

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
COCHISE COUNTY
AND
NACO ELEMENTARY SCHOOL DISTRICT NO. 23
FOR
SERVICES OF SCHOOL RESOURCE OFFICER**

This Intergovernmental Agreement ("Agreement") is entered into this ____ day of _____, 2022, by and between Cochise County, a political subdivision of the State of Arizona ("County"), and the Naco Elementary School District No. 23 ("District"), a political subdivision of the State of Arizona. (County and District are referred to herein individually as a "Party" and collectively as the "Parties").

RECITALS

WHEREAS, Arizona Revised Statutes ("A.R.S."), §§ 15-154 and 15-155 allows the District to participate in and secure funding for a School Safety Program; and

WHEREAS, the District has secured available funding through its Arizona Department of Education School Safety Program Grant to fund the service of one (1) school resource officer ("SRO Services") for District; and

WHEREAS, the County and the District desire to enter into an agreement whereby the County will provide a sworn, certified law enforcement officer to provide SRO Services at the District during the 2022-2023 school year (the "School Year"); and

WHEREAS, the District is authorized to enter into the Agreement, pursuant to A.R.S. §§ 15-342 and 11-952; and

WHEREAS, the County is authorized to enter into this Agreement, pursuant to A.R.S. § 11-952.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

In consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. General Terms and Conditions

- a. Term. The term of this Agreement shall be from July 25, 2023, until May 20, 2024 (the end of the school year), unless otherwise terminated in accordance with this Agreement. This Agreement may be terminated without cause by either party upon thirty (30) day's prior written notice, as provided in Paragraph Lg. of this Agreement.
- b. Relationship of Parties. County shall have the status of an independent contractor for the purpose of this Agreement. The School Safety Officer ("SRO") assigned to the School shall be considered an employee of the County and shall be subject to its control and supervision. The SRO will be subject to the current procedures in effect for law enforcement officers of the Cochise County Sheriff's Office ("Sheriff's Office"), including attendance at all mandated training and testing to maintain law enforcement officer certification. The County, and not the District, shall determine the time of its performance of the SRO Services agreed to in this Agreement, so long as it complies with the scope of work set out in this Agreement in Section 2 and all of its subparagraphs. This Agreement is not intended to, and will not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, or formal business association or organization of any kind between the Parties, and the rights and obligations of the Parties shall be only those expressly set forth in this Agreement. The Parties agree that no person supplied by the District to accomplish the goal of this Agreement is a County employee and no rights under County civil service, retirement, or personnel rules accrue to any such person. The District does not have the authority to supervise or control the actual work of the County, its employees, or its subcontractors.
- c. Chain of Command and Channels of Communication. The Superintendent or Superintendent's designee will communicate directly with the SRO's commanding officer about any issues or concerns involving the SRO.

- d. Coordination of Processes to Address Student Misconduct. The Parties will work together to identify and streamline any separate processes for investigating and responding to acts of student misconduct that may also implicate criminal misconduct.
- e. Records. Parties shall maintain the records required in this Agreement for a period of three years after the termination of this Agreement.
- f. Program Continuation Subject to Appropriation. The provisions of this Agreement for payment of funds by the District shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. If the District is denied the School Safety Grant, it may, at its discretion, initiate an Appeal under the School Safety Manual guidelines. The District shall be the sole judge and authority in determining the availability of funds under this Agreement and the District shall keep the County fully informed as to the availability of funds for this program. The obligation of the District to make any payment pursuant to this Agreement is a current expense of the District, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the District. If the Legislature or Governing Board of the District fails to appropriate money sufficient to pay the reimbursements as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of the then-current fiscal year and the County and the District shall be relieved of any subsequent obligation under this Agreement.

The County is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the County's then current fiscal year. The County's obligations under this Agreement are current expenses subject to the "budget law" and unfettered legislative decision of the County concerning budgeted purposes and appropriation of funds. Should the County elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then current fiscal year term for which such funds were appropriate and budgeted for such purpose and the County shall be relieved of any subsequent obligation under this Agreement. The parties agree that the County has no obligation or duty of good faith to budget or appropriate the payment of the County's obligations set forth in the Agreement in any budget in any fiscal year other than the fiscal year in which the Agreement is executed and delivered. The County shall be the sole judge and authority in determining the availability

of funds for its obligations under this Agreement. The County shall keep the District informed as to the availability of funds for this Agreement. The obligation of the County to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the County. The District hereby waives any and all rights to bring any claim against the County from or relating in any way to County's termination of this Agreement.

- g. Termination. Either Party may terminate this Agreement upon thirty (30) days prior written notice to the other Party at the addresses indicated below. Five (5) days after the District fails to make reimbursements as required by this Agreement, the County may terminate this Agreement by delivering ten (10) days written notice to the District. The District may terminate this Agreement immediately should the School Safety Grant funding become unavailable for any reason. The District further has the right to terminate this Agreement at any time that it appears in the reasonable judgment of the District that the SRO is displaying inappropriate conduct that negatively affects or distracts from the teaching environment. In such an event, the District shall direct the SRO to return to his/her County station and shall immediately contact the SRO's superior officer and/or another person designated by the County by telephone or fax to describe the situation and the District's concern. The County, then, shall have seventy-two (72) hours to correct the problem or to schedule a meeting with the District to attempt to resolve the issue. If the issue cannot be resolved, the District and the County agree:
- i. The County and the District may mutually agree that the School will no longer have an SRO for the remainder of the school year, nor will the District be required to pay for the unfulfilled portion of the SRO's work (although District is required to pay for any work already performed by the SRO), or
 - ii. District may terminate the Agreement; or
 - iii. The County may terminate the Agreement.

The District shall not be required to pay for the SRO's services during any time the SRO is reassigned to the County pending resolution of an issue concerning inappropriate conduct.

- h. Cancellation for Conflict of Interest. This Agreement may be cancelled pursuant to the provisions of A.R.S. § 38-511, regarding conflict of interest.

- i. Public Records Laws. Notwithstanding any provision in the Agreement to the contrary, disclosure of any documents or records are subject to Arizona public records law, A.R.S. §§ 39-121, *et seq.*
- j. Dispute Resolution Process. The Parties agree that they shall use all reasonable efforts to resolve any dispute or claim through good faith negotiations. If the Parties are unable to resolve the dispute or claim through negotiations, upon written request of either party, the County Sheriff or designee, and the Superintendent or designee, will attempt to resolve the matter with ten (10) days of the date of the written request that referred the matter to them. If the matter is not resolved, the Parties may terminate this Agreement pursuant to Paragraph 1.g of this Agreement.
- k. Entire Agreement. This Agreement comprises the entire agreement of the Parties and supersedes any other agreements or understandings, oral and written, whether previous to the execution of this Agreement or contemporaneous herewith. Any amendments or modifications to this Agreement shall be made only in writing and signed by the Parties to this Agreement.
- l. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona and venue shall be in Cochise County, Arizona
- m. Workers' Compensation. Any employee of either Party shall be deemed to be an "employee" of both public agencies while performing pursuant to this Agreement solely for the purposes of A.R.S. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any workers' compensation benefits that may accrue. Each Party shall post a notice pursuant to the provisions of A.R.S. § 23-1022 in substantially the following form:

"All employees are hereby further notified that they may be required to work under the jurisdiction or control or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of worker's compensation."

- n. Indemnification and Hold Harmless Clauses. Each party (as "Indemnitor" agrees to the extent permissible under Arizona law to indemnify, defend, and hold harmless the other party (as "Indemnitee") from and against all claims, losses, liability, costs or expenses (including reasonable court-awarded attorneys' fees)(hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.
- o. FERPA Compliance. The Parties will ensure that the dissemination and disposition of educational records complies at all times with the Family Educational Rights and Privacy Act of 1974 and any subsequent amendments thereto.
- p. Non-Discrimination. The Parties agree to comply with all state and federal law and regulations, including the Americans with Disabilities Act and Executive Orders 99-4 and 2009-09, which are incorporated herein by reference, mandating non-discrimination and requiring that all persons, regardless of age, religion, sex, race, national origin, or political affiliation shall have equal access to employment opportunity.
- q. Property Disposition. The Parties do not anticipate having to dispose of any property upon partial or complete termination of this Agreement. However, to the extent that such disposition is necessary, property shall be returned to its original owner.
- r. E-Verify. The Parties acknowledge that immigration laws require them to register and participate with the E-Verify program (employment verification program administered by the United States Department of Homeland Security and the Social Security Administration or any successor program) as they both employ one or more employees in this state. The Parties warrant that they have registered with and participate with E-Verify. If either Party later determines that the other non-compliant Party has not complied with E-Verify, it will notify the non-compliant Party by certified mail of the determination and the right to appeal the determination.

To the extent applicable under A.R.S. § 41-4401, the Parties and their subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-Verify

requirements under A.R.S. § 23-214(A). The Parties also agree that any violation of this requirement shall be deemed a material breach of the contract that is subject to penalties up to and including termination of this Agreement. The Parties acknowledge that the other party retains the legal right to inspect the papers of the other Party's contractor and subcontractor employees that work on this Agreement to verify such compliance.

- s. Fingerprinting Requirements. The County represents and warrants that it will ensure that each officer assigned to perform services on district property pursuant to this Agreement will be fingerprinted and successfully complete a background check performed by the County before such assignment.
- t. Severability and Savings. If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion without inequity to the Parties.
- u. Notices. All notices relating to this Agreement shall be deemed given when mailed, by certified or registered mail, or overnight courier, to the other Party at the address set forth below or such other addresses as may be given in writing from time to time:

If to COUNTY: Cochise County Sheriff's Office
Attn: Tom Alinen, Chief of Staff
205 N. Judd Drive
Bisbee, Arizona 85603
Email: talinen@cochise.az.gov
Phone: (520) 432-9509

With a copy to: Cochise County Attorney's Office
Attn: Christine J. Roberts, Esq.
100 Higgins Hill
P.O. Drawer CA
Bisbee, Arizona 85603
Email: croberts@cochise.az.gov
Phone: 520-432-8700

If to DISTRICT: Naco Elementary School District No. 23
Attn: Tim Mayclin, Superintendent
1911 West Valenzuela Street -PO Box 397
Naco, Arizona 85620

With a copy to: Udall Shumway, PLC
Attn: Jessica Sanchez
1138 N. Alma School Road, Ste. 101
Mesa, Arizona 85201

- v. Time References. All references to "days" within this Agreement mean calendar days, and not business days.
 - w. Both parties to the Agreement accept the guidelines as set out in the School Safety Program Manual, which is attached as Exhibit A to this Agreement.
2. Obligations of the County:
- a. During the School Year, the County shall provide SRO Services to the District on an hourly basis, as required by the Superintendent, but not to exceed forty (40) hours per week. In determining which County Officer(s) to assign as SRO to the District, the County will review and consider the SRO Recommended Qualifications and Recommended Job Description set out in the School Safety Program guidelines (Ex. A). If feasible in the sole discretion of County, the SRO assigned to the school will be the same individual from year to year if new agreements are executed for the remainder of the School Safety Program Grant. The County agrees that in the event it provided SRO Services throughout the three- year School Safety Grant Program, it will assign no more than three separate SROs to District during the three-year cycle.
 - b. The County agrees to involve the District in the selection process for assigning an officer to the SRO position if the currently assigned officer must be replaced. This process will include allowing the District's Superintendent or designee to be on the final selection committee once the County has identified final candidates for the position. The County agrees that it will select an officer for the SRO position who demonstrates a commitment to the goals of the School Safety Grant.
 - c. The County will invoice the District for payment of the SRO's services on a monthly basis.

- d. During the days the School is not in session, the law enforcement officer assigned as an SRO shall perform his/her regular law enforcement duties at a station as determined by the Cochise County Sheriff or his/her designee. The County agrees that it is responsible for 100% of the SRO's salary and expenses when the SRO is assigned to work at another location during times the School is not in session.
- e. The County shall ensure that the designated County law enforcement officer(s) performing SRO Services attend annual training provided by the Arizona Department of Education ("ADE").
- f. The County shall ensure that the SRO's supervisor attends training provided by the ADE.
- g. The SRO(s) performing SRO Services shall fulfill their duties as sworn law enforcement officers for the State of Arizona. SROs must be present and accessible on the District campuses as assigned by the Grant. Absent an emergency, the SRO shall not be called away from the District. If the SRO is called away on law enforcement business, including but not limited to County-mandated training, County-mandated meetings, County-related emergencies, etc., the District shall not be invoiced for that time and the costs shall be borne by the County. If the SRO is attending an SRO-related training or other activity mandated by the Grant, the District shall be invoiced for that time.
- h. The County shall ensure that the SRO(s) assigned to the District complete 180 hours of Law Related Education ("LRE"), which shall consist of 80 hours of classroom instruction to ongoing cohort groups of students, and at least 100 hours of universal instruction.
- i. The SRO will maintain a weekly activity log that tracks his/her LRE instruction hours, teacher and subject or staff/community group the instruction was directed at, the topic of each LRE lesson, and the time that the SRO spends off the assigned the District campus during duty hours. The SRO shall also provide a monthly recap of LRE activities, law enforcement activity, and time on campus to be presented to the Superintendent.
- j. The County shall, within ten (10) business days of a request by the District, provide verification to the District of the SRO's successful criminal records

check, e.g., a copy of current fingerprint clearance card, copy of criminal records report, etc.

- k. The SRO assigned to the District shall:
- i. Serve as a liaison between the Schools and the Cochise County Sheriff's Department.
 - ii. Solicit and promote crime prevention and police/community relations in School and/or to other groups that have a potential impact on juvenile crime.
 - iii. Consult with students, parents, teachers, and District/School officials regarding problems and issues and will be knowledgeable of referral agencies in order to provide information to the requesting parties.
 - iv. Work with other unit members and School personnel and provide supervision in a positive, cooperative, and productive manner.
 - v. Enforce all applicable laws in a fair and consistent manner.
 - vi. Perform tasks or assignments as instructed by the law enforcement officer's supervisor.
 - vii. Educate the students and School personnel by providing relevant and informative educational programs.
 - viii. Be flexible in his/her work schedule to attend major events (without causing the SRO to incur overtime hours) as deemed appropriate by School administration.
 - ix. Maintain a highly visible presence on and around campus.
 - x. Be available for duty at the District each day that School is in session during the regular school year. Other than any Sheriff's Office-related activities that the SRO may perform when not at the School, the SRO's activities will be restricted to the District except for:
 1. Follow-up home visits when needed as a result of School-related student problems.
 2. Incentive programs approved by the Parties.
 3. In response to off-campus, but School related criminal activity.
 4. In response to emergency police activities.
 5. To attend mandatory Sheriff's Office meetings.
 6. To attend mandatory Sheriff's Office programs to maintain continuing proficiency standards to maintain law enforcement officer certification.
 7. To attend any scheduled court hearings, trials, or grand jury that requires the SRO's appearance.

3. Obligations of the District:

- a. The District shall reimburse the County monthly for the services the County provides pursuant to its obligations identified in Paragraph 2 of this Agreement. Specifically, the District agrees, subject to the provisions set out in subsections I and ii of this Paragraph, to pay the County an amount not to exceed \$75,100.00 for the 2022-2023.
 - i. The District will not pay for SRO Services for any times that school is not in session, nor for any personal vacations or sick leave taken by the SRO during times that school is in session. The Fiscal Year (FY) 2023 School Safety Program application is year one of a three-year grant. Requests for salary and benefits (under purchased professional services) for a continuing officer must be consistent with the FY 2023 approved salary and benefits amount for that officer. Upward adjustments in salary and benefits cannot be accepted. If the actual salary of an officer is less than what was approved in FY 2023, the lesser amount of the two must be requested.
 - ii. The SRO's time worked at THE DISTRICT must be substantiated by timecards and approved by the Superintendent or his/her designee. The County shall bear the cost of the SRO's overtime worked on school-related investigations, provided that the SRO obtains approval in advance from the Sheriff's Office. The District shall not use Program Grant funds to pay any part of overtime costs for the SRO's overtime. The SRO must obtain approval from the Sheriff's Office before working on any school-related overtime. Overtime payments shall not exceed, under any circumstance, twenty (20) hours annually. The County shall pay 100% of the SRO's costs during the one-month summer vacation and any other times that school is not in session and the County assigns the SRO to County related duties.
 - iii. The District shall pay invoices from the County within fifteen (15) days of receipt, so long as proper documentation is on file to support the invoiced amount.
- b. The District shall provide office space that provides privacy for the SRO to conduct confidential business. The office shall include the necessary equipment for the SRO to effectively perform his/her duties.
- c. The District will complete an SRO performance assessment twice per year. The SRO(s) will assist the Superintendent with the preparation of the

assessment based upon requirements of ADE and the District. The District will share the performance assessment with the SRO's TPD supervisor.

- d. The District shall provide \$100 for classroom instructional supplies for the SRO as may be incurred throughout the School Year. The District shall pay travel-related expenses incurred by the SRO for attending mandatory ADE SRO training, if the grant allocates funding.
- e. No District administrator shall interfere with the sworn law enforcement duties of an SRO. The SRO shall not be responsible for assistance in administrative discipline, unless a definitive danger is perceived by school staff, or the student is suspected of breaking a criminal law.
- f. The District shall provide a complete copy of the School Safety Program grant application and award to each SRO when s/he begins service at the District.

IN WITNESS WHEREOF, the County and the District have executed this Agreement as of the date of the last signature set forth below.

COCHISE COUNTY

Ann English, Chair
Cochise County Board of Supervisors

Date

ATTEST:

Tim Mattix, Clerk
Cochise County Board of Supervisor

NACO ELEMENTARY SCHOOL DISTRICT NO. 23

Tim Mayclin, Superintendent
Naco Elementary School District No. 23

Date

In accordance with the requirements of A.R.S. § 11-952(D), the undersigned attorneys acknowledge that (i) they have reviewed the above Agreement on behalf of their respective clients and that (ii) as to their respective clients only, each attorney has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

Christine J. Roberts

Christine J. Roberts, Chief Civil Deputy
Cochise County Attorney's Office

Date: 12/21/2022

Jessica S. Sanchez, Attorney for the District

Date: _____

EXHIBIT A
TO
INTERGOVERNMENTAL AGREEMENT
BETWEEN
NACO ELEMENTARY SCHOOL DISTRICT NO. 23
AND
COCHISE COUNTY FOR SCHOOL RESOURCES
OFFICER SERVICES

[SCHOOL SAFETY PROGRAM GUIDANCE MANUAL]

SEE FOLLOWING PAGES.