

Intergovernmental Agreement

Date: July 1, 2013

Parties: Yavapai County Free Library District, an Arizona library district (“District”)
Yavapai County Education Service Agency (“YCESA”), the statutory educational service agency for Yavapai County Schools.

Statutory Authority:

1. YCESA is the statutory educational service agency for Yavapai County Schools. *See* Ariz. Rev. Stat. § 15-301.
2. YCESA and the District may enter into an intergovernmental agreement to (a) procure goods or services, (b) jointly exercise powers common to YCESA and the District, and (c) take joint or cooperative action. *See* Ariz. Rev. Stat. § 11-952.
3. YCESA and the District join together and by this Intergovernmental Agreement procure and provide services and take joint, cooperative action as follows.

Agreements:

YCESA and the District agree to jointly and cooperatively procure and provide services, exercise powers, and take concerted action in accordance with the terms and conditions of this Intergovernmental Agreement.

1. Purpose. The District retains YCESA to provide E-Rate Services consulting.

1.1 Universal Service Administrative Company’s Schools and Library Program, commonly known as “E-Rate,” provides discounts of up to 90% to assist most schools and libraries in the United States to obtain affordable telecommunications and Internet access. YCESA assists school districts and individual schools to comply with applicable regulations and to obtain all available E-Rate Services at the lowest cost.

1.2 YCESA is the successor in interest to Educational Technology Associates L.L.C., the firm that previously provided these services to the District. The E-Rate Services provided by YCESA are intended to support and enhance student achievement by assisting and guiding the District to plan, procure, and implement essential technology assets.

2. YCESA’s Scope of Services. Under this Intergovernmental Agreement, YCESA shall provide the following specific services to the District.

2.1 YCESA shall consult with and guide the District on the District's E-Rate application for FY 2013-14, 2014-15, and 2015-16.

2.2 YCESA shall advise and train the District on the E-Rate process and share technical advice on related services and equipment.

2.3 With respect to E-Rate Services procurement, YCESA shall: (1) prepare bid documents and contract documents necessary to procure and contract for E-Rate Services; (2) assist the District in publishing the call for bids; (3) advise the District on compliance with federal and state procurement regulations; and (4) assist the District in scoring and evaluating all bids received.

2.4 YCESA shall assist the District in filing the following E-Rate forms: Form 470, 471, 472 (BEAR), 486, and any necessary extension letters, appeals, and/or other related forms.

2.5 YCESA shall guide the District through any Program Integrity Assurance (PIA) review of FCC forms filed by or on the District's behalf.

2.6 YCESA shall advise the District on reasonable means and methods to obtain the maximum E-rate discount allowed by governing rules and regulations.

2.7 YCESA shall advise the District on reasonable means and methods to reduce and minimize costs for both E-Rate eligible and ineligible services.

2.8 YCESA shall perform all other reasonable, customary, and lawful E-Rate tasks to assist the District during this Agreement's term.

2.9 YCESA shall not accept any gratuity, gift, favor, service, or opportunity from any service provider.

3. Services not provided by YCESA. YCESA will not provide the following services:

3.1 YCESA will not select the final E-Rate vendor or advise the District which vendor to select;

3.2 YCESA will not sign, nor may the District authorize YCESA to sign, any E-Rate Forms.

4. District Responsibilities. The District shall provide all information reasonably requested by YCESA in a timely manner. The District shall designate a responsible, authorized person to: (1) serve as a point of contact for Universal Service Administrative

Company's School and Libraries Division (SLD); (2) review and sign all E-Rate Forms; and (3) deal with YCESA on all matters relating to this Intergovernmental Agreement. The District 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 and incorporated into this Agreement as **exhibit 1**. The District shall not accept any gratuity, gift, favor, service, or opportunity from any service provider.

5. Duration. This Intergovernmental Agreement's term is three years (FY 2013-16).

6. Consideration. Within 30 days after YCESA invoices the District, the District shall pay YCESA \$_____ for all services provided under this Intergovernmental Agreement for FY 2013-14. YCESA will establish fees for subsequent years, which the District shall pay, if it accepts the amount of the fees, within 30 days after YCESA invoices the District.

7. Termination. The District may withdraw from this Intergovernmental Agreement on 30 days notice but no part of the consideration is refundable if YCESA has assisted the District to file the E-Rate Forms.

8. Alternative Dispute Resolution. YCESA and the District may submit any dispute among them arising out of or relating to this Intergovernmental Agreement to alternative dispute resolution if they mutually agree.

9. Indemnification. To the fullest extent permitted by law, YCESA and the District shall indemnify and hold harmless each other and their respective officers, directors, members, consultants, agents, and employees from and against all claims for bodily injury and property damage, including reasonable attorneys' fees, costs, and expenses that may arise from each party's performance of or failure to perform this Intergovernmental Agreement, but only to the extent caused by the negligent acts or omissions of the party, its agents, or employees.

10. Insurance. Throughout this Intergovernmental Agreement's term, the parties shall maintain liability insurance coverage in the forms and policy limits necessary to protect the parties from losses attributable to the claims for which each party is obligated to indemnify the other under Section 9 above.

11. Waivers of Subrogation. YCESA and the District waive all rights against each other and any of their agents and employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Intergovernmental Agreement or other applicable property insurance, except the rights they have to proceeds of the insurance held by either party as fiduciary. A waiver of subrogation is effective as to a person or entity even though that person or entity would

otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

12. Miscellaneous Provisions.

12.1 Governing Law. This Intergovernmental Agreement's interpretation and performance are governed by Arizona law.

12.2 No Waiver. No action or failure to act by YCESA or the District constitutes a waiver of any right or duty under this Intergovernmental Agreement, nor does the action or failure to act constitute approval of or acquiescence in a breach of the Agreement, unless YCESA and the District memorialize the waiver or approval in writing and sign it.

12.3 Entire Agreement. This Intergovernmental Agreement represents the entire, integrated agreement between YCESA and the District. The Agreement supersedes all prior negotiations, representations, or agreements, whether written or oral. The Agreement may be amended only by written instrument signed by YCESA and the District.

12.4 Third Parties. Nothing contained in this Intergovernmental Agreement shall create a contractual relationship with or a cause of action in favor of a third party against YCESA or the District. This Agreement is not intended to benefit any third party.

12.5 Binding Effect. YCESA and the District each bind themselves and their respective successors, assigns, and legal representatives each to the other and to the other's successors, assigns, and legal representatives with respect to this Intergovernmental Agreement's covenants, terms, and conditions.

12.6 Compliance with Law. YCESA and the District shall comply with all applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities in performing this Intergovernmental Agreement, including but not limited to environmental laws.

12.7 Severability. If any provision(s) of this Intergovernmental Agreement is/are invalid, illegal, or unenforceable for any reason, all other Agreement provisions shall nevertheless remain in full force and effect. If any provision(s) is/are inapplicable to any person or circumstance, the same provision(s) shall nevertheless remain applicable to all other persons and circumstances.

12.8 Fingerprint and E-verify. If required, and only to the extent required, the parties shall comply with the fingerprinting provisions in Ariz. Rev. Stat. § 15-512(H),

the e-verify provisions in Ariz. Rev. Stat. § 41-4401, and the Federal Immigration and Nationality Act.

12.9 Nondiscrimination. The parties shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, disability, age, veteran’s status, or political affiliation. They shall comply with all applicable federal and state employment laws, rules, regulations, and executive orders.

12.10 Conflict of Interest. In accordance with Ariz. Rev. Stat. § 38-511, either party may cancel this Agreement for a prohibited conflict of interest.

12.11 Scrutinized Business Operations. In accordance with Ariz. Rev. Stat. 35-391.06, 35-393.06, the parties represent and warrant that they do not have, and their contractors do not have, scrutinized business operations in Sudan or Iran.

12.12 Counsel’s Review and Approval. The District appoints the Yavapai County Attorney as its attorney for purposes of reviewing and approving this Intergovernmental Agreement. The District waives any and all conflicts of interest arising out of the Yavapai County Attorney’s joint representation of the District and any other districts in reviewing and approving this Agreement.

This Intergovernmental Agreement is effective on the date approved by the District’s governing board.

Dated _____, 2013

District:

Approved as to form:

Yavapai County Attorney

By: _____

Name: _____

Title: _____

Dated _____, 2013

YCESA:

Approved as to form:

Yavapai County Education Service Agency

Counsel for YCESA

By: _____

Name: _____

Title: _____

Exhibit 1

Letter of Agency

This confirms our participation with and representation by Yavapai County Education Service Agency (“YCESA”) for procurement of affordable telecommunications and/or Internet access. I hereby authorize YCESA to submit FCC Form 470, FCC Form 471, and other E-rate forms to the Schools and Libraries Division of the Universal Service Administrative Company on our behalf.

I understand that, in submitting these forms on our behalf, YCESA is making certifications for us. By signing this Letter of Agency, I make the following certifications:

- (a) I certify that the libraries in our system are eligible for assistance from a State Library Administrative Agency under the Library Services and Technology Act of 1996, Pub. L. No. 104-208, § 211 et seq., 110 Stat 3009 (1996), the libraries do not operate as for-profit businesses, and their budgets are completely separate from any school (including, but not limited to elementary, secondary schools, colleges, or universities).
- (b) I certify that our libraries have secured access, separately or through this program, to all of the resources, including computers, training, software, internal connections, maintenance, and electrical capacity, necessary to use the services purchased effectively. I recognize that some of the aforementioned resources are not eligible for support. I certify that to the extent that the Billed Entity is passing through the non-discounted charges for the services requested under this Letter of Agency, that the entities I represent have secured access to all of the resources to pay the non-discounted charges for eligible services from funds to which access has been secured in the current funding year.
- (c) I certify that our libraries are covered by a technology plan that is written, that covers all 12 months of the funding year, and that has been or will be approved by a state or other authorized body, or an SLD-certified technology plan approver, prior to the commencement of service. The plan(s) is written at the following level(s):
 - _____ an individual technology plan for using the services requested in this application; and/or
 - _____ higher-level technology plan(s) for using the services requested in this application; or
 - _____ no technology plan needed; applying for basic local, cellular, PCS, and/or long distance telephone service and/or voice mail only.

- (d) I certify that the services the school, library or district purchases at discounts provided by 47 U.S.C. § 254 will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value, except as permitted by the rules of the Federal Communications Commission (Commission or FCC) at 47 C.F.R. § 54.500 (et seq.).
- (e) I certify that our libraries have complied with all program rules and I acknowledge that failure to do so may result in denial of discount funding and/or cancellation of funding commitments. I acknowledge that failure to comply with program rules could result in civil or criminal prosecution by the appropriate law enforcement authorities.
- (f) I acknowledge that the discount level used for shared services is conditional, for future years, upon ensuring that the most disadvantaged schools and libraries that are treated as sharing in the service, receive an appropriate share of benefits from those services.
- (g) I certify that I will retain required documents for a period of at least five years after the last day of service delivered. I certify that I will retain all documents necessary to demonstrate compliance with the statute and Commission rules regarding the application for, receipt of, and delivery of services receiving schools and libraries discounts, and that if audited, I will make such records available to the Administrator. I acknowledge that I may be audited pursuant to participation in the schools and libraries program.
- (h) I certify that I am authorized to order telecommunications and other supported services for the eligible entity(ies) covered by this Letter of Agency. I certify that I am authorized to make this request on behalf of the eligible entity(ies) covered by this Letter of Agency, that I have examined this Letter, that all of the information on this Letter is true and correct to the best of my knowledge, that the entities that will be receiving discounted services under this Letter pursuant to this application have complied with the terms, conditions and purposes of the program, that no kickbacks were paid to anyone and that false statements on this form can be punished by fine or forfeiture under the Communications Act, 47 U.S.C. §§ 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. § 1001 and civil violations of the False Claims Act.
- (i) I acknowledge that FCC rules provide that persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the schools and libraries support mechanism are subject to suspension and debarment from the program. I will institute reasonable measures to be informed, and will notify USAC should I be informed or become aware that I or any of the entities, or any person associated in any way with my entity and/or

the entities, is convicted of a criminal violation or held civilly liable for acts arising from their participation in the schools and libraries support mechanism.

- (j) I certify that, to the best of my knowledge, the non-discount portion of the costs for eligible services will not be paid by the service provider. I acknowledge that the provision, by the provider of a supported service, of free services or products unrelated to the supported service or product constitutes a rebate of some or all of the cost of the supported services.
- (k) I certify that, to the best of my knowledge, the non-discount portion of the costs for eligible services will not be paid by the service provider. I acknowledge that the provision, by the provider of a supported service, of free services or products unrelated to the supported services or product constitutes a rebate of some or all of the costs of the supported services.
- (l) I certify that I am authorized to sign this Letter of Agency and, to the best of my knowledge, information, and belief, all information provided to YCESA for E-rate submission is true.

Entity Name _____ Signature _____
Date: _____ Name: _____
Title: _____