

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE ASH CREEK ELEMENTARY SCHOOL DISTRICT NO. 53
AND
THE COCHISE COUNTY LIBRARY DISTRICT**

This Intergovernmental Agreement (“Agreement”) for a branch library is entered into between Cochise County Library District (“Library District”) and the Ash Creek Elementary School District No. 53 (“School”) as of the date last signed by both parties and approved by their respective governing boards.

RECITALS:

WHEREAS, it is the desire of the parties to enter into an agreement to continue to jointly operate the School's library as a branch library for the Library District; and

WHEREAS, the joint operation of the School's library as partially a school library for the Ash Creek Elementary School and partially as a branch library for the Library District is deemed by the School Governing Board to promote the educational function of the School; and

WHEREAS, pursuant to A.R.S. §§ 11-901, et seq., and 48-3901, et seq., the Library District is a county free library district within Cochise County; and

WHEREAS, pursuant to A.R.S. § 11-909(A), the Library District has authority to establish branch libraries throughout Cochise County (“County”); and

WHEREAS, pursuant to A.R.S. § 15-362(C), the School’s Governing Board may enter into a contract or agreement with the authorities of a county free library or other public library possessing facilities for rendering the desired service for the procurement of other library books or the extension services of such library; and

WHEREAS, pursuant to A.R.S. § 15-1105(B), the School's Governing Board may permit the uncompensated use of school property for an educational or civic purpose; and

WHEREAS, pursuant to A.R.S. § 11-951, et. seq., both parties are authorized to enter into this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and provisions contained in this Agreement and other good and valuable consideration, the adequacy of which is hereby acknowledged, the School and the Library do now agree to cooperate with each other in carrying out the above purposes and agree as follows:

Section 1. **License.** The School grants to the Library District the right to continue to house and operate its branch library jointly with the School library, which shall be open, during branch hours, to all residents of Cochise County.

Section 2. **Space Allotted.** The joint library shall continue to be located in the historic Ash Creek School building.

Section 3. **Term.** This Agreement shall commence July 1, 2025. The initial term of this Agreement shall be for four years and, unless extended, shall terminate on June 30, 2029. The parties may extend the term of this Agreement by the written consent of both parties.

Section 4. **Utilities and Fixtures.** The School shall provide to the Library District, without charge, all the necessary utilities, such as light, heating, and cooling, which are needed for the operation of the branch library.

Section 5. **Equipment, Materials and Supplies.** Both the School and the Library District shall purchase equipment, library materials, and supplies for the joint library, according to the needs of each party's own use. Equipment, materials, and supplies purchased by one party remain the property of that party, and any shared use shall be determined by further agreement of the parties. Otherwise, the equipment, materials, and supplies shall be labelled and stored separately.

Section 6. **Hours of Operation.** The branch library shall be allowed to be open to the public on such days and at such times as shall be agreed upon by the Library District and the School.

Section 7. **Volunteers.** It is expressly understood that the branch library will be partially staffed by volunteers, who will be under the direction and supervision of a Branch Coordinator hired by the Library District. In this regard, the Branch Coordinator will provide the School and the Library District with a list of volunteers who will be working in the branch library. In operating the branch library, neither the Library District nor any volunteer of the Library District shall be considered an employee of the School. However, both the Library District and any volunteer of the Library District will at all times conform to any and all laws and School rules and regulations pertaining to the use and occupancy of the School premises. The School shall have the right to require the removal from School premises of any volunteer whose conduct shall be unsatisfactory to the School. Neither party shall be liable for the negligent or tortious acts of the other's volunteers, including during times in which the party whose volunteer is at fault does not have operational control of the premises.

Section 8. **Branch Coordinator.** The Library District will hire a qualified person to perform the functions of Branch Coordinator. Among other duties, the Branch Coordinator shall arrange for the branch library to be open at all regularly scheduled hours; recruit, train, and supervise volunteers; and act as liaison with the School and any employee of the School who may be responsible for providing the services of the School library to teachers and students. The Library District shall invite the School Superintendent or his/her delegate to participate in the interview process when a new Branch Coordinator is to be hired.

Section 9. **Joint Collections** The collections of the Library District and the School shall be interfiled, and the furniture, equipment, and shelving arranged, as agreed upon by the Library District and the School. Procedures which affect both the School library and the branch library shall be jointly developed and agreed upon by the Library District and the School. The joint library shall be a member of the Library District's computer network, and the School will catalog and circulate the School library materials on this network. The School will participate as a borrower and lender in the Library District's countywide and national interlibrary loan systems. The School may use its own policies on circulation, computer use, and other library services during School hours, and the branch may use the Library District's policies during branch hours.

Section 10. **Obligations of the Parties.** In consideration for this Agreement, the Library District shall provide, through the branch library, books and other materials for the students and faculty of the School, and for other residents of the branch library community and Cochise County, as well as library services such as reference, interlibrary loan, and access to the countywide online system. In addition, the Library District will provide in-service training for volunteer staff and assistance with branch library projects. The amount, time, place and manner of provision of such services shall be determined by the Library District in consultation with the School and with volunteer staff.

Section 11. **Financing.** Except as noted in the previous section, each party shall be responsible for any financing required to perform its obligations pursuant to this Agreement, and there shall be no exchange of funds between the parties.

Section 12. **Condition of Premises.** The Library District shall keep the School's premises in good and sightly condition, insofar as it may be affected by the Library District's operations hereunder. The School will be responsible for janitorial service, maintenance, and repair of the building.

Section 13. **Community Input.** To give the community an opportunity to comment on the policies and services of the branch library, the Library District will annually, or more frequently as needed, call a public meeting. This meeting may be held in conjunction with a meeting of the School's Governing Board. The time, date, and agenda for each meeting will be posted at the branch library. In addition, the Library District will mail a notice of the meeting to the Superintendent of the School, if the meeting is not a joint event.

Section 14. **Indemnification.** The Library District shall indemnify and hold the School, its governing board members, employees and agents harmless from any and all claims for damages of any kind whatsoever including costs and attorney's fees, arising or in any manner occasioned by the negligence or intentional torts of the Library District, its board members, employees and agents, in connection with the Library District's duties under this Agreement, or the Library District's use and occupancy of the School premises. The Library District shall indemnify the School for any acts of a Library District volunteer that causes the School to be liable for damages in connection with injuries occurring on School property.

The School shall indemnify and hold the Library District, its board members, employees and agents harmless from any and all claims for damages of any kind whatsoever, arising or in any manner occasioned by the negligence or intentional torts of the School, its board members, employees and agents, in connection with the School's duties under this Agreement.

The mutual indemnification provisions of this Section shall not apply with respect to the personal or real property of the parties; that is, the Library District and the School hereby waive any and all right to recovery from each other for loss to personal or real property belonging to the parties, or loss of use thereof, howsoever occurring, except that any library user shall be responsible for the care and return of any item borrowed from the branch library. The Library District and the School agree to notify their respective insuring companies of this mutual waiver provision.

Section 15. **Insurance.** The Library District agrees to take out and keep in force during the life of this Agreement, general liability insurance in such amounts as is necessary to protect against any liability incident to the duties of the Library District under this Agreement, or the Library District's use and occupancy of the School's premises.

It is permissible for the Library District to be a self-insurer as to any required insurance. In the event that the Library District elects to self-insure, any and all losses shall be paid by the Library District to the extent of the Library District's liability for loss, damage or otherwise.

The Library District shall provide the School with a Certificate of Insurance naming the School as an additional insured for its use of School property.

The School shall maintain and provide the Library District with proof of sufficient liability insurance to cover its activities and obligations pursuant to this Agreement.

Section 16. **Assignment.** This Agreement is not assignable, and any attempt to assign any of the rights, duties or obligations of this Agreement is void.

Section 17. **Prior Agreements.** This Agreement shall supersede any prior agreements between the parties with respect to the joint operation of a library.

Section 18. **Termination.** This Agreement may be terminated by either party for any reason by giving ninety (90) days written notice thereof to the other.

Section 19. **Ownership of Property.** Each party shall remain sole owner of any property it owns at the outset of this Agreement or of any property it acquires during the duration of the Agreement; no joint purchase of property is contemplated hereunder.

Section 20. **Choice of Law.** This Agreement shall be construed under the laws of the State of Arizona and shall incorporate by reference all laws governing the mandatory contract provisions of state agencies required by statute or executive order.

Section 21. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties except for applicable state or federal law governing the relationship between the parties. Any subsequent amendment or addenda to this Agreement must be in writing and signed by both parties.

Section 22. **Legal Review.** Pursuant to A.R.S. § 11-952(D), an attorney for the School and an attorney for the Library District must review this Agreement. Copies of these authorizations are attached to this Agreement at page 9.

Section 23. Student Privacy. To the extent the parties interact with student records as a result of this Agreement, all written student records shall be kept confidential in accordance with all applicable Arizona and Federal laws and rules including the Family Rights and Privacy Act (FERPA) and regulations adopted pursuant to that Act, the Reauthorization of the Individuals with Disabilities Education Act (“IDEA”) and regulations adopted thereunder, and applicable School Board Policies as to the disclosure of personally identifiable information from students’ education records.

Section 24. Non-Discrimination. Pursuant to Executive Order 2009-09, the parties shall comply with all applicable Arizona and Federal employment laws, rules, and regulations which requires that all persons shall have equal access to employment and educational opportunities regardless of race, color, religion, disability, sex (including sexual orientation or gender identity), age, national origin, veteran’s status, genetic code or political affiliation during the term of this Agreement.

Section 25. Cancellation for Conflict of Interest. This Agreement may be canceled pursuant to A.R.S. § 38-511, the applicable provisions of which are incorporated herein by reference.

Section 26. Workers Compensation. An employee of either party shall be deemed to be an “employee” of both public agencies while performing pursuant to this Agreement for purposes of A.R.S. § 23-1022 and the Arizona Workers’ Compensation laws. The primary employer shall be solely liable for any worker’s compensation benefits which may accrue. Each party shall post a notice pursuant to the provisions of A.R.S. § 23-906 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 workers’ compensation.”

Section 27. **E-verify, Records, and Audits.** To the extent applicable under A.R.S. § 41-4401, each party and their respective 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). A Party's or its subcontractors' breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in termination of the Agreement by the non-breaching Party under the terms of this Agreement. Each Party has the legal right to randomly inspect the papers and records of the other Party and its subcontractors who work under this Agreement to ensure that that the other Party and its subcontractors are complying with the above-mentioned warranty. Each Party warrants to keep their respective papers and records open for random inspection during normal business hours by the other party. Each Party and their respective subcontractors shall cooperate with the other Party's random inspections including granting the inspecting Party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

Section 28. **Availability of Funding for Each Successive Fiscal Year.** All parties acknowledge that the School is a government entity and this Agreement's contract validity is based upon the availability of public funding under its authority to operate. In the event that the public funds are unavailable and not appropriate for the performance of either party's obligations under this Agreement, then this Agreement shall automatically expire without penalty to either party after written notice of the unavailability and non-appropriations of public funds. It is expressly agreed that the School shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of the Agreement, but only as an emergency fiscal measure.

Section 29. **Severability.** The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a court of competent jurisdiction shall not affect any other provision or application of the Agreement, which may remain in effect without the invalid provision or application.

Section 30. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be considered an original, and all of which taken together shall be considered one and the same instrument.

Section 31. Relationship and Responsibility of the Parties. It is clearly understood that each Party will act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other. An employee or agent of one Party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever except as provided in Section 26 above. Each party agrees to be responsible for the conduct of its operations and performance of contract obligations and for any accidents or injuries to persons or property arising out of acts or omissions by its officers, agents or employees acting in the course or scope of their employment while performing duties undertaken pursuant to this Agreement

Section 32. Notices. Any notice required or permitted hereunder shall be in writing and shall be deemed given if delivered in person, electronic mail with delivery receipt, or three (3) days after mailing, by United States registered or certified mail, postage prepaid, and addressed to the following:

For the School:

Its Superintendent
6460 E Highway 181
Pearce, AZ 85625
520-824-3340

For the Library:

Its Director
1415 W Melody Lane, Building C
Bisbee, AZ 85603
520-432-8935

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

ASH CREEK ELEMENTARY SCHOOL
DISTRICT NO. 53

COCHISE COUNTY LIBRARY DISTRICT

By:
Its:
Dated:

By:
Its:
Dated:

APPROVAL OF ATTORNEY FOR BOTH PARTIES

This Intergovernmental Agreement has been reviewed pursuant to A.R.S. § 11-952 by the undersigned counsel of the respective parties, who have determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to each of the parties.

For the District



By: Kimberly R. Davis, Udall Shumway PLC
Dated: March 24, 2025

For the Library District



By: Denise Riden, Cochise County Deputy Attorney
Dated: March 20, 2025