

YC CONTRACT No. 2018-279
AGREEMENT FOR E-RATE SERVICES
BETWEEN
COCHISE COUNTY EDUCATIONAL TECHNOLOGY CONSORTIUM
AND YAVAPAI COUNTY

1. **Parties.**

THE COCHISE COUNTY BOARD OF SUPERVISORS, ON BEHALF OF THE COCHISE COUNTY EDUCATIONAL TECHNOLOGY CONSORTIUM (hereinafter referred to as “School”).

Yavapai County through the Yavapai County School Superintendent (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 Universal Service Administrative Company’s Schools and Library Program (SLD), commonly known as “E-Rate Services,” provides discounts of up to 90% to assist most schools and libraries in the United States to obtain affordable telecommunications and internet access. YCSS assists school districts, individual schools, and libraries with the paperwork necessary to comply with applicable regulations to obtain available E-Rate Services.

2.2 The purpose of this Agreement for E-Rate Services between School and YCSS (hereinafter referred to as this “Agreement”) is that School retains YCSS to provide consulting about and assistance with E-Rate Services pursuant to a service program under A.R.S. §§ 15-301, 15-302, and/or 15-365.

2.3 The E-Rate Services provided by YCSS are intended to support and enhance student achievement by assisting and guiding School to plan, procure, and implement essential technology assets.

3. **Statutory Authority.**

3.1 The office of county school superintendent 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, and municipal libraries within that county. See A.R.S. § 15-301. YCSS has the authority to provide assistance with E-Rate Services to School pursuant to A.R.S. §§ 15-301 (Office of County School Superintendent), 15-302 (Powers and Duties), and/or 15-365 (Service Programs

Operated Through the Office of a County School Superintendent).

3.2 School has authority to retain the YCSS and request that the YCSS provide consulting about and assistance with E-Rate Services and discretionary programs pursuant to A.R.S. §§ 15-302 (Powers and Duties), 15-343(A) (Employment of Professional Help), 15-365 (Service Programs Operated Through the Office of a County School Superintendent), and/or 15-1261 (E-Rate Application).

4. **Duration/Term.** This Agreement's term is for 1 year and shall be effective from July 1, 2018 until June 30, 2019.
5. **Termination.** The parties may terminate this Agreement with thirty (30) days written notice. 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 incurred prior to the effective date of the termination.
6. **Scope of Work: Services and Duties Provided by YCSS.** Under this Agreement, YCSS shall provide the following services to School:
 - 6.1 YCSS shall consult with and guide School on School's E-Rate application for FY 2018-19.
 - 6.2 YCSS shall provide School with information on and assistance with the E-Rate process and share technical advice on related services and equipment.
 - 6.3 With respect to E-Rate Services procurement, YCSS shall:
 - (a) prepare bid documents and contract documents necessary to procure and contract for E-Rate Services;
 - (b) assist School in publishing the call for bids;
 - (c) assist School with compliance with federal and state procurement regulations; and
 - (d) assist School in scoring and evaluating all bids received.
 - 6.4 YCSS shall assist School in filing, which may include the YCSS filing the forms on behalf of School, the following E-Rate forms: Form 470, 471, 472 (BEAR), 486, and any necessary extension letters, appeals, and/or other related forms.
 - 6.5 YCSS shall assist School with Program Integrity Assurance (PIA) review of Federal Communications Commission (FCC) forms filed by School.

- 6.6 YCSS shall assist School with its determination on reasonable means and methods to obtain the maximum E-Rate discount allowed in accordance with governing rules and regulations.
- 6.7 YCSS shall assist School with its determination on reasonable means and methods to reduce and minimize costs for both E-Rate eligible and ineligible services.
- 6.8 YCSS shall perform all other reasonable, customary, and lawful E-Rate tasks to assist School during this Agreement's term.
- 6.9 YCSS makes no promises or guarantees to School with respect to available E-Rate Services and any discounts and/or reimbursements payable to School. If the FCC and/or SLD requests any adjustments from School and/or requests any adjustments to any discounts and/or reimbursements made to School, such adjustments are the sole responsibility of School.
- 6.10 YCSS shall not accept any gratuity, gift, favor, service, or opportunity from any service provider.
7. **Services Not Provided By YCSS.** YCSS will not select the final E-Rate vendor or advise School which vendor to select.
8. **Scope of Work: Duties Provided by School.** Under this Agreement, School shall provide the following duties and warranties to YCSS:
 - 8.1 School shall provide all information reasonably requested by YCSS in a timely manner.
 - 8.2 School shall designate a responsible, authorized person to:
 - (a) serve as a point of contact for SLD under the direction of the FCC;
 - (b) review all E-Rate Forms;
 - (c) sign all E-Rate Forms; and
 - (d) deal with YCSS on all matters relating to this Agreement.
 - 8.3 School shall fully comply with all E-Rate rules and regulations and all other applicable federal and state laws, including the obligation to certify the representations in and execute the Letter of Agency form attached as Exhibit 1 incorporated by reference herein. School certifies and warrants all information provided to YCSS and certifies and warrants all information provided to the FCC and/or SLD whether provided directly by School or whether provided by

YCSS on behalf of School.

- 8.4 School acknowledges and agrees that if the FCC and/or SLD requests any adjustments from School and/or requests any adjustments to any discounts and/or reimbursements made to School, such adjustments are the sole responsibility of School.
- 8.5 School shall not accept any gratuity, gift, favor, service, or opportunity from any service provider.
9. **Payment and Consideration.** Within 30 days after YCSS invoices School, School shall pay YCSS the invoiced amount for all services provided under this Agreement as follows:
- \$3500.00 for FY 2018-19.
10. **Insurance.** The parties shall maintain appropriate insurance. Certificates of Insurance shall be provided to a party upon request.
11. **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, vendors, subcontractors, or anyone for whose acts School may be liable. School agrees to waive all rights of subrogation against the 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.
12. **Limitation of Liability.** To the fullest extent permitted by law, School agrees that the liability of YCSS, its departments, officers, officials, agents, and/or employees, in connection with services hereunder to School and to all persons having contractual relationships with them, for all causes of action, including, but not limited to, breach of contract and tort, including any negligent act, errors and/or omissions of YCSS, its departments, officers, officials, agents, and/or employees is limited to the total fees actually paid by School to YCSS for services rendered by YCSS under this Agreement.
13. **Notices.** 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:

Cochise County Educational Technology Consortium

Attn: Jacqui Clay

1415 Melody Lane

Building C

Bisbee, AZ 85603

If to YCSS to:

Tim Carter, Yavapai County School Superintendent

2970 Centerpointe East Drive

Prescott, AZ 86301

The parties shall 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 parties. Notice is effective on the date of actual receipt or three days after the date of mailing, whichever is earlier.

14. **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.
15. **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.
16. **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.
17. **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.
18. **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.

19. **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.
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 Agreement, including environmental laws.
21. **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.
22. **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.
23. **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.
24. **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.

25. **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.
26. **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.
27. **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 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.
28. **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.
29. **Alternative Dispute Resolution.** Pursuant to A.R.S. § 12-1518, disputes under this Agreement may be resolved through the use of arbitration.
30. **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.
31. **Written Certification Pursuant to A.R.S. § 35-393.01.** The parties are not currently engaged in, and agree for the duration of this Agreement to not engage in, a boycott of Israel.

32. **Parol 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.
33. **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.
34. **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 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.
35. **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.

APPROVALS

The parties hereto have caused this Agreement to be executed by their duly authorized officials and have affixed their signatures to this Agreement on the date written below.

School:

Cochise County through the Cochise County School Superintendent

Jacqui Clay

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 Cochise County.

Britt Hanson, Chief Civil Deputy

Date: _____

Cochise County Attorney

APPROVED BY:

Peggy Judd, Chair
Cochise County Board of Supervisors

Date: _____

ATTEST:

Arlethe Rios, Clerk of the Board

YCSS:

Yavapai County through the Yavapai County School Superintendent

Tim Carter

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:

Chairman
Yavapai County Board of Supervisors

Date: _____

ATTEST:

Clerk of the Board