

**FY 2020-21
INTERGOVERNMENTAL AGREEMENT
FOR SUBSTITUTE TEACHER CONSOLIDATION SERVICES
BETWEEN SEDONA – OAK CREEK JOINT UNIFIED SCHOOL DISTRICT #9
AND YAVAPAI COUNTY**

This Intergovernmental Agreement for Substitute Teacher Consolidation Services (hereinafter referred to as this “IGA”) is made and entered into by and between Sedona – Oak Creek Joint Unified School District #9 (hereinafter referred to as “DISTRICT”) and Yavapai County through the Yavapai County School Superintendent also known as the Yavapai County Education Service Agency (hereinafter referred to as “YCESA”). DISTRICT and YCESA may each be referred individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, pursuant to A.R.S. § 15-342(13), DISTRICT is authorized to enter into this IGA with YCESA; and,

WHEREAS, pursuant to A.R.S § 15-301, the YCESA is designated as a local education agency for the purpose of serving as an education service agency that is eligible to receive and spend local, state and federal monies to provide programs and services to school districts, charter schools, county free library districts, municipal libraries, nonprofit and public libraries, tribal libraries, private schools and tribal schools within that county; and,

WHEREAS, pursuant to A.R.S. § 15-302(B), YCESA may provide discretionary programs to DISTRICT; and,

WHEREAS, pursuant to A.R.S. § 15-365, YCESA may establish service programs and DISTRICT may participate in service programs established; and,

WHEREAS, pursuant to A.R.S. § 11-952, the Parties are authorized and wish to enter into this IGA for joint or cooperative action for the YCESA to provide support to DISTRICT for substitute teacher consolidation services.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and conditions set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DISTRICT and YCESA, intending to become legally bound, agree as follows:

1. **Duration/Term.** This IGA’s term is for one (1) year and shall be effective for Fiscal Year 2020-2021 (hereinafter referred to as “FY 2020-21”) from July 1, 2020, through June 30, 2021.

2. **Termination.**

- 2.1 **Termination by Mutual Agreement.** This IGA may be terminated at any time by mutual agreement of the Parties.
 - 2.2 **Termination for Convenience/Termination Without Cause.** Either Party may terminate this IGA with ninety (90) days advance written notice specifying the termination date.
 - 2.3 **Termination for Breach.** In the event of a material breach, default, or violation of any term or condition of this IGA by any Party, the Party claiming breach shall provide written notice to the breaching Party and said notice shall set forth the factual basis for the determination that a breach has occurred. If the breach is not remedied within fifteen (15) days of the breaching Party's receipt of notice, this IGA shall terminate, at the option of the Party alleging such breach.
 - 2.4 **Immediate Termination by YCESA.** This IGA may be terminated prior to its expiration, at the election of YCESA, without penalty or prejudice to YCESA, immediately upon written notice by YCESA to DISTRICT upon the occurrence of the following events:
 - 2.4.1 Governmental emergency action that lasts for more than fourteen (14) days that makes it impracticable for YCESA to perform its obligations under this IGA;
 - 2.4.2 Changes to applicable laws and regulations that make it impracticable for YCESA to perform its obligations under this IGA; or
 - 2.4.3 Any event or action that makes it impracticable for YCESA to perform its obligations under this IGA.
 - 2.5 **Cancellation for Conflict of Interest.** This IGA is subject to cancellation for conflict of interest pursuant to ARS § 38-511, the pertinent provisions of which are incorporated into this IGA by reference.
 - 2.6 Any termination or cancellation of this IGA shall not relieve the Parties of their respective obligations for costs of goods or services actually provided prior to the effective date of the termination.
3. **Purpose.** The purpose of this IGA is that YCESA shall provide assistance to DISTRICT to increase substitute teacher fill rates in an effort to lower costs related thereto. This IGA and the Yavapai County substitute teacher consolidation partnership are intended to support and enhance student achievement by providing DISTRICT with efficient coordination and placement of substitute teachers.
 4. **Scope of Work: Services Provided by YCESA.** YCESA shall provide the following services to DISTRICT:

- 5.1 YCESA shall work with Educational Services Inc., an Arizona corporation, with a trade name of Educational Services (hereinafter referred to as “ESI”) to provide and assign substitute teachers that are employees of ESI (hereinafter referred to as “substitute” or “substitutes”) to DISTRICT upon DISTRICT’s request.
 - 5.2 YCESA shall employ a Substitute Coordinator for the purpose of facilitating and coordinating the assignment of a substitute at DISTRICT. The Substitute Coordinator shall conduct all services from a YCESA approved site.
 - 5.3 Upon request and notification that a written agreement between ESI and DISTRICT exists, YCESA shall provide the services of coordinating and assigning a substitute at DISTRICT when required.
 - 5.4 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 DISTRICT.
 - 5.5 YCESA shall provide training related to the Yavapai County substitute teacher consolidation program to substitutes, DISTRICT personnel, and relevant YCESA employees.
 - 5.6 YCESA direction of substitutes is limited to a Yavapai County school assignment (times and dates) and related training.
 - 5.7 YCESA shall have no responsibility or liability for the employment, quality or credentialing of a substitute, and YCESA shall have no responsibility or liability arising from any services provided pursuant to a separate written agreement between ESI and DISTRICT.
 - 5.8 YCESA is not responsible for any costs or fees associated with ESI services provided to DISTRICT.
6. **Scope of Work: Services Provided by DISTRICT.** DISTRICT shall provide the following duties to YCESA:
- 6.1 DISTRICT shall contract with ESI to provide substitute teachers that are employees of ESI.
 - 6.2 DISTRICT is responsible for all costs and fees associated with ESI services provided to DISTRICT.
 - 6.3 DISTRICT shall promptly notify YCESA if the written agreement between DISTRICT and ESI is terminated.

- 6.4 DISTRICT SHALL provide, in a prompt and timely manner, all information reasonably requested by YCESA.
- 6.5 DISTRICT shall designate a responsible, authorized person to:
- (a) serve as a point of contact for the YCESA Substitute Coordinator;
 - (b) satisfy all substitute requirements as requested; and
 - (c) communicate with YCESA on all matters relating to this IGA.
- 6.6 DISTRICT has the right to direct substitutes only to the extent necessary to conduct the DISTRICT's business and operations and to comply with licensing and certification requirements that apply to DISTRICT or to any substitute.
- 6.7 DISTRICT shall fully comply with all applicable federal and state laws, rules and regulations, and local ordinances.
7. **Representations and Warranties.** The Parties hereby warrant and agree that ESI is an independent contractor and shall perform its obligations under this IGA as an independent contractor. ESI is not an employee of DISTRICT or YCESA. Any substitute provided by ESI to perform substitute services for DISTRICT shall be an employee of ESI and not of DISTRICT or YCESA. 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 DISTRICT.
8. **Payment and Consideration.** A Party shall provide the services outlined in this IGA in reliance on the other with the understanding that consideration is satisfied by the performance of said services. No monetary payment shall be exchanged between DISTRICT and YCESA in satisfaction of the obligations pursuant to this IGA.
9. **Confidentiality.** The Parties shall keep confidential all student records and all student's personally identifiable information in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g, and regulations adopted thereunder, including 34 CFR part 99; the Reauthorization of the Individuals with Disabilities Education Act of 2004 ("IDEA"), 20 U.S. Code § 1400, and regulations adopted thereunder; the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and regulations adopted thereunder; the Privacy Act of 1974, 5 U.S.C. § 552a, and regulations adopted thereunder; State and Federal law; and DISTRICT and school board policies.
10. **Retention and Inspection of Records.** Each Party shall make, and shall contractually require each subcontractor to make, all books, accounts, reports, files, and other records relating to the performance of this IGA open to inspection and audit at reasonable times during regular business hours. Each Party shall retain, and shall contractually require each subcontractor to retain, all books, accounts, reports, files, and other records relating to the performance of this IGA for a period of five (5) years after termination of this IGA.

- 11. Non-appropriation of funds.** The Parties recognize and acknowledge that both Parties are governmental entities and this IGA's validity is based upon the availability of public funding. In the event public funds are not appropriated for the performance of either Party's obligations under this IGA, then the affected Party shall notify the other Party in writing of any such non-allocation of funds at the earliest possible date, and this IGA shall automatically expire without penalty to either Party, except that the Parties are still responsible for their obligations and costs incurred prior to any expiration of this IGA. If either Party's allocation of funds is reduced, then the scope of this IGA may be reduced, if appropriate, or this IGA may be cancelled without further duty or obligation, except that the Parties are still responsible for their obligations and costs incurred prior to any cancellation of this IGA.
- 12. Force Majeure.** Except for the duty to pay contracted prices for goods or services actually provided, neither Party shall be liable in any manner for any delay or failure that last longer than thirty (30) days to perform its obligations under this IGA arising out of or caused, directly or indirectly, by circumstances beyond such Party's reasonable control, including, without limitation, acts of God; earthquakes; fires; floods; wars; civil or military disturbances; acts of terrorism; sabotage; strikes; pandemics; epidemics; viral or communicable disease outbreaks; quarantines; riots; power failures; computer failure and any such circumstances beyond a Party's reasonable control as may cause interruption, loss or malfunction of utility, transportation, computer (hardware or software), or telephone communication service; accidents; labor disputes; acts of civil or military authority; governmental emergency action; changes to applicable laws and regulations; or inability to obtain labor, material, equipment or transportation. A Party claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence of any such event, (a) provide written notice to the other Party of the nature and extent of any such Force Majeure condition; and, if practicable, (b) use commercially reasonable efforts to remove any such causes and resume performance under this IGA.
- 13. Property Disposition Clause.** The Parties do not anticipate the joint acquisition of property attributable to the exercise of each Party's duties and obligations pursuant to this IGA. Any property acquired during the term of this IGA shall be returned to the purchasing Party no more than thirty (30) days from the effective date of termination of this IGA.
- 14. Insurance.** Each Party shall maintain appropriate insurance. Certificates of Insurance shall be provided to a Party upon request.
- 15. Mutual Indemnification.** To the maximum extent permitted by law, each Party (as "Indemnitor") agrees to indemnify, defend and hold harmless the other Party, its officers, officials, agents, employees, or volunteers from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of actions taken in performance of this IGA to the extent that such Claims are caused by the acts, omissions, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

16. Notices. All notices required or permitted to be given under the terms of this IGA shall be in writing, and shall be effective upon hand delivery, deposit with a reputable overnight courier such as FedEx for overnight delivery or three (3) business days after deposit with the U.S. Mail via certified or registered mail, postage prepaid, return receipt requested as follows:

If to DISTRICT to:

Sedona – Oak Creek Joint Unified School District #9

Attn: Dennis Dearden

995 Upper Red Rock Loop Road

Sedona, Arizona 86336

If to YCESA to:

Yavapai County School Superintendent

Attn: Tim Carter

2970 Centerpointe East Drive

Prescott, AZ 86301

A Party shall have the right to change the place notice is to be given by providing written notice to the other Party in accordance with this section.

17. Relationship of Parties. Nothing contained in this IGA 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 IGA, be entitled or eligible, by reason of this IGA, to participate in any benefits or privileges given or extended by the other Party to its employees. Neither Party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including (without limitation) the other Party's obligation to withhold Social Security and income taxes for itself or any of its employees.

18. Third Parties. Nothing contained in this IGA shall create a contractual relationship with or a cause of action in favor of a third party against DISTRICT or YCESA. This IGA is not intended to benefit any third party.

19. Assignment. No Party to this IGA may assign any of its rights or responsibilities under this IGA, 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 Party. No Party may delegate any performance under this IGA, except with the prior written consent of the other Party. Any purported assignment of rights or delegation of performance in violation of this section is void.

20. 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 IGA, including environmental laws.

21. **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.
22. **Non-discrimination.** The Parties shall comply with State Executive Order 2009-09, the pertinent provisions of which are incorporated into this IGA by reference, and which mandate, in part, 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.
23. **Legal Arizona Workers Act Compliance.** The Parties hereby warrant that they will at all times during the term of this IGA 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, and the Parties shall have the right to terminate this IGA for such a breach, in addition to any other applicable remedies. The Parties retain the legal right to inspect the papers of each contractor or subcontractor employee who performs work pursuant to this IGA to verify performance of the foregoing warranty of compliance with the State and Federal Immigration Laws.
24. **Workers’ Compensation.** For purposes of workers’ compensation, an employee of a Party to this IGA, who works under the jurisdiction or control of, or who works within the jurisdictional boundaries of another Party pursuant to this IGA, 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.
25. **Alternative Dispute Resolution.** Pursuant to A.R.S. § 12-1518, disputes under this IGA shall be resolved through the use of arbitration when the case or lawsuit is subject to mandatory arbitration pursuant to rules adopted under A.R.S. § 12-133.
26. **Waiver of Jury Trial.** The Parties hereby waive their respective rights to trial by jury in any action or proceeding arising out of this IGA.
27. **Governing Law and Venue.** This IGA shall be governed by, and construed and enforced, in accordance with the laws of the State of Arizona. Any action or claim arising from, under, or pursuant to this IGA shall be brought in the courts, state or federal, within the State of Arizona, and the Parties expressly waive the right to bring any legal action or claim in any other court. The Parties hereby consent to venue in Yavapai County for all purposes in connection with any action or proceeding commenced between the Parties hereto in

connection with or arising from this IGA. Any changes in the governing laws, rules, and regulations that do not materially affect DISTRICT's obligations under this IGA during the Term of this IGA will apply but will not require an Amendment.

28. **Material Change in Law or Regulation.** In the event of adoption of legislation, regulations, or instructions or the initiation of an enforcement action by a governmental agency, any of which materially affects the legality of this IGA or the relationship among the Parties hereto, either Party may propose amendments to this IGA to bring this IGA into conformity with such laws. If DISTRICT and YCESA are unable to reach agreement on the renegotiation of this IGA within thirty (30) days of the initiation of negotiations, then either Party may terminate this IGA upon written notice to the other Party.
29. **Implied Contract Terms.** Each provision of law and any terms required by law to be in this IGA are a part of this IGA as if fully stated herein.
30. **Severability/Unenforceable Provisions.** In the event that any of the provisions of this IGA 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 IGA are inapplicable to a person or circumstance, the same provisions shall remain applicable to all other persons and circumstances.
31. **Waiver.** A Party's failure or neglect to enforce any term, covenant, condition, right, or duty in this IGA 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 IGA. 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 IGA shall not be construed as a waiver of a subsequent default or breach of the same covenant, term, condition, right, or duty.
32. **Parol Evidence.** This IGA 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 IGA.
33. **Headings and Construction of Agreement.** In construing this IGA, 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 IGA or considered a part of this IGA. 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.
34. **Fair Meaning.** This IGA 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.

35. Entire Agreement. This IGA contains the entire, integrated agreement of the Parties and there are no oral agreements, understandings, or representations relied upon by the Parties. This IGA supersedes all prior negotiations, representations, or agreements, whether written or oral. Any modifications or amendments to this IGA must be in writing and signed by all Parties.

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

37. Legal Agreement. This IGA 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 IGA, each person signing this IGA represents and warrants that he or she is duly authorized and has the legal capacity to execute this IGA and understands the meaning of all terms contained herein and agrees to their application and enforceability.

APPROVALS

IN WITNESS WHEREOF, the Parties have caused this IGA to be executed by their duly authorized officials and have affixed their signatures to this IGA on the date written below.

DISTRICT: Sedona – Oak Creek Joint Unified School District #9

Signature of Governing Board President

Date: _____

Printed Name

Signature of Governing Board Member

Date: _____

Printed Name

Signature of Governing Board Member

Date: _____

Printed Name

Signature of Governing Board Member

Date: _____

Printed Name

Signature of Governing Board Member

Date: _____

Printed Name

DETERMINATION OF COUNSEL: Pursuant to A.R.S. Section 11-952(D), the foregoing IGA has been reviewed by the undersigned attorney for DISTRICT, who has determined that this IGA is in proper form and is within the powers and authority granted under the laws of the State of Arizona to DISTRICT.

Signature

Date: _____

Printed Name and Title/Law Firm Name

YCESA: Yavapai County through the Yavapai County School Superintendent also known as the Yavapai County Education Service Agency

Tim Carter
Yavapai County School Superintendent

Date: _____

APPROVED BY:

Craig L. Brown, Chairman
Yavapai County Board of Supervisors

Date: _____

ATTEST:

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

DETERMINATION OF COUNSEL: Pursuant to A.R.S. Section 11-952(D), the foregoing IGA has been reviewed by the undersigned attorney for YCESA, who has determined that this IGA is in proper form and is within the powers and authority granted under the laws of the State of Arizona to YCESA.

Joy L. Biedermann
Deputy Yavapai County Attorney

Date: _____