

AGREEMENT FOR SUBSTITUTE TEACHER CONSOLIDATION SERVICES
BETWEEN
SEDONA-OAK CREEK JUSD #9 AND YAVAPAI COUNTY

1. **Parties.**

Sedona-Oak Creek JUSD #9 (hereinafter referred to as “School”).

Yavapai County through the Yavapai County School Superintendent also known as the Yavapai County Education Service Agency (hereinafter referred to as “YCSS”).

School and YCSS may each be referred individually as a “Party” or “party,” and collectively as the “Parties” or “parties.”

2. **Purpose.**

2.1 The purpose of the Agreement for Substitute Teacher Consolidation Services (hereinafter referred to as this “Agreement”) is that YCSS will provide assistance to School to increase substitute teacher fill rates and lower costs related thereto. Educational Services Inc., an Arizona corporation, with a trade name of Educational Services (hereinafter referred to as “ESI”) will provide substitute teachers that are employees of ESI (hereinafter referred to as “substitute” or “substitutes”) and YCSS will work with ESI to provide and assign substitutes to School upon request. This Agreement and the Yavapai County substitute teacher consolidation partnership are intended to support and enhance student achievement by providing School with efficient coordination and placement of substitutes.

2.2 ESI is an independent contractor and shall perform its obligations under this Agreement as an independent contractor. ESI is not an employee of the YCSS or the School. Any substitute provided by ESI to perform substitute services for School shall be an employee of ESI and not of YCSS or the School. ESI shall retain full control over the employment, direction, supervision, evaluation, compensation, discipline, and discharge of substitutes and as specified pursuant to a separate agreement between ESI and School. Any YCSS direction of substitutes is limited to a Yavapai County school assignment (time and dates) and related training. School has the right to direct substitutes only to the extent necessary to conduct the School’s business and operations and to comply with licensing and certification requirements that apply to the School or to any substitute.

2.3 YCSS shall have no responsibility or liability for the employment, quality or credentialing of a substitute; and YCSS shall have no responsibility or liability arising from any services provided pursuant to a separate written agreement between ESI and School.

3. **Statutory Authority.**

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3.1 YCSS provides the Yavapai County substitute teacher consolidation program to School pursuant to A.R.S. §§ 15-301 (Office of County School Superintendent), 15-302 (Powers and Duties), and 15-365 (Service Programs Operated through the Office of a County School Superintendent).

3.2 School has authority to participate in the Yavapai County substitute teacher consolidation program pursuant to A.R.S. § 15-365 (Service Programs Operated through the Office of a County School Superintendent).

4. **Duration/Term.** This Agreement term is for one year and shall be effective from July 1, 2018, until June 30, 2019.

5. **Termination.** Either party may terminate this Agreement with ninety (90) days written notice to the other party. This Agreement is also subject to the cancellation provisions of A.R.S. § 38-511. Any termination of this Agreement shall not relieve the parties of responsibility for its costs, if any, incurred prior to the effective date of the termination.

6. **Scope of Work: Services Provided by YCSS.** Under this Agreement, YCSS shall provide the following specific services to School:

6.1 During FY 2018-19, YCSS shall employ a Substitute Coordinator for the purpose of facilitating and coordinating the assignment of a substitute at School. The Substitute Coordinator shall conduct all services from a YCSS site.

6.2 On a daily basis, the Substitute Coordinator shall manage the Substitute Coordination Software obtained from ESI for the purpose of coordinating and assigning substitutes to both short and long term vacancies as requested by School.

6.3 Upon request, and notification that a written agreement between ESI and School exists, YCSS will provide the services of coordinating and assigning a substitute at School when required.

6.4 Pursuant to this Agreement between YCSS and the School, YCSS will provide the services of coordinating and assigning a substitute at School when required.

6.5 YCSS shall provide training related to the Yavapai County substitute teacher consolidation program to the substitutes, School personnel, and relevant YCSS employees.

7. **Scope of Work: Services Provided by School.** Under this Agreement, School shall provide the following duties to YCSS:

7.1 School shall provide all information reasonably requested by YCSS in a timely

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manner.

- 7.2 School shall timely notify YCSS if the written agreement between it and ESI is terminated.
- 7.3 School shall designate a responsible, authorized person to:
- (a) serve as a point of contact for the YCSS Substitute Coordinator;
 - (b) satisfy all substitute requirements as requested; and
 - (c) communicate with YCSS on all matters relating to this Agreement.
- 7.4 School shall fully comply with all applicable federal and state laws, rules and regulations, and local ordinances.
8. **Payment and Consideration.** During the FY 2018-19, a party shall provide the services outlined in this Agreement in reliance on the other with the understanding that consideration is satisfied by the performance of said services. No monetary payment will be exchanged between the parties in satisfaction of this Agreement. YCSS is not responsible for any costs or fees associated with ESI services provided to School or its governing board.
9. **Indemnification.** To the fullest extent permitted by law, School shall defend, indemnify, and hold harmless YCSS, its departments, officers, officials, and employees without limitation from and against any and all claims, damages, losses, liabilities, fees, fines or expenses (including but not limited to attorney fees, court costs, and cost of appellate proceedings) relating to, arising from, resulting from or alleged to have arisen or resulted from this Agreement. School's duty to defend, indemnify, and hold harmless YCSS, its departments, officers, officials, and employees shall arise in connection with any and all claims, damages, losses, liabilities, fees, fines or expenses that are attributable to bodily injury, personal injury, sickness, disease, death or damage to, or destruction of, tangible or intangible property including the loss of use therefrom, caused in whole or in part by any act, error, mistake or omission of School, its departments, officers, officials, employees, agents, vendors, subcontractors or anyone for whose acts School may be liable. School agrees to waive all rights of subrogation against YCSS, its departments, officers, officials, and employees. The insurance, its limits, amount and type required herein shall in no way be construed as limiting the scope of this indemnity.
10. **Insurance.** The parties shall maintain appropriate insurance. Certificates of Insurance shall be provided to a party upon request.
11. **Governing Law.** This Agreement shall in all respects be interpreted and construed in accordance with and governed by the laws of the State of Arizona. Any changes in governing laws, rules, and regulations that do not materially affect this Agreement will apply during the term of this Agreement and will not require an amendment.
12. **Material Change in Law or Regulation.** In the event of adoption of legislation, regulations,

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or instructions or the initiation of an enforcement action by a governmental agency, any of which materially affects the legality of this Agreement or the relationship among the parties hereto, either party may propose amendments to this Agreement to bring this Agreement into conformity with such laws. If School and YCSS are unable to reach agreement on the renegotiation of this Agreement within thirty (30) days of the initiation of negotiations, then either party may terminate this Agreement upon written notice to the other party.

13. **Compliance with Law.** The parties shall comply with all applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities in performing this Agreement, including environmental laws.
14. **Immigration Law Compliance.** The parties hereby warrant that they will at all times during the term of this Agreement comply with all federal immigration laws applicable to their employment of their employees and with the requirements of A.R.S. §§ 23-214 and 41-4401 (together the “State and Federal Immigration Laws”). A breach of the foregoing warranty shall be deemed a material breach of the contract, and the parties shall have the right to terminate this Agreement for such a breach, in addition to any other applicable remedies. The parties retain the legal right to inspect the papers of each contractor, subcontractor or employee who performs work pursuant to this Agreement to verify performance of the foregoing warranty of compliance with the State and Federal Immigration Laws.
15. **Fingerprint and E-verify.** If required, and only to the extent required, the parties shall comply with the fingerprinting provisions in A.R.S. § 15-512(H) and the e-verify provisions in A.R.S. § 41-4401.
16. **Workers’ Compensation.** For purposes of workers’ compensation, an employee of a party to this Agreement, who works under the jurisdiction or control of, or who works within the jurisdictional boundaries of another party pursuant to this Agreement, is deemed to be an employee of both the party who is his primary employer and the party under whose jurisdiction or control or within whose jurisdiction he is then working, as provided by A.R.S. § 23-1022(D). The primary employer party of such employee shall be solely liable for payment of workers’ compensation benefits for the purposes of this section. The parties herein shall comply with the provisions of A.R.S. § 23-1022(E) by posting the public notice required.
17. **Non-discrimination.** The parties shall comply with the Office of the Arizona Governor Executive Order 2009-09, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities, and all other applicable State and Federal employment laws, rules and regulations, including the Americans with Disabilities Act. The parties shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

18. **Non-appropriation of funds.** The parties recognize and acknowledge that YCSS is a governmental entity and this Agreement's validity is based upon the availability of public funding. In the event public funds are not appropriated for the performance of YCSS's obligations under this Agreement, then YCSS shall notify the other party(ies) in writing of any such non-allocation of funds at the earliest possible date, and this Agreement shall automatically expire without penalty to YCSS. If YCSS's allocation of funds is reduced, then the scope of this Agreement may be reduced, if appropriate, or this Agreement may be cancelled without further duty or obligation.
19. **Alternative Dispute Resolution.** Pursuant to A.R.S. § 12-1518, disputes under this Agreement may be resolved through the use of arbitration.
20. **Waiver of Jury Trial.** The parties hereby waive their respective rights to trial by jury in any action or proceeding arising out of this Agreement.
21. **Notice.** All notices under this Agreement must be in writing and sent to the appropriate person. Notices will be deemed properly given if sent by personal delivery or certified U.S. mail, postage prepaid, return receipt requested, addressed as follows:

If to School to:

Sedona-Oak Creek JUSD #9
Attn: Sally Cadigan
221 Brewer Road
Sedona, Arizona 86336

If to YCSS to:

Tim Carter, Yavapai County School Superintendent
2970 Centerpointe East Drive
Prescott, AZ 86301

YCSS and School shall each have the right from time to time to change the place notice is to be given under this paragraph by written notice thereof to the other Party. Notice is effective on the date of actual receipt or three days after the date of mailing, whichever is earlier.

22. **Implied Contract Terms.** Each provision of law and any terms required by law to be in this Agreement are a part of this Agreement as if fully stated herein.
23. **Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed as creating a joint venture, partnership, agency, employment or fiduciary relationship between the parties. The Parties' employees shall not be considered employees of the other Party, and neither Party's personnel will, by virtue of this Agreement, be entitled or eligible, by reason of this Agreement, to participate in any benefits or privileges given or extended by the other Party to its employees.

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24. **Third Parties**. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against School or YCSS. This Agreement is not intended to benefit any third party.
25. **Assignment**. No party to this Agreement may assign any of its rights or responsibilities under this Agreement, either voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or any other manner, except with the prior written consent of the other parties. No party may delegate any performance under this Agreement, except with the prior written consent of the other parties. Any purported assignment of rights or delegation of performance in violation of this section is void.
26. **Severability/Unenforceable Provisions**. In the event that any of the provisions of this Agreement are held to be unenforceable or invalid, the validity and enforceability of the remaining provisions shall not be affected and effect shall be given to the intent manifested by the provisions held enforceable and valid. If any of the provisions of this Agreement are inapplicable to a person or circumstance, the same provisions shall remain applicable to all other persons and circumstances.
27. **Parole Evidence**. This Agreement is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this Agreement.
28. **Waiver**. A party's failure or neglect to enforce any term, covenant, condition, right, or duty in this Agreement does not constitute a waiver of any term, covenant condition, right, or duty, nor is it deemed to be a waiver of that party's rights or remedies under this Agreement. A waiver or extension is only effective if it is in writing and signed by the party granting it. No single or partial exercise of any right or remedy will preclude any other or further exercise of any right or remedy. One or more waivers by a party of any term, covenant, condition, right, or duty in this Agreement shall not be construed as a waiver of a subsequent default or breach of the same covenant, term, condition, right, or duty.
29. **Headings and Construction of Agreement**. In construing this Agreement, all headings and titles are for the convenience of the parties and for organizational purposes only and shall not be considered in interpreting the meaning of any provision in this Agreement or considered a part of this Agreement. Whenever required by the context, each number shall include the plural, each gender shall include all genders, and unless the context otherwise requires, the word "person" shall include corporation, firm or association. This Agreement shall not be construed as if prepared by one of the parties, but rather according to its fair meaning as a whole, as if both parties had prepared it.
30. **Execution in Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon, provided

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such signature page is attached to any other counterpart identical thereto. Each of the Parties may sign any number of copies of this Agreement. Each signed copy shall be deemed to be an original, but all of them together shall represent one and the same agreement.

31. **Entire Agreement.** This Agreement contains the entire, integrated agreement of the parties and there are no oral agreements, understandings, or representations relied upon by the parties. This Agreement supersedes all prior negotiations, representations, or agreements, whether written or oral. Any modifications or amendments to this Agreement must be in writing and signed by all parties.
32. **Legal Agreement.** This Agreement is an important, binding legal document, and each Party warrants it has had an opportunity to consult with an attorney about the terms set forth herein. By signing this Agreement, each person signing this Agreement represents and warrants that he or she is duly authorized and has the legal capacity to execute this Agreement and understands the meaning of all terms contained herein and agrees to their application and enforceability.
33. **Binding Effect.** This Agreement shall not be legally binding upon either party until signed by the School's governing board and the Yavapai County Board of Supervisors.

APPROVALS

School:

Sedona-Oak Creek JUSD #9

Date: May 1, 2018

Randy Hawley, Governing Board President

This Agreement has been reviewed by the undersigned who has determined that it is in the appropriate form and is within the power and authority granted to School District.

Date: _____

Signature

Ben Hufford, Legal Counsel for School District

YCSS:

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Tim Carter, Yavapai County School Superintendent

Date: _____

This Agreement has been reviewed by the undersigned who has determined that it is in the appropriate form and is within the power and authority granted to YCSS.

Signature

Date: _____

Printed Name of Legal Counsel for YCSS

APPROVED BY:

Rowle P. Simmons, Chairman
Yavapai County Board of Supervisors

Date: _____

ATTEST:

Kim Kapin, Clerk of the Board
Yavapai County Board of Supervisors