

MEMORANDUM OF AGREEMENT

FY 2023-2024

**MEMORANDUM OF AGREEMENT FOR SPECIAL EDUCATION SERVICES
BETWEEN CENTER FOR ACADEMIC SUCCESS, INC. NUMBER 028750000
AND COCHISE COUNTY**

This Memorandum of Agreement for Special Education Services (hereinafter referred to as this "Agreement") is made and entered into by and between **CENTER FOR ACADEMIC SUCCESS, INC., NUMBER 028750000**, a Charter School (hereinafter referred to as ("School")) and Cochise County through the Cochise County School Superintendent also known as Cochise County Education Service Agency (hereinafter referred to as ("CochisESA")). School and CochisESA may each be referred to individually as a "Party" or "party" and collectively as the "Parties" or "parties."

RECITALS

WHEREAS, School is authorized to enter into this Agreement with CochisESA pursuant to A.R.S. § 15-183(H).

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 district, and municipal libraries within that county pursuant to A.R.S § 15-301; and,

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

WHEREAS, CochisESA may establish service programs pursuant to A.R.S. § 15-365 and School may participate in such service programs; 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 § 15-183; and,

WHEREAS, the parties are authorized and wish to enter into this Agreement for joint or cooperative action for the CochisESA to provide support to School for special education services for all children with disabilities enrolled in School.

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, School and CochisESA, intending to become legally bound, agree as follows:

1. **Duration/Term.** This Agreement'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 Agreement with thirty (30) days written notice specifying the termination date. Any termination of this Agreement 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 Agreement is subject to cancellation for conflict of interest pursuant to ARS § 38-511, the pertinent provisions of which are incorporated into this Agreement by reference.
4. **Scope of Services.** CochisESA agrees to provide the following services to School, as provided for in **Exhibit A**, to support the special education services School provides to its students with disabilities during the term of this Agreement for FY 2023-24.
5. **Payment and Consideration.** CochisESA shall invoice School for special education services provided pursuant to this Agreement. School is responsible for and shall pay all charges assessed by CochisESA in accordance with this Agreement 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 School 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 Agreement 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 Agreement for a period of five (5) years after termination of this Agreement.
8. **Non-appropriation of funds.** The parties recognize and acknowledge that CochisESA is a governmental entity, and that School is a charter school funded by public monies 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 School's or CochisESA's

obligations under this Agreement, then School 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 Agreement shall automatically expire without penalty to School or CochisESA, except that the parties are still responsible for their costs incurred prior to any expiration of this Agreement. If School's or CochisESA's allocation of funds are reduced, then the scope of this Agreement may be reduced, if appropriate, or this Agreement 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 Agreement.

- 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 Agreement. Any property acquired during the term of this Agreement shall be returned to the purchasing Party no more than thirty (30) days from the effective date of termination of this Agreement.
- 10. Insurance.** Each party shall maintain appropriate insurance. Certificates of insurance shall be provided to the 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 Agreement 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 Agreement 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 School to:

CENTER FOR ACADEMIC SUCCESS, INC., NUMBER 028750000

Attn: Vada Phelps, CAS Superintendent

900 Carmelita Drive

Sierra Vista, AZ 85635

If to CochisESA to:

COCHISE COUNTY SCHOOL SUPERINTENDENT

Attn: Jacqui Clay

4001 Foothills, Suite 1

Sierra Vista, AZ 85635

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 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.
- 14. 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 CochisESA. This Agreement is not intended to benefit any third party.
- 15. 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.
- 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 Agreement, 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 Agreement 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 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, 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 or subcontractor employee who

performs work pursuant to this Agreement to verify performance of the foregoing warranty of compliance with the State and Federal Immigration Laws.

- 20. Worker's 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.
- 21. Alternative Dispute Resolution.** Pursuant to A.R.S. § 12-1518, disputes under this Agreement 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 Agreement.
- 23. 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. The parties agree to bring any legal proceedings arising under this Agreement 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 Agreement will apply during the term of this Agreement 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 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 CochisESA 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.
- 25. 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.
- 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. 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.
- 28. 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.
- 29. 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.
- 30. 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.
- 31. 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.
- 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.

APPROVALS

The parties 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: CENTER FOR ACADEMIC SUCCESS, INC. NUMBER 028750000

Vada J. Phelps
Signature

Date: 8/14/23

Vada J. Phelps Executive Director
Printed Name and Title

DETERMINATION OF COUNSEL: The foregoing Agreement has been reviewed by the undersigned attorney for School, who 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 to School.

Kathleen H. Brantingham
Signature

Date: 8/14/23

Kathleen H. Brantingham
Printed Name for Udell Shumway, P.L.C.

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

Date: _____

DETERMINATION OF COUNSEL: Pursuant to A.R.S. Section 11-952(D), the forgoing Agreement has been reviewed by the undersigned attorney for CochisESA, who 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 to CochisESA.

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

Date: _____

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 which reflect a 10% discount for signing up before the end of May 2023 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	\$450	\$225	\$60
School Psychologist Assistant	\$360	\$180	\$45
Behavioral Inter. Specialist	\$270	\$135	\$36
Behavioral Inter. Coach	\$252	\$130	\$31
Child Find Screening	\$900		