



## INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement ("**Agreement**") is made by and between Pima County Community College District ("**College**") and Amphitheater Public Schools ("**APS**") effective as of June 1, 2022 ("**Effective Date**"). College and APS may be referred to herein individually as a Party ("**Party**") and collectively as the Parties ("**Parties**").

### RECITALS

- I. College is a political subdivision of the State of Arizona and is authorized to enter into this Agreement pursuant to the Arizona Revised Statutes ("**A.R.S.**") §§ 11-952, 15-1401, and 15-1444;
- II. APS is a school district authorized to enter into this Agreement pursuant to A.R.S. §§ 11-952 and 15-342(13);
- III. College has been awarded a Grant ("**Grant**") from the Office of Postsecondary Education, U.S. Department of Education for the period of June 1, 2022 through May 31, 2027. The purpose of this Agreement is to establish the rights and responsibilities of the Parties for implementing the goals, objectives, and activities of College's Upward Bound Program ("**Upward Bound**");
- IV. APS desires College and College is willing and able to provide APS with certain curriculum and services in Upward Bound.

**NOW, THEREFORE**, for and in consideration of the mutual promises hereinafter set forth and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

### 1. SCOPE OF WORK

College's Upward Bound will provide APS students with curriculum and instruction to increase academic achievement and provide students with the skills, knowledge, and motivation necessary to successfully graduate high school and beyond.

### 2. TERM AND TERMINATION

This Agreement shall be effective as of the Effective Date and shall remain in effect for five (5) years ("**Term**"). Either Party may terminate this Agreement for convenience with ninety (90) days written notice to the other Party. Either Party may immediately terminate this Agreement by providing written notice to the other Party if the other Party materially breaches this Agreement and fails to cure such breach within thirty (30) days following written notice of such breach. This Agreement is contingent upon College receiving sufficient Grant funding and as such, College may terminate this Agreement if Grant funding is insufficient to cover this Agreement. Upon expiration or termination of this Agreement, the personal property used by the Parties under this Agreement shall remain the property of the purchasing Party.

### 3. OBLIGATIONS OF COLLEGE

College shall:

- A. Provide curriculum and instructional design, with advice and input from APS, for training of selected individuals identified by APS. All curriculum and instruction will remain under the sole control of College. Proposed services may include but are not limited to counseling, advisement, tutoring, summer programs, student workshops, parent workshops, dual enrollment, and field trips;
- B. Provide administrative support for all educational activities under this Agreement, including but not limited supervision, coordination, and direction to all appropriate instructional staff, faculty, and instructional aides;
- C. Manage all project funds and expenditures under this Agreement;
- D. Work with APS personnel to process and select applicants for Upward Bound;
- E. Coordinate with APS staff to monitor student progress, and if necessary, recommend interventions and adjust services based on student needs;
- F. Provide staff and faculty to mentor Upward Bound students;
- G. Provide Student Success Workshops on Saturdays during College's academic year;
- H. Provide Student Success Workshops for six (6) weeks during the summer program;
- I. Engage with the community and local business to provide Upward Bound students career exploration and learning opportunities;
- J. Disperse stipends to Upward Bound students to incentivize full participation in the program and provide the opportunity to earn money through academic achievement and personal growth. The amount of the stipend will be relative to participation in Upward Bound and will be limited to \$20 per month during the academic year and \$40 per month during the summer program;
- K. Provide Upward Bound students access to necessary facilities as well as any other program and education related



facilities.

#### **4. OBLIGATIONS OF APS**

APS shall:

- A. Provide the necessary facilities, resources, and equipment to Upward Bound students;
- B. Allow College access to APS facilities in support of Upward Bound events;
- C. Promote and market Upward Bound;
- D. Work with College personnel to process and select applicants for Upward Bound;
- E. Support Upward Bounds taking place at APS facilities;
- F. Collaborate with College to integrate Upward Bound into APS's counseling program to identify potentially eligible students;
- G. Designate a APS employee to serve as liaison with College.

#### **5. SCOPE OF THE RELATIONSHIP**

The Parties intend that an independent contractor relationship will be created by this Agreement. Nothing in this Agreement will be construed as establishing a partnership, joint venture or similar relationship between College and APS and nothing in this Agreement will be construed to authorize either Party to act as agent for the other.

#### **6. INDEMNIFICATION**

Each Party shall indemnify, defend, and hold harmless the other Party, and the other Party's employees, officers, and agents, from and against any and all claims damages, losses, liabilities, expenses (including all expenses associated with litigation up through final appeal, and costs (including all court costs up through final appeal) arising out of or resulting from any negligent or intentional act, willful misconduct, omission, violation of applicable law, or breach of this Agreement by the Party or any party acting at its direction or on its behalf. Each Party expressly reserves the right to retain separate counsel at its own expense to participate in the defense or settlement of such claims.

#### **7. LIMITATION OF LIABILITY**

EACH PARTY'S AGGREGATE AND TOTAL LIABILITY UNDER THIS AGREEMENT FOR ALL CLAIMS SHALL BE LIMITED TO DIRECT DAMAGES AND SHALL NOT EXCEED THE AMOUNTS ONE THOUSAND DOLLARS. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING FROM THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOST PROFITS, AND LOSS OF DATA, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES.

#### **8. CONFIDENTIALITY**

Confidential Information ("**Confidential Information**") means (i) any non-public information of a Party, including, without limitation, any information relating to a Party's current and planned products, services, technology, know-how, designs, accounts, manufacturing, customer lists, business forecasts and marketing plans; and (ii) any other information of a Party that is disclosed in writing and is conspicuously designated as "Confidential" at the time of disclosure or that is disclosed orally, is identified as "Confidential" at the time of disclosure, and is summarized in a writing sent by the disclosing Party to the receiving Party within thirty (30) days of any such disclosure. Each Party shall not use the other Party's Confidential Information, except as necessary for the performance of this Agreement, and shall not disclose such Confidential Information to any third party, except to those of its employees and subcontractors that need to know such Confidential Information for the performance of this Agreement, provided that each such employee and subcontractor is subject to a written agreement that includes binding use and disclosure restrictions that are at least as protective as those set forth herein. Each Party shall use all reasonable efforts to maintain the confidentiality of all of the other Party's Confidential Information in its possession or control, but in no event less than the efforts that it ordinarily uses with respect to its own confidential information of similar nature and importance. The foregoing obligations will not restrict either Party from disclosing the other Party's Confidential Information: (i) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the Party required to make such a disclosure gives reasonable notice to the other Party to enable it to contest such order or requirement; (ii) on a confidential basis to its legal or professional financial advisors; (iii) as required under applicable securities regulations; or (iv) on a confidential basis to present or future providers of venture capital and/or potential private investors in or acquirers of such Party. Any Confidential Information which has not been marked and identified as "Confidential", which is released due to a public records request, will not be deemed a violation of the Confidentiality provisions of this Agreement. The obligations will not apply to the extent any information (i) is or becomes generally known to the public through no fault of or breach of this Agreement by the receiving Party; (ii) was rightfully in the receiving Party's possession at the time of disclosure, without an obligation of confidentiality; (iii) is independently developed by the





receiving Party without use of or access to the disclosing Party's Confidential Information; or (iv) is rightfully obtained by the receiving Party from a third Party without restriction on use or disclosure.

**9. MISCELLANEOUS**

A. ENTIRE AGREEMENT; AMENDMENTS; ASSIGNMENTS. This Agreement, including all Attachments, constitutes the entire agreement between the Parties. This Agreement may not be modified, amended, or extended except by written amendment signed by both Parties. Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party.

B. Waiver. No waiver of satisfaction of a condition or nonperformance of an obligation under this agreement will be effective unless it is in writing and signed by the Party granting the waiver. A waiver of satisfaction of a condition or nonperformance of an obligation under this Agreement will not be construed as a waiver of any earlier or later breach of the same term or as a waiver of the term itself. A non-breaching Party's continued performance after a breach, failure to give notice of a breach, or failure to enforce or exercise a right under this Agreement will not be deemed a waiver of the breach.

C. COMPLIANCE WITH ALL LAWS. The Parties shall comply with the requirements of all state and federal rules and regulations, including the Americans with Disabilities Act (ADA), 42 U.S.C. § 12132, Immigration and Nationality Act (INA), 8 U.S.C. § 1324a, and A.R.S. § 41-4401. Neither Party shall discriminate against any person on any basis prohibited under state or federal law.

D. NOTICES. A notice or other communication under this agreement will be effective if it is in writing and received by the Party to which it is addressed. It will be deemed to have been received as follows: (a) if a paper copy is delivered by a delivery organization that allows users to track deliveries, upon receipt as stated in the tracking system; (b) if a paper copy is delivered by another means, when the intended recipient or a representative of the intended recipient signs for it; and (c) if the intended recipient rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address for which no notice was given, then upon that rejection, refusal, or inability to deliver. For a notice under this Agreement to be valid, it must be addressed using the information below for that Party or any other information stated by that Party in a notice in accordance with this section: For College: Pima County Community College District, Attn: Contract Services, 4905 E. Broadway Blvd. Ste. D-232, Tucson, AZ 85709, with copy to: Pima County Community College District, Attn: General Counsel's Office, 4905 E. Broadway Blvd. Ste. C-232, Tucson, AZ 85709. For APS: Amphitheater Public Schools, Attn: Todd A. Jaeger; 701 W. Wetmore Rd., Tucson, AZ 85705.

E. FERPA; EDUCATIONAL RECORDS. Any educational records provided pursuant to this Agreement shall be used solely for the purposes of this Agreement and shall not be disclosed except as provided by law, including the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.

F. GOVERNING LAW AND VENUE. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona without regard to its conflicts of law principles. Jurisdiction and venue for any dispute arising out of this Agreement shall exclusively rest in Pima County, Arizona.

G. FORCE MAJEURE. Neither Party will be responsible for any failure or delay in its performance under this Agreement (except for any payment obligations) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, war, terrorism, riots, pandemics, epidemics, or acts of God.

H. USE OF NAMES; TRADEMARKS. Neither Party shall use the other Party's trade name, trademark, service mark, logo, domain name, or any other distinctive brand feature, or the names of the Party's employees in any publicity or advertising material without prior written approval by the other Party.

I. ARIZONA REVISED STATUTES. College is a public entity of the State of Arizona and its agreements, including this Agreement, are subject to the A.R.S. and, as such, this Agreement is subject to, but not limited to, A.R.S. §§ 12-133 and 38-511.

J. INSURANCE. APS shall secure and maintain, at its own cost and expense, throughout the duration of this Agreement, general liability insurance with limits of not less than one million dollars per occurrence and three million dollars in the aggregate. At the request of College, APS shall provide College with a copy of all such policies and shall name Pima County Community College District as an additional insured.

K. COUNTERPARTS. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

[SIGNATURE PAGE TO FOLLOW]



IN WITNESS THEREOF, the Parties to this Agreement have executed and delivered this Agreement as of the final signature below:

**Pima County Community College District**

Dolores Duran-Cerda

By: Signed: 11/17/2022

Print: Dolores Duran-Cerda

Date: \_\_\_\_\_

**Amphitheater Public Schools**

By: \_\_\_\_\_

Print: Todd A. Jaeger, Superintendent

Date: \_\_\_\_\_

**REVIEWED AND APPROVED AS TO FORM**

Pursuant to A.R.S. § 11-952(D), the attorney for each Party has determined that this Agreement is in proper form and is within the powers and authority granted to each respective Party under the laws of the State of Arizona.

Jeff Silvyn

Signed: 11/16/2022

College Legal Counsel

Print Name: Jeff Silvyn

Title General Counsel

Date:

Michelle Tong

APS Legal Counsel

Print Name: Michelle Tong

Title Associate to the Superintendent and General Counsel

Date: 12/20/22