

## **Memorandum of Agreement**

This Memorandum of Agreement is made on the Effective Date of September 1, 2022, by and between Ector County Independent School District, 802 N Sam Houston Odessa, Texas, 79761, hereinafter "ECISD Special Services" and " Sul Ross State University, 79830 East Highway 90, Alpine, Texas, 79832. hereinafter "Sul Ross Department of Education", collectively, "Parties."

The parties hereby bind themselves to undertake a Memorandum of Agreement ("Agreement") under the following terms and conditions:

**TERM.** The term of this Agreement shall be 2 years from the effective date unless terminated sooner in accordance with the terms of this Agreement (the "Term").

**GOALS AND OBJECTIVES.** Ector County ISD Special Services Department will partner with Sul Ross Department of Education to provide selected candidates an online option to obtain Texas certification/licensure for Diagnostician within a 24-month time frame.

The Parties to this agreement shall abide by the terms of this agreement to achieve the following goals and objectives:

Sul Ross will invoice ECISD Special Services for payment of tuition for identified enrolled students.

ECISD will provide Sul Ross with a list of students who are eligible for tuition payment. ECISD will use ESSER funds to provide payment to Sul Ross for identified students enrolled in the Masters of Special Education with Diagnostician certification or Diagnostician certification. Sul Ross will provide students with a FERPA release document allowing ECISD Special Services access to students' grades.

ECISD will provide the opportunity for enrolled students to complete the required practicum and will provide a site supervisor.

### **OBLIGATIONS OF THE PARTIES.**

ECISD Special Services shall perform the following obligations:

1. Provide a list to Sul Ross of all Sul Ross students (ECISD employees) eligible to receive tuition payment from ECISD. Eligible students are determined by ECISD Special Services through a selection process.
2. Provide payment to Sul Ross for tuition of identified students enrolled for Diagnostician certification.
3. Provide opportunity for identified students to complete practicum hours and requirements with the support of a site supervisor.

Sul Ross Department of Education shall perform the following obligations:

1. Provide invoice to ECISD Special Services requesting tuition payment for identified students.
2. Provide identified students with FERPA release form allowing ECISD Special Services access to grades and progress.
3. Provide students with sustained and rigorous learning opportunities in an authentic school setting with evidence-based coursework.

**CONFIDENTIALITY.** Each party shall treat as strictly confidential all student information received or obtained as a result of entering into or performing this Agreement. Student information may consist of student grades and performance in coursework.

Each party may disclose information which would otherwise be confidential if and to the extent:

- i.required by the law of any relevant jurisdiction;
- ii.the information has come into the public domain through no fault of that party; or
- iii.the other party has given prior written approval to the disclosure, provided that any such information disclosed shall be disclosed only after consultation with and notice to the other party.

Both parties acknowledge that during the course of this Agreement, each may obtain confidential information regarding the other party's business. Both parties agree to treat all such information and the terms of this Agreement as confidential and to take all reasonable precautions against disclosure of such information to unauthorized third parties during and after the term of this Agreement.

Upon request by an owner, all documents relating to the confidential information will be returned to such owner.

**RELATION OF THE PARTIES.** This Agreement is not intended and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association between the Parties but is rather an agreement by and between independent organizations.

**CONSIDERATION.** This Agreement is being made in consideration of the following: Ector County Independent School District agrees to pay for the tuition of identified students for completion of the Masters of Special Education with Diagnostician Certification or Diagnostician Certification.

**REPRESENTATIONS AND WARRANTIES.** Each party to this Agreement represents and warrants to the other party that he/she/it:-

- a) has full power, authority and legal right to execute and perform this Agreement;
- b) has taken all necessary legal and corporate action to authorize the execution and performance of this Agreement;
- c) this Agreement constitutes the legal, valid and binding obligations of such party in accordance with its terms; and (d) shall act in good faith to give effect to the intent

of this Agreement and to take such other action as may be necessary or convenient to consummate the purpose and subject matter of this Agreement.

**TERMINATION.** Either party may terminate its performance of related obligations under this Agreement if the other party fails to rectify a material breach under a portion of this Agreement within thirty (30) days of receipt by the breaching party of written notice of such breach from the non-breaching party. In such case, the non-breaching Party shall be entitled, without further notice, to cancel that Party's involvement pursuant to the agreement, without prejudice to any claim for damages, breach of contract or otherwise. The parties agree that the failure or termination of any portion or relevant provision of this Agreement will not be a basis for terminating other severable obligations or provisions of this Agreement, unless the failure or breach is such that the entire Agreement loses substantially all of its value to the non-breaching party. Unless waived by a party providing notice, the failure to cure the default(s) within such time period shall result in the automatic termination of this Agreement.

Any termination of this Agreement shall not absolve the Parties from the obligation to observe the confidentiality measures and other restraints as set out herein.

**FORCE MAJEURE.** If performance of this Agreement or any obligation under this Agreement is prevented, restricted, or interfered with by causes beyond either party's reasonable control ("Force Majeure"), and if the party unable to carry out its obligations gives the other party prompt written notice of such event, then the obligations of the party invoking this provision shall be suspended to the extent necessary by such event. The term Force Majeure shall include, without limitation, acts of God, plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions, fire, explosion, vandalism, storm or other similar occurrence, orders or acts of military or civil authority, or by national emergencies, insurrections, riots, or wars, or strikes, lock-outs, work stoppages. The excused party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased. An act or omission shall be deemed within the reasonable control of a party if committed, omitted, or caused by such party, or its employees, officers, agents, or affiliates.

**NOTICE.** Any notice or communication required or permitted under this Agreement shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the addresses listed above or to such other address as one party may have furnished to the other in writing. The notice shall be deemed received when delivered or signed for, or on the third day after mailing if not signed for.

**ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties regarding the subject matter of this Agreement, and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.

**AMENDMENT.** This Agreement may be modified or amended if the amendment is made in writing and signed by both parties.

**SEVERABILITY.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

**WAIVER OF CONTRACTUAL RIGHTS.** The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

**GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of Texas. Venue for any legal disputes will be in Ector County, Texas.

**SIGNATORIES.** This Agreement shall be signed on behalf of Ector County Independent School District by Leslie Wilson, Ector County ISD Executive Director of Special Services and on behalf of Sul Ross President and effective as of the date first written above.

Accepted for Ector County ISD

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Dr. Steve Brown

ECISD Board President

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Date

Accepted for Sul Ross State University

*J Carlos Hernandez*  
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Dr. Carlos Hernandez

Sul Ross State University Interim President

08/23/22  
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Date