

**INTERGOVERNMENTAL AGREEMENT FOR SPECIAL EDUCATION SERVICES
BETWEEN POMERENE ELEMENTARY DISTRICT NUMBER 020364000
AND COCHISE COUNTY
FY 2023 – 2024**

This Intergovernmental Agreement for Special Education Services (hereinafter referred to as this “IGA”) is made and entered into by and between POMERENE ELEMENTARY DISTRICT NUMBER 020364000 (hereinafter referred to as “DISTRICT”) and Cochise County through the Cochise County School Superintendent also known as Cochise County Education Service Agency (hereinafter referred to as “CochisESA”). DISTRICT and CochisESA may each be referred to individually as a “Party” or “party” and collectively as the “Parties” or “parties.”

RECITALS

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

WHEREAS, the CochisESA 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 pursuant to A.R.S § 15-301; and,

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

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

WHEREAS, each party is authorized to provide special education and related services for all children with disabilities and make such programs and services available to all eligible children with disabilities who are at least three years but less than twenty-two years of age pursuant to A.R.S. § 15-764; and,

WHEREAS, the parties are authorized and wish to enter into this IGA for joint or cooperative action for the CochisESA to provide support to DISTRICT for special education services for all children with disabilities pursuant to A.R.S. § 11-952.

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 CochisESA, 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 2023-2024 (hereinafter referred to as "FY 2023-24") from July 1, 2023, through June 30, 2024.
2. **Termination.** The parties may terminate this IGA with thirty (30) days written notice specifying the termination date. Any termination of this IGA shall not relieve the parties of responsibility for their costs incurred prior to the effective date of the termination.
3. **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.
4. **Scope of Services.** CochisESA agrees to provide the following services to DISTRICT, as provided for in **Exhibit A**, to support the special education services DISTRICT provides to its students with disabilities during the term of this IGA for FY 2023-24.
5. **Payment and Consideration.** CochisESA shall invoice DISTRICT for special education services provided pursuant to this IGA. DISTRICT is responsible for and shall pay all charges assessed by CochisESA in accordance with this IGA within thirty (30) days of the date of any invoice from CochisESA.
6. **Confidentiality of Student Records; Privacy of Records.** 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.
7. **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.
8. **Non-appropriation of funds.** The parties recognize and acknowledge that DISTRICT and COCHISESA 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 DISTRICT's or CochisESA's obligations under this IGA, then DISTRICT or CochisESA, as appropriate, 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 DISTRICT or COCHISESA, except that the parties are still responsible for their costs incurred prior to any expiration of this IGA. If DISTRICT's or CochisESA's allocation of funds are 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 costs

incurred prior to any cancellation of this IGA.

9. **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.
10. **Insurance.** Each party shall maintain appropriate insurance. Certificates of Insurance shall be provided to a party upon request.
11. **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.
12. **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:

POMERENE ELEMENTARY DISTRICT NUMBER 020364000
Attn: Michael Sherman, Superintendent
1396 N. Old Pomerene Rd.,
Benson, AZ 85602

If to CochisESA to:

Cochise County School Superintendent
Attn: Jacqui Clay
4001 Foothills, Suite 1
Sierra Vista, AZ 85615

The parties shall have the right from time to time to change the place notice is to be given in accordance with this paragraph by written notice thereof to the other parties.

13. **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.
14. **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 CochisESA. This IGA is not intended to benefit any third party.

- 15. 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 parties. No party may delegate any performance under this IGA, 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.
- 16. 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.
- 17. 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.
- 18. 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.
- 19. 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.
- 20. 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.

- 21. 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.
- 22. 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.
- 23. Governing Law.** This IGA shall in all respects be interpreted and construed in accordance with and governed by the laws of the State of Arizona. The parties agree to bring any legal proceedings arising under this IGA in a state or federal court of competent jurisdiction within Cochise County, Arizona. Any changes in governing laws, rules, and regulations that do not materially affect this IGA will apply during the term of this IGA and will not require an amendment.
- 24. 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 CochisESA 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.
- 25. 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.
- 26. 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.
- 27. 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.
- 28. 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. 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.

- 29. 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.
- 30. 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.
- 31. 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.
- 32. 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

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: POMERENE ELEMENTARY DISTRICT NUMBER 020364000


Signature

Date: 8.14.23

Michael L. Sherman Superintendent
Printed Name and Title

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: 7/24/2023

C. Benson Hufford
Printed Name

CochisESA: Cochise County through the Cochise County School Superintendent also known as the Cochise County Education Service Agency

Jacqui Clay
Cochise County School Superintendent

Date: _____

Peggy Judd, Chairman
Cochise County Board of Supervisors

Date: _____

ATTEST:

Sharon Gilman, Interim Clerk of the Board
Cochise 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 CochisESA, 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 CochisESA.

Date: _____

Christine J. Roberts, Esq.
Chief Civil Deputy Cochise County Attorney

Exhibit A

CochisESA agrees to provide the following services to DISTRICT to support the special education services DISTRICT provides to its students with disabilities during the term of this IGA for FY 2023-24 for the costs specified below:

CochisESA will offer services to DISTRICT at the following rates for SY23/24:
These services cover evaluation, screening, METs/IEPs, Counseling, Functional Behavioral Assessment, Functional Behavioral Plans, and Coaching.

Service	Full-day Rate	Half-day Rate	Hourly Rate
School Psychologist	\$500	\$250	\$66
School Psychologist Assistant	\$400	\$200	\$50
Behavioral Inter. Specialist	\$300	\$150	\$40
Behavioral Inter. Coach	\$280	\$140	\$35
Child Find Screening	\$1000		