Parties hereto with respect to the EAC and supersedes all previous agreements and understandings relating to the EAC.

**2. Severability.** If any one or more of the provisions contained in this Agreement shall be determined to be invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

**3. Counterparts.** This Agreement may be executed by the Parties in any number of counterparts or separate counterparts, any combination of which shall constitute an Agreement between and among the Parties.

**4. Headings.** The Article, section and subsection headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

**5. Survival of Covenants.** Any provision of this Agreement which, by its terms has or may have application after the expiration or earlier termination of this Agreement, including all covenants, agreements, and warranties, shall be deemed to the extent of such application to survive the expiration or termination of this Agreement.

**6. Agency Relationship.** Nothing contained in this Agreement or any transaction is intended to or should be construed as creating the relationship of partners, joint-ventures, or agency relationship between Parties or any Participating Entities. Neither shall the employees, agents, or representatives of any Party or Participating Entity be considered to be employees, agents, or representatives of any other Party or Participating Entity for the purposes of the Oregon Tort Claims Act (“OTCA”), ORS 30.260 to 30.300, or for any other purpose. Provided, however, that Standing Directors and Rotating Directors shall be considered officers of the EAC for purposes of the OTCA with respect to those actions taken by each Director that fall within the course and scope of their obligations to the EAC as defined by this Agreement, EAC bylaws, or otherwise applicable law.

**7. Third party beneficiaries; No Employment Relationship.** Except as expressly provided in this Agreement, the State and the units of local government are the only Parties to the Agreement and are the only parties entitled to enforce the terms of the Agreement. Nothing in the Agreement gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly, indirectly, or otherwise, to third persons. No employment relationships between the Parties or Participating Entities shall be imputedly created by this Agreement. Employees and volunteers remain subject solely to the personnel policies, rules, and regulations of their employer-of-record. The intent of this provision is to prevent the creation of any “special employer” relationships under Oregon workers’ compensation law, PERS regulations, or other state or federal laws.

**8. Indemnification.** SUBJECT TO THE TORT CLAIM LIMITATIONS OF THE OREGON CONSTITUTION AND THE OREGON TORT CLAIMS ACT, AND SUBJECT TO ORS CHAPTERS 180 AND 190:

- A) EACH PARTY SHALL DEFEND, SAVE, HOLD HARMLESS AND INDEMNIFY ALL OTHER PARTIES AND THEIR RESPECTIVE SUBDIVISIONS, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER, RESULTING FROM, ARISING OUT OF OR RELATING TO OFFICIAL ACTIONS TAKEN WITHIN THE PROPER SCOPE OF THEIR AUTHORITY UNDER THIS AGREEMENT; AND
- B) EACH PARTY SHALL FURTHER DEFEND, SAVE, HOLD HARMLESS AND INDEMNIFY ALL PARTICIPATING ENTITIES AS DEFINED IN THIS AGREEMENT, THEIR OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ACTS OR OMISSIONS OF THE PARTY OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS RELATED TO THE PARTY’S PARTICIPATION IN THE EAC.

**9. Parties’ Insurance.** The Parties shall each maintain comprehensive insurance coverage or sufficient self-insurance reserves to cover the reasonable risks of damage or loss in the form of personal injury, bodily injury, or property damage, or economic or financial losses for acts or omissions done in the course and scope of this Agreement. Each Party that is a part of “state government” as defined in ORS 174.111 shall maintain insurance coverage through the State of Oregon Insurance Fund pursuant to ORS Chapter 278. Each Party to this Agreement that is not a part of “state government” as defined in ORS

174.111 shall obtain at its expense the insurance specified in Exhibit 2, attached hereto and incorporated herein by reference.

**10. Council Works.** In the operation of the EAC, the EAC may create, procure, or otherwise own materials, including, but not limited to, brochures, logo designs, printed and electronic materials (“Works”) for the benefit of the EAC, to be used by the EAC. Subject to the rights and limitations set forth below, the following provisions apply to the Works:

- a) All right, title and interest to the Works, including trademarks, trade secrets, patents and any other proprietary rights arising out of or embodied in the Works, are owned exclusively by the EAC.
- b) Board members shall execute such documents and instruments as the EAC may reasonably request in order to record or perfect the assignments required under this Article 6, section 11 to fully vest such rights in EAC.

**11. Non-Appropriation Clause.** Each Party’s obligation to pay any amounts, perform any activities or provide any items under this Agreement is conditioned upon that Party’s receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow the Party, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement is to be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon.

**12. Effective Date and Duration.** This Agreement shall become effective on the date signed by all Parties and shall remain in effect until such time as it may be terminated or the EAC dissolved as provided herein.

**13. Authority to Sign.** The signatories to this Agreement represent and warrant that they have the power and authority to enter into this Agreement and perform the requirements described herein.

IN WITNESS WHEREOF the Parties have dated and signed this Agreement.

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Oregon Department of Education

\_\_\_\_\_  
Oregon Early Learning Division

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Oregon Teacher Standards and Practices Commission

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High Desert Education Service District

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Beaverton School District

**EXHIBIT 1**  
**Party Contact Information**

**Oregon Department of Education**

Colt Gill, Deputy Superintendent of Instruction  
255 Capitol Street NE  
Salem, OR 97310

**Oregon Early Learning Division**

Miriam Calderon, Early Learning System Director  
775 Summer Street NE, #300  
Salem, OR 97301

**Oregon Teacher Standards and Practices Commission**

Anthony Rosilez, Executive Director  
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Beaverton, OR 97003

## **EXHIBIT 2**

### **Insurance Requirements**

#### **INSURANCE REQUIREMENTS:**

Each Party to this Agreement that is not a part of “state government” as defined in ORS 174.111 (“Local Government Member”) shall obtain at its expense the insurance specified in this Exhibit 2 prior to performing under this agreement and shall maintain it in full force and expense throughout the duration of this agreement and as required by an extended reporting period or all tail coverage requirements. Insurance shall be from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to the State. Self-insurance may be considered an acceptable form of insurance. Coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers’ compensation. Local Government Members shall pay for all deductibles, self-insurance retention and self-insurance, if any.

#### **WORKERS’ COMPENSATION & EMPLOYERS’ LIABILITY**

All employers, including Local Government Members, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Local Government Members shall require and ensure that each of its subcontractors complies with these requirements. If a Local Government Member is a subject employer, as defined in ORS 656.023, Local Government Member shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If a Local Government Member is an employer subject to any other state’s workers’ compensation law, Contactor shall provide workers’ compensation insurance coverage for its employees as required by applicable workers’ compensation laws including employers’ liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

#### **COMMERCIAL GENERAL LIABILITY:**

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this Agreement, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

#### **AUTOMOBILE LIABILITY INSURANCE:**

Automobile Liability Insurance covering a Local Government Member’s business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

#### **PROFESSIONAL LIABILITY:**

**Professional Liability insurance** covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Agreement by the Local Government Member and Local Government Member’s subcontractors, agents, officers or employees in an amount not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability insurance coverage, or the Local Government Member shall provide Tail Coverage as stated below.

**DIRECTORS, OFFICERS AND ORGANIZATION LIABILITY:**

Directors, Officers and Organization insurance covering actual or alleged errors, omissions, or negligent acts, including improper financial oversight and use of funds and donor contributions, of the directors and officers of the organization with a combined single limit of no less than \$1,000,000 per claim.

**EXCESS/UMBRELLA INSURANCE:**

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

**ADDITIONAL INSURED:**

The Commercial General Liability insurance and Automobile liability insurance required under this Agreement must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to a Local Government Member's activities to be performed under this Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 04 13 or equivalent.

**TAIL COVERAGE:**

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, each Local Government Member shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Agreement, for a minimum of 24 months following the later of (i) Local Government Member's completion of all Services required under this Agreement, or, (ii) termination of the Agreement, or, (iii) The expiration of all warranty periods provided under this Agreement.

**CERTIFICATE(S) AND PROOF OF INSURANCE:**

Local Government Member shall provide to the State of Oregon Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Agreement. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance, the State of Oregon has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Agreement.

**NOTICE OF CHANGE OR CANCELLATION:**

The Local Government Member or its insurer must provide at least 30 days' written notice to the State of Oregon before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

**INSURANCE REQUIREMENT REVIEW:**

Local Government Member agrees to periodic review of insurance requirements by the State of Oregon under this agreement and to provide updated requirements as mutually agreed upon by Local Government Member and the State of Oregon.

**STATE ACCEPTANCE:**

All insurance providers are subject to acceptance by the State of Oregon. If requested by the State of Oregon, Local Government Member shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to the State of Oregon's representatives responsible for verification of the insurance coverages required under this E