

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE ARIZONA BOARD OF REGENTS, UNIVERSITY OF ARIZONA,
AND THE GOVERNING BOARD OF TUCSON UNIFIED SCHOOL DISTRICT**

Pursuant to A.R.S. § 11-951, *et seq.*, the Governing Board of Tucson Unified School District No. 1 of Pima County, Arizona (“**TUSD**”) and the Arizona Board of Regents, on behalf the University of Arizona College of Education, Department of Teaching, Learning, and Sociocultural Studies and the University of Arizona Earth Education Research and Evaluation Team (“**UA**”), enter into this Agreement to establish their joint, common, and individual efforts and responsibilities with respect to the operation and maintenance of the Cooper Center for Environmental Learning. The UA and TUSD are sometimes referred to in this Agreement individually, as a “Party” and collectively, as the “Parties”.

TUSD is authorized to enter into this Agreement by A.R.S. §§ 15-342 and 15-1105. The Arizona Board of Regents, on behalf of the University of Arizona, is authorized to enter into this Agreement pursuant to A.R.S. §15-1625.

1. Location

The Cooper Center for Environmental Learning (the “**Cooper Center**”) is comprised of several buildings and land located at 5403 West Trails End Road in Tucson, Arizona.

2. Mission of the Partnership between TUSD and Cooper Center

The Cooper Center is an integral component of the TUSD’s Science and Environmental Education programs. The partnership between TUSD and UA at the Cooper Center will:

- a. Provide extended educational experiences for students and teachers that deepen and enrich science learning;
- b. Offer programs and workshops to increase understandings of and deepen feelings for the earth and its life;
- c. Inspire students and teachers to develop ecologically sound practices in the Sonoran Desert and local environment;
- d. Promote the partnership between Southern Arizona Schools and UA; and
- e. Provide educators with professional development and opportunities for environmental learning and sustainable practices.

The Parties will accomplish their mission by implementation through two individual programs. One program will be used for PK-12 educational use (“**Program Time**”, as described in **Sections 4,5 and 6**), and the other will be used for rental use by third-parties (“**Rental Time**”, as described in **Section 7**).

3. Term

The term of this agreement shall be from July 1, 2017 to June 30, 2022.

4. TUSD Program Time Responsibilities

During the term of this agreement, TUSD will:

- a. Meet with UA Cooper Center staff a minimum of twice a year to identify and clarify the collaborative working partnership, evaluate the effectiveness of Cooper Center programs, and review the Cooper Center budget and other items as set forth below;
- b. Retain control and ownership of, and provide all maintenance (excluding daily custodial service), property insurance (TUSD coverage will be the primary insurance for all property losses), and security for the Cooper Center, including all buildings, facilities, fixtures, building systems, equipment (the “**Improvements**”), and land, keep the Improvements in the same condition that exist as of the date of this Agreement throughout the Term, ordinary wear and tear excluded, and make all repairs to the same caused by any vandalism, damage, renovation, or destruction of the buildings, facilities, and land;
- c. Provide the custodial cleaning supplies and paper products necessary to maintain the daily custodial service in the bathrooms, kitchen, and other areas of the Cooper Center, in an amount not to exceed an annual cost of \$1,500.00;
- d. Provide and pay for all utilities and services, including water, gas, electricity, phone, and internet service to the Cooper Center;
- e. Permit UA to operate educational programs and conduct research at the Cooper Center, provided that any research conducted involving TUSD students is conducted in compliance with TUSD Governing Board Policy LCA;
- f. Permit UA to charge reasonable fees to participants to help defray the cost of programs, the amount of which shall be determined after consultation between appropriate UA and TUSD personnel; and
- g. Provide an annual accounting to UA of any TUSD Cooper Center revenues or expenses, including the costs of maintenance, utility, repair, and other applicable expenditures during each fiscal year.

5. UA Program Time Responsibilities

During the term of this agreement, UA will:

- a. Provide the day-to-day operational management for the Cooper Center;
- b. Provide the management of the daily educational programming at the Cooper Center, including the planning, implementation, and evaluation of instructional programs;

- c. Recruit TUSD schools as well as other PK-12 schools in southern Arizona to participate in Cooper Center programs and events;
- d. Hire UA Cooper Center staff as needed to support educational programs managed by UA;
- e. Provide educational programs and offerings to all students and adults attending the Cooper Center that comply with Arizona state and TUSD educational standards, focus on increasing ecological understandings of and deepening feelings for the earth and its life, and encourage behaviors that will lessen human impact on the natural world;
- f. Provide daily custodial services, provided that TUSD will provide supplies and products, as provided in **Section 4(c)** above;
- g. Reserve the Cooper Center for exclusive use by TUSD schools during 80% of the Program Time occurring during regular school days; and make the Cooper Center available to other PK-12 schools during 20% of the Program Time during school days, as well as on weekends and holidays;
- h. Comply with TUSD Governing Board Policies, except such compliance shall not require UA employees to violate Arizona Board of Regent policies; and
- i. Provide a quarterly accounting of program incomes and costs such as maintenance, utilities, repairs, and other applicable TUSD Cooper Center expenses and revenue during each fiscal year; provided such costs are timely provided to UA as set out in **Section 4(g)** above.

6. Joint or Common Program Time Responsibilities

During the term of this agreement, the parties will:

- a. Collaborate to develop educational programs for the Cooper Center;
- b. Meet once each semester in order to:
 - i. Review the Cooper Center Facility Master Plan and consider facility needs and designs that may be appropriate to continuously support the mission and vision of the Cooper Center; and
 - ii. Review the educational programs and ensure alignment with the development of the written educational curriculum.
- c. Ensure that both current TUSD and UA College of Education logos appear in conjunction with the Cooper Center logo on all materials generated by either party regarding the Cooper Center;
- d. Collaborate to create and produce Cooper Center marketing and informational materials;

e. Ensure that the retention, dissemination, and disposition of TUSD students' educational records complies at all times with the Family Educational Rights and Privacy Act of 1974 and any subsequent amendments thereto;

f. Comply with the fingerprinting requirements of A.R.S. § 15-512 unless otherwise exempted;

g. Comply with UA's policy on Interactions With Non-Enrolled Minors in the administration and operation of this Agreement. Compliance with this policy is the responsibility of all Parties and their personnel. Any fees and costs associated with ensuring compliance (i.e. background checks, CPR/First Aid Certification, etc.) will be the responsibility of the Party providing the instructor or staff person;

h. Consult and cooperate with one another in developing any collaboration relating to the Cooper Center;

i. Ensure that any use of the Cooper Center complies with state law restrictions prohibiting the possession of alcohol, tobacco, illicit drugs, medical marijuana, and weapons on school district property, as well as restrictions of A.R.S. § 15-511 prohibiting the use of school district resources to influence the outcome of elections; and

j. Consult and coordinate with one another for Program Time scheduling, and provide notice to the District Rental Office of Rental Time available to third-parties for the Cooper Center facilities in accordance with A.R.S. § 15-1105, and as specified in **Section 7** of this Agreement.

7. Rental Time of Cooper Center to Third-Parties

The use of the Cooper Center facilities by either of the Parties or their respective educational programs as anticipated by **Sections 4, 5 and 6**, does not require rental of the facilities and shall instead be governed by the terms of those Sections. However, in order to maximize the attainment of the mission of the partnership between the Parties expressed in **Section 2**, the Parties intend that the Cooper Center should be available for public use through appropriate and temporary rentals of the facilities. TUSD personnel shall oversee the granting access and monitoring of third-parties using the Cooper Center. Any rental of Cooper Center facilities shall be in accordance with A.R.S. § 15-1105, TUSD Governing Board Policy KF, and TUSD District Regulation KF-R, as each may be amended, unless otherwise stated below.

a. The rental of the Cooper Center by third-parties shall be arranged through the District Rental Office, but shall not interfere with Program Time as coordinated between the parties.

b. Educational programs provided during Program Time will not be included for Rental Time.

c. To the extent a conflict of rental requests from third-parties arises, the priority of rental request approvals, in accordance with District Regulation KF-R, shall be as follows:

- i. Direct Service Groups, meaning those groups which provide direct services to TUSD schools;
- ii. Community and Youth Service Programs, such as publicly-sponsored neighborhood groups and non-profit child care or youth groups;
- iii. Other non-profit groups and programs; and
- iv. Other individuals, groups, and private organizations.

d. Any agreement for rental of the Cooper Center by a third-party shall be submitted to the TUSD Director of Risk Management for prior approval and, if approved, shall require the provision of commercial general liability, commercial auto liability, and worker's compensation insurance (in the amount of \$1,000,000.00) naming State of Arizona, the Arizona Board of Regents, TUSD, and UA as additional insureds. However, dependent on the service and risk at hand, other type(s) of coverages may be required by the TUSD Director of Risk Management.

e. Rental fees charged for use of the Cooper Center shall be as provided by District Regulation KF-R, including distinctions between nonprofit and for-profit entities. Fees are to be paid to the District Rental Office.

f. In accordance with A.R.S. § 15-1105, all rental fees received by the District for third-party use of the Cooper Center shall be deposited into the District's "Civic Center Fund". To offset costs associated with District responsibilities under this Agreement, the District shall retain one-third (1/3) of such rental fees. The remaining revenues will be paid by the District to UA as an operation management fee to offset costs associated with UA's responsibilities under this Agreement, to be paid annually. The terms of this paragraph, rather than the terms of District Regulation KF-R, shall be controlling with regard to the distribution of rental income derived from third-party use of the Cooper Center.

8. Indemnity and Insurance

TUSD and UA (individually, an "Indemnitor") agree to indemnify, defend, and hold harmless each other (individually, as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of the bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the applicable Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the other Indemnitor, its officers, officials, agents, employees, or volunteers.

In addition, both TUSD and UA shall cause its contractor(s) and/or vendors (individually, a "Contractor" and collectively the "Contractors") hired to provide work and/or services arising out of this Agreement (hereinafter referred to as "Contractor Indemnitor"), if any, to indemnify, defend, save and hold harmless TUSD, State of Arizona, the Arizona Board of Regents, and the University of Arizona, and their respective directors, officers, officials, agents, employees (hereinafter referred to as "Contractor Indemnitees") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorney's fees, and costs

of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of such Contractor or any of the directors, officers, agents, or employees or subcontractors of such Contractor. This indemnity includes any claim or amount arising out of or recovered under Workers' Compensation law or arising out of the failure of such Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the Parties that the applicable Contractor Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of such Contractor Indemnitee, be indemnified by such Contractor from and against any and all claims. It is agreed that such Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable.

It is understood that both TUSD and UA are self-insured and no Certificates of insurance will be exchanged. The procuring party of any and all Contractor shall ensure the contract causes the Contractor to meet or exceed insurance requirements applicable to the type of service being provided of the party procuring their services. Such coverages usually include the following: commercial general liability, commercial auto liability, and worker's compensation insurance. However, dependent on the service and risk at hand, other type(s) of coverages may be required. Third party vendors shall be required to endorse their General and Auto liability insurance policies adding TUSD, State of Arizona, Arizona Board of Regents, and the University of Arizona as additional insureds. All Contractors will be required to waive subrogation in all instances which may be also done through an endorsement to their policies to include workers compensation. If any other coverages are required than those mentioned above, the procuring agency will ensure any and all applicable protections available under the coverage will be afforded to TUSD, State of Arizona, Arizona Board of Regents, and the University of Arizona.

9. Employment Relationships

TUSD employees shall not be considered to be UA employees and UA employees shall not be considered TUSD employees by virtue of this Agreement, and neither TUSD nor UA personnel will be entitled or eligible, by reason of this Agreement, to participate in any benefits or privileges given or extended by the other party to its employees.

10. Appropriations Limitation

The Parties recognize that the performance of either party to this Agreement may be dependent upon the appropriation of funds by the Legislature of the State of Arizona. If the Legislature fails to appropriate the necessary funds or if either Party's appropriation its involvement in this Agreement, if appropriate, or cancel this Agreement without further duty or obligation by delivering written notice to the other Party as soon as reasonably possible after the unavailability of such funds comes to the attention of the initiating Party.

11. Modification of Agreement

A mutual act of the Parties to this Agreement is necessary to make any modification to the Agreement. No amendment or modification of this Agreement shall be valid or binding unless written and signed by all Parties.

12. Conflict of Interest

This Agreement may be canceled pursuant to Arizona Revised Statutes § 38-511 as amended, without penalty or further obligation, if any person significantly involved in initiating, negotiating, creating, drafting, or obtaining this Agreement on behalf of either Party to this Agreement is, at any time while this Agreement or any renewal and extension of this Agreement is in effect, an employee or agent of the other Party in any capacity or a consultant to the other Party with respect to the subject matter of this Agreement. Cancellation will be effective when written notice is received, unless the notice specifies a later time.

13. Termination

Either Party may terminate this Agreement upon thirty (30) days prior written notice.

14. Dispute Resolution and Arbitration

Any controversy or claim arising out of or relating to this Agreement, its execution or breach, and any damages allegedly suffered there from, first shall be submitted to negotiation between the Parties. To facilitate the amicable resolution of any controversy or claim, the aggrieved Party shall document the dispute or misunderstanding by promptly notifying the other Party in writing of the relevant facts, unresolved issues, and the clarification or remedy sought. The other Party shall submit a written position on the matter(s) in dispute within thirty (30) calendar days after being notified of the controversy or claim.

The Parties agree that if a dispute arises between them concerning this Agreement, the Parties may be required to submit the matter to arbitration pursuant to Arizona law.

15. Notices

All notices under this Agreement given by either Party to the other shall be made in writing and shall be sent by U.S. Postal Service, first class mail as follows:

UA: Cooper Center for Environmental Learning
Attn.: Director of Cooper Center
P.O. Box 40400
Tucson, Arizona 85717

TUSD: TUSD Regional Science Center
Attn.: Science Coordinator
2025 E. Winsett Street
Tucson, Arizona 85719

16. Nondiscrimination and Legal Compliance

The Parties will comply with all applicable state and federal statutes and regulations governing Equal Employment Opportunity, Nondiscrimination, and Immigration. Additionally, in the course of carrying out duties pursuant to this Agreement, the Parties agree to cooperate

with one another in the investigation and resolution of any complaint of discrimination related to the Cooper Center which is received by either Party.

To the extent applicable under A.R.S. § 41-4401, the Parties warrant compliance, on behalf of themselves and any and all subcontractors, with all federal immigration laws and regulation that relate to their employees and compliance with the E-Verify requirements under A.R.S. § 23-214(A). The Parties will comply with all applicable federal, state and local laws, rules, regulations, standards, and executive orders, without regard to whether the same are specifically mentioned in this Agreement.

17. Severability

If any provision of this Agreement is held to be invalid or unenforceable by a court of law or other lawful authority, the remaining provisions will continue valid and enforceable to the full extent permitted by law.

18. Assignment

Neither Party may assign any rights or obligations under this Agreement without written agreement by the other Party.

19. Third-Parties

It is the specific intention of the Parties that this Agreement serve only to establish the respective rights, obligations, and remedies as between the Parties to it. No third-party benefit is intended or may be construed by virtue of the existence of this Agreement.

20. Disposition of Property upon Termination of the Agreement

The Parties do not anticipate having to dispose of any property upon partial or complete termination of this Agreement. However, to the extent that such disposition is necessary, property shall be returned to its original owner.

21. Force Majeure

A Party does not breach this Agreement if it is unable fulfill any of its obligations hereunder because it is prevented or delayed in doing so by reason of uncontrollable forces. The term "uncontrollable forces" shall mean, for the purpose of this Agreement, any cause beyond the control of the Party affected, including but not limited to, failure of facilities, breakage or accident to machinery or transmission facilities, weather conditions, flood, earthquake, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, strike, lockout, labor dispute, boycott, material or energy shortage, casualty loss, acts of God, or action or non-action by governmental bodies in approving or failing to act upon applications for approvals or permits which are not due to the negligence or willful action of the Parties, order of any government officer or court (excluding orders promulgated by the Parties themselves), any declared local, state or national emergency, which, by exercise of due diligence and foresight, such Party could not reasonably have been expected to avoid. Either Party rendered unable to fulfill any obligation by reason of

uncontrollable forces shall exercise due diligence to remove such inability as promptly as possible.

Signed on behalf of the Parties:

Arizona Board of Regents, a body corporate,
for and on behalf of the **University of Arizona**

**Governing Board of the
Tucson Unified School District No. 1
of Pima County**

Name: _____
Title: Contract Officer
Date: _____

Michael Hicks
Governing Board President
Date: _____

Legal Determinations:

The undersigned have determined that the foregoing Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the Arizona Board of Regents, University of Arizona, and the Governing Board of Tucson Unified School District No. 1 of Pima County:

APPROVED AS TO FORM:

Governing Board of Tucson Unified
School District No. 1 of Pima County:

By: _____

By: _____

Counsel for the Arizona Board of Regents

Name: _____

TUSD Legal Counsel

Dated: _____

Dated: _____