

J. Todd Finnell, Ed.D.

County Superintendent of Schools

1398 Sperber Road, El Centro, CA 92243

Phone: (760) 312-6464 Fax: (760) 312-6565 www.icoe.org

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding establishes an agreement between the **Imperial County Office of Education (ICOE)** and **Calexico Unified School District (District)** for ICOE to provide nursing (LVN) services to student 4091681024. The Licensed Vocational Nurse will accompany the student on the bus due to the child's physician's order to and from Imperial Valley Center for Exceptional Children. The term of this agreement will be for two years: from July 1, 2017 to June 30, 2019.

The terms of this Agreement are as follows:

1. ICOE – Support Services agrees to:

- a) Employ LVN services to meet the physician's order for child 4091681024.
 - i) The licensed vocational nurse will provide professional nursing care by utilizing the nursing process to care for special needs students.
 - ii) The licensed vocational nurse will serve under the immediate direction of ICOE school nurse in implementing physician orders for services rendered to students enrolled in the ICOE – Sp. Ed. School based programs.
- b) Nursing Services include:
 - i) Assist student specific interventions, which are based upon the nursing diagnosis and expected outcomes.
 - ii) Communicates with the students' physician regarding all orders pertaining to student care.
 - iii) Demonstrates technical/clinical skills to provide nursing care that is appropriate for the assigned students.
 - iv) Use clinically appropriate judgment in emergency situation.
 - v) Acts as an advocate for patient rights by initiating and maintaining confidentiality, privacy and safety.
 - vi) Establish a system of communication and review to provide timely and appropriate feedback regarding nursing support services.

2. CUSD agrees to:

- a) Reimburse ICOE-Support Services for Nursing (LVN) services provided to student 4091681024.
- b) Pay ICOE the amount of 19% of the total cost of LVN to include salary and benefit packet.
 - i) Second year cost may be reassessed due to salary adjustments.
- c) The district will reimburse ICOE for all materials (i.e. nursing supplies, etc.) related to the provision of services within this agreement. ICOE will bill the district directly before May 30th
- d) Participate in a system of regular communication and review of the progress and coordination of nursing support services.

3. Effective Date and Term of Agreement. This Agreement shall commence on the later of the date the Agreement is signed by all parties or July 1, 2017 and shall remain in full force and effect until June 30, 2019.

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4. Termination:

- a) In the event that the District fails to perform on a material term of this Agreement, ICOE has the right to terminate the Agreement upon seven days' written notice and all other rights and remedies available to it at law and equity.
- b) In the event that ICOE fails to perform on a material term of this Agreement, then District shall have the right to terminate the Agreement upon seven days' written notice.

5. Indemnification:

- a) The District agrees to indemnify, defend, and hold harmless ICOE, its officers, agents and employees against any claim, liability, loss, injury or damage imposed on ICOE arising out of the District's performance on this Agreement, except for liability resulting from the negligent or willful misconduct of ICOE, its officers, agents and employees. If obligated to indemnify, defend, or hold harmless ICOE under this Agreement, the District shall reimburse ICOE for all costs, attorney's fees, expenses and liabilities associated with any resulting legal action. The District shall seek ICOE approval of any settlement that could adversely affect the ICOE, its officers, agents or employees.
- b) ICOE agrees to indemnify, defend, and hold harmless the District, its officers, agents and employees against any claim, liability, loss, injury or damage imposed on the District arising out of ICOE's performance on this Agreement, except for liability resulting from the negligent or willful misconduct of District, its officers, agents and employees. If obligated to indemnify, defend, or hold harmless the District under this Agreement, ICOE shall reimburse the District for all costs, attorney's fees, expenses and liabilities associated with any resulting legal action. ICOE shall seek the District's approval of any settlement that could adversely affect the District, its officers, agents or employees.

6. Insurance:

- a) Each party shall obtain, pay for and maintain in effect during the life of this Agreement the following policies of insurance issued by an insurance company with a current A.M. Best's rating no less than "A-" and "V" and licensed to do business in California:
 - i) Commercial General Liability including coverage for Premises Operations, Products/Completed Operations, Contractual, Independent Contractors, Broad Form Property Damage, and Personal Injury; with a minimum combined single limit of not less than \$1,000,000 for Bodily injury and Property Damage (each occurrence) and a \$2,000,000 aggregate.
 - ii) Commercial Automobile Liability for "any auto" with a minimum combined single limit of not less than \$1,000,000 per occurrence.
 - iii) Professional Liability Insurance for errors and omissions with a limit of liability of not less than \$1,000,000 per occurrence; and
 - iv) Workers' Compensation and Employer's Liability Insurance shall be retained to the full extent required by applicable state and federal law.
- b) Nothing in this Insurance section shall reduce a party's liabilities or obligations under the Indemnification section of this Agreement.
- c) The Parties acknowledge that ICOE is permissibly self-insured under California law.

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7. **Arbitration.** Any controversy or claim arising out of or relating to this Agreement shall first be subject to mediation with a mediator agreed to by both parties and paid for by both parties, absent an agreement otherwise. If after mediation there is no resolution of the dispute, the parties agree to resolve the dispute by binding arbitration administered by the American Arbitration Association (“AAA”) in accordance with its Commercial Arbitration Rules, and judgment on an arbitrator’s award may be entered in any court having jurisdiction thereof.
- a) The Parties shall select one arbitrator pursuant to the AAA’s Commercial Arbitration Rules.
 - b) The arbitrator shall present a written, well-reasoned decision that includes the arbitrator’s findings of fact and conclusions of law. The decision of the arbitrator shall be binding and conclusive on the Parties.
 - c) The arbitrator shall have no authority to award punitive or other damages not measured by the prevailing Party’s actual damages, except as may be required by statute. The arbitrator shall have no authority to award equitable relief. Any arbitration award initiated under this clause shall be limited to monetary damages and shall include no injunction or direction to either Party other than the direction to pay a monetary amount. As determined by the arbitrator, the arbitrator shall award the prevailing Party, if any, all its costs and fees. The term “costs and fees” includes all reasonable pre-award arbitration expenses, including arbitrator fees, administrative fees, witness fees, attorney’s fees and costs, court costs, travel expenses, and out-of-pocket expenses such as photocopy and telephone expenses. The decision of the arbitrator is not reviewable, except to determine whether the arbitrator complied with sections (c) and (d) of this paragraph.
8. **Independent Contractor.**
- a) ICOE, in the performance of this Agreement, shall be and act as an independent contractor. ICOE understands and agrees that it and all its employees shall not be considered officers, employees or agents of District, and are not entitled to benefits of any kind or nature normally provided employees of District and/or to which District’s employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers’ Compensation. ICOE assumes the full responsibility for the acts and/or omissions of its employees or agents as they relate to the services to be provided under this Agreement. ICOE shall assume full responsibility for payment of federal, state and local taxes, including unemployment insurance, social security and income taxes for its employees.
 - b) Except as otherwise set out in this Agreement, ICOE shall determine the means and methods for carrying out the work to achieve the result required by District. ICOE shall determine the hours during which the services shall be performed and the sequence of tasks, subject to the reasonable business needs of District.
 - c) Nothing in this Agreement shall prohibit ICOE from taking on other jobs or performing services for other entities, so long as ICOE can perform the work necessary to carry out this Agreement.
9. **Governing Law and Venue.** The laws of the State of California shall govern this Agreement. Proper venue for any dispute regarding this Agreement shall lie in Imperial County, California.
10. **Entire Agreement.** This Agreement represents the entire Agreement between ICOE and District and supersedes any and all prior negotiations, representations, understandings or

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agreements, either written or oral.

11. **Interpretation.** This Agreement shall be interpreted to give effect to its fair meaning and shall be construed as though both parties prepared it.
12. **Assignment.** Unless authorized in writing by both Parties, neither Party shall assign or transfer any rights or obligations covered by this Agreement. Any unauthorized assignment or transfer shall constitute grounds for termination by the other Party.
13. **Compliance with Laws.** The Parties shall, at their own cost and expense, comply with all local, state, and federal ordinances, regulations, and statutes now in force and which may hereafter be enacted that affect this Agreement.
14. **No Waiver of Default.** No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that instance or any other instance. Any waiver must be in writing and shall only apply to that instance.
15. **Successors and Assigns.** All representations, covenants, and warranties set forth by, on behalf of, or for the benefit of either Party herein shall be binding upon and inure to the benefit of such Party and its successors and assigns.
16. **Amendment.** This Agreement may only be altered, amended, or modified by written instrument executed by both Parties. The Parties agree to waive any right to claim, contest, or assert that this Agreement was modified, canceled, superseded, or altered by oral agreement, course of conduct, waiver, or estoppel.
17. **Severability.** If any one or more of the provisions of this Agreement is held to be invalid, illegal, or unenforceable, then such provision or provisions shall be severed from the Agreement, and the remaining provisions of the Agreement shall continue in full force and effect and shall not be affected, impaired, or invalidated in any way.
18. **Execution of Counterparts.** If this Agreement is executed in counterparts, each counterpart shall be deemed an original, and all such counterparts or as many of them as the Parties preserve undestroyed shall together constitute one and the same Agreement.
19. **Authority.** The Parties warrant and represent that they have the authority to enter into this Agreement in the names, titles, and capacities stated herein and on behalf of the entities, persons, or firms named herein and that all legal requirements to enter into this Agreement have been fulfilled.
20. **Nondiscrimination.** During the performance of this Agreement, the Parties shall not discriminate against any employee, applicant, student or other person connected to this Agreement in a manner prohibited by the laws of the United States or the State of California (including, but not limited to, on the basis of religion, race, color, national origin, handicap, ancestry, sex, sexual orientation, marital status or age).

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21. **Public Safety.** ICOE certifies that, in the employment of ICOE employees providing services under this Agreement, it has complied with the employment and fingerprinting requirements set out in Education Code section 45125 *et. seq.*
22. **Notice.** Any notice given under this Agreement shall be in writing to the parties' representatives and shall be deemed delivered three (3) days after the deposit in the United States mail, certified or registered, postage prepaid, and addressed to the parties.

The Parties' representatives shall be:

ICOE:

Amanda Brooke, Deputy Superintendent
1398 Sperber Road
El Centro, CA 92243
Phone: (760) 312-6429
Email: amanda.brooke@icoe.org

Calexico Unified School District:

Michael McFadden, Special Education Director
901 Andrade Ave.
Calexico, CA 92231
Phone: (760) 768-3800
Email: mmcfadden@cusdk12.org

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date hereof.

For the Imperial County Office of Education

By: 

Amanda Brooke
Deputy Superintendent

Date: 6/7/17

For Calexico Unified School District

By: 

Maria Ambriz
Superintendent

Date: 8/6/15/2017

Appendix A: 2017-2018 Detailed Accounting of Salary, Benefits and Costs for ICOE LVN

Appendix B: 2018-2019 Detailed Accounting of Salary, Benefits and Costs for ICOE LVN

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Calexico Unified School District
Licensed Vocational Nurse 2017-2018

Appendix A

RE: Student ID 4091681024

Proposed contract 2017-2018

Hourly Rate:	\$	57.63
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(1) 1.5 hr day - LVN Services during bus transportation to and from school.	\$	86.44
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Salary & Benefits (19% FTE)	\$	16,735
Indirect & Admin Cost:	\$	2,344

Annual MOU Amount:	\$	19,079
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FULL Salary & Benefit Cost of LVN	\$	89,249
Calexico % of Salary & Benefits	\$	16,735
%FTE of LVN		19%
Admin Fee @ 5%	\$	837
ISF @1%	\$	176
Indirect Cost @ 7.50%	\$	1,331
<u>Total Annual Cost</u>	\$	<u>19,079</u>

Calexico Unified School District
Licensed Vocational Nurse 2018-2019
Appendix B
RE: Student ID 4091681024

Hourly Rate:	\$	61.88
(1) 1.5 hr day - LVN Services during bus transportation to and from school.	\$	92.81
Salary & Benefits (19% FTE)	\$	17,759
Indirect & Admin Cost:	\$	2,486
Annual MOU Amount:	\$	20,245

FULL Salary & Benefit Cost of LVN	\$	94,712
Calexico % of Salary & Benefits	\$	17,759
%FTE of LVN		19%
Admin Fee @ 5%	\$	888
ISF @1%	\$	186
Indirect Cost @ 7.50%	\$	1,412
<u>Total Annual Cost</u>	\$	<u>20,245</u>

** Second year cost may be reassessed due to salary adjustments.*