

Agreement  
Between

The Seattle Public Schools,  
Pacific Lutheran University and  
The Alliance for Education

For the Operation of  
Confucius Institute of the State of Washington  
and  
Confucius Institute Education Center  
In the State of Washington

## **Agreement**

This Agreement ("Agreement") effective as of the date of all parties signing is made by and between the Seattle Public Schools, a Washington municipal corporation ("SPS"), Pacific Lutheran University ("PLU"), a private institution of higher education of the State of Washington, and the Alliance for Education, a Washington nonprofit corporation ("AFE"). SPS, PLU and AFE (herein referred to as "Parties") hereby agree as follows:

### **1. General**

1.1. Hanban Agreement. SPS, PLU and Confucius Institute Headquarters ("Hanban") are parties to an agreement dated 2/26/2020 ("Hanban Agreement"), in which such parties agreed to create the Confucius Institute of the State of Washington ("Institute") and the Confucius Institute Education Center in the State of Washington ("Education Center").

1.2. Legal Status. The "Confucius Institute of the State of Washington" and the "Confucius Institute Education Center" are the names the parties to the Hanban Agreement have assumed for convenience only and as such are not independent legal entities capable of acting or entering into agreements.

1.3. Use of Confucius Institute of the State of Washington. As provided in the Hanban Agreement, the name "Confucius Institute of the State of Washington" or "CIWA" may be used, at times, to refer to the program established in the Hanban Agreement that includes SPS, PLU or joint SPS-PLU activities. Use of the Confucius Institute of the State of Washington may occur in connection with the submission of funding or gift proposals to Hanban or other sponsors, the receipt of funding from Hanban or other sponsors, or general publicity. As provided for in the Hanban Agreement, the Advisory Board of Directors shall provide advice to the Institute and Education Center.

1.4. Good Faith. The parties come to this Agreement in good faith and will work together in good faith to effectuate its purposes.

### **2. SPS and PLU: Annual Funding Proposals to Hanban**

2.1. SPS and PLU Funding Proposal. SPS and PLU will collaboratively submit an annual funding proposal to Hanban, in the name of the Confucius Institute of the State of Washington, seeking funds for specific projects to be undertaken by SPS's Education Center or PLU's Institute, either singly or collaboratively. The proposal will specify:

- A. Which projects (or in the case of collaborative projects, which portion of the projects) will be undertaken by each party; and the specific amount of funds and support requested for each project or portion of a project.
- B. All terms and conditions the Parties desire to include in an agreement with the Hanban to fund the proposed projects, including but not limited to:

- (1) reporting requirements to Hanban, if any;
- (2) a provision concerning matching fund expectations, if any, including (a) specifics on how any matching fund expectations can be met; and (b) that as between SPS and PLU, matching requirements shall be in proportion to the amount awarded for efforts by each party or as agreed to by both parties.
- (3) a provision providing that the terms and conditions of a particular funding agreement will take precedence over any other agreements between the parties.

2.2 AFE Review. UW and SPS will not submit a proposal that involves AFE as Fiscal Agent unless AFE has approved it with particular attention on whether the proposal contains clarity sufficient to permit AFE to perform as Fiscal Agent as described herein.

### 3. **AFE Fiscal Agent Role**

3.1 General. SPS and UW each qualify as an organization described in Internal Revenue Code Section 170 and could receive funds directly from Hanban. Per the Hanban Agreement, AFE agrees to serve as Fiscal Agent with respect to funds provided by Hanban for the benefit of SPS's Education Center and PLU's Institute. For purposes of this Agreement, AFE's Fiscal Agent responsibilities shall be limited to undertaking the activities described herein.

3.2 Distribution of Funds. AFE will disburse or subcontract funds received from Hanban promptly upon receipt of such funds in a manner consistent with the directions set forth in the relevant funding document; *provided that* if AFE concludes that the directions set forth in the relevant funding document are not clear, AFE shall have no obligation to distribute funds until UW and/or SPS obtain necessary clarification from Hanban. Upon receipt of such clarification, AFE will promptly distribute funds. If the parties have differences about the clarity of directions, they will negotiate in good faith to resolve those differences.

3.3 Fees and Costs. AFE shall retain a portion of all funds received from Hanban as a fee for its services as Fiscal Agent. To accommodate the funders reporting requirements, fees will be assessed at the time funding budgets are approved. The fee shall be based on the level of services requested:

A. Direct Disbursement: Funds that AFE distributes directly to PLU, SPS or other entities that are sponsored by CIWA such as CIWA sponsored Confucius Classrooms, as one-time subgrants for their direct administration shall be assessed a 2% sponsorship fee.

B. Active Funds Management: Funds for which AFE provides fiscal services, including accounts payable, vendor management and account reporting services, shall be assessed a 7% fee.

C. Unanticipated Expenses: If there are unanticipated costs (e.g. legal fees) directly associated with this Agreement that are distinct and separate from the management of funds as per A & B above, AFE shall consult with PLU and SPS and receive approval in writing before obligating PLU and SPS to share in such costs, for which approval shall not be unreasonably withheld.

3.4 Reports - SPS and PLU Assistance. Upon request, SPS and PLU (as applicable) agree to provide AFE with written reports and other substantiation as may be reasonably requested by AFE to make reports as required by the relevant funding documents.

3.5 Change in AFE Role. In the event that Hanban enters into a funding agreement directly with SPS or PLU in which Hanban agrees to directly remit funds to SPS or PLU, AFE shall not serve as Fiscal Agent, shall not be entitled to an administrative fee with respect to such funds, shall not have any obligations pursuant to such funding agreement, and shall be held harmless by SPS or PLU for any claims arising from any source with respect to such funding agreement.

#### **4. Funding from Other Sponsors**

4.1 SPS and PLU Funding Efforts. SPS and the PLU, using the name of the Institute, Education Center or both, agree to undertake reasonable efforts to jointly develop plans to solicit funds (e.g., grants and gifts) from sponsors other than Hanban, including individuals and entities; and to then implement such plans. With regard to fund raising from sponsors other than the Hanban, the Director of the Institute and the Director of the Education Center shall consult with the Advisory Board.

4.2 AFE Role. AFE agrees to serve, upon request by SPS, PLU or both, as the Fiscal Agent with regard to any non-Hanban funds *subject to* the terms and conditions set forth herein with regard to its role as Fiscal Agent for funds received from Hanban, including but not limited to, the right of approval set forth in 2.2 and the fees and costs provided for in section 3.3.

4.3 No AFE Role. Alternatively, non-Hanban funds may be provided directly to PLU or SPS depending upon which entity will undertake the project to be funded by the gift: may be given to SPS to the extent SPS is able and willing to transfer to the PLU any portion of the funds intended for projects conducted by the PLU; or may be given to the PLU to the extent the PLU is able and willing to transfer to SPS any portion of the funds intended for projects conducted by SPS. In the event AFE does not serve as Fiscal Agent, AFE shall not be entitled to an administrative fee with respect to such funds, and shall not have any obligations pursuant to such funding agreement.

#### **5. Relationship of the Parties**

5.1 No Authority to Bind Other Parties. Nothing in this Agreement shall be interpreted as creating a relationship of agent, partnership, joint venture, profit-sharing, association or similar relationship between the Parties. The Parties are independent contractors in relation to one another. No Party shall have the authority to expend or commit to expend funds of any other Party or enter into any binding legal agreement of any type on behalf of any other Party, except as may be expressly authorized in writing by the Party to be bound thereby.

5.2 No Joint Relationship. Nothing in this Agreement shall be interpreted as making an employee or agent of one Party the employee or agent of any other Party and no Party shall make any representation to the contrary to any third party. This Agreement is not intended and shall not be deemed to create dual or joint employer relationships with employees of one Party assigned to work on a joint project performed in whole or in part at the facility of any other Party.

5.3 Committees. Any committees or similar groups involving the personnel of both Parties shall be considered advisory only and their function shall be limited to making recommendations and rendering advice. This Agreement shall not be construed or interpreted as conveying or delegating any authority to any such bodies or persons to represent, act for, or otherwise legally bind or commit any Party to any agreement.

5.4 Non-Use of Names. Each Party agrees that it will not use the name, trademark or other identifier of any other Party for any advertising, promotion, or other commercially related purpose without the express prior written consent of such other Party.

## **6. Representation and Risk**

6.1 Right to Enter Agreement. Each Party represents and warrants that it has the right to accept its respective obligations as set forth in this Agreement and its representative executing below is duly-authorized to enter into this Agreement.

6.2 No Third-Party Obligations. Each Party represents to the best of its knowledge that it is under no obligation to any third party that could interfere with its own ability to enter into or perform its obligations under this Agreement.

6.3 Indemnification. To the extent permitted by the laws of the State of Washington, the Parties agree to defend, indemnify, and hold each other harmless from and against any loss, claim, or damage arising from the negligent acts or omissions of their respective officers, employees, students, agents, or authorized subcontractor(s) in the performance of their duties under this Agreement. This indemnification clause shall survive the expiration or termination of this Agreement.

## **7. Term and Termination**

7.1 Term. The Agreement shall be in effect on the date of all parties signing. The Agreement shall have a period of 5-year validity, in accordance with the Hanban Agreement, unless sooner terminated, or extended, in accordance with the provisions set forth in this Agreement.

7.2 Termination.

The Parties to this Agreement may terminate it any time by agreement. Any party may unilaterally terminate this Agreement at any time, providing, however, that any termination of this Agreement shall not operate to terminate any funding agreement entered into pursuant to this Agreement. The Parties shall cooperate with each other, in good faith, to timely meet all reporting requirements and other responsibilities as set forth in such funding agreements and the Hanban Agreement.

7.3 Force Majeure. In the event any Party hereto is prevented from or delayed in the performance of any of its obligations hereunder by reason of acts of God or Government, war, hostilities, civil unrest, strikes, riots, epidemics, accidents, storms, fires, earthquake, embargo, or any other cause whatsoever beyond the reasonable control of the non-performing Party, the nonperforming Party shall be excused

from the performance of any such obligation to the extent and during the period of such prevention or delay. Lack of funds shall not be considered to be Force Majeure.

## **8. General**

8.1 Governing Law and Venue. This Agreement shall be construed and enforced in accordance with, and its performance shall be governed by, the laws of the United States of America and the State of Washington without giving effect to any principles of conflict of laws. The Parties accept the exclusive jurisdiction and venue of the King County Superior Court, Seattle, Washington.

8.2 Severability. If any provision of this Agreement will be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be in any way affected or impaired thereby.

8.3 Waiver of Breach. No omission or delay of any Party in requiring due and punctual fulfillment of the obligations of any other Party shall be deemed to constitute a waiver by such Party of its rights to require such due and punctual fulfillment, or of any other of its remedies hereunder.

8.4 Independent Contractors. The Parties are independent contractors, and nothing in this Agreement shall be deemed to create any association, partnership, franchise, employment relationship, joint venture, or agency relationship.

8.5 Amendments. No amendment or modification to this Agreement shall be valid or binding upon the Parties unless it is made in writing, cites this Agreement, and is signed by duly authorized representatives of the Parties.

8.6 Survival. Unless expressly provided otherwise herein, each provision of this Agreement reasonably interpreted as intending to survive after the termination or expiration of this Agreement shall survive any such termination or expiration.

8.7 Assignment. This Agreement and the rights and benefits conferred by each Party upon any other Party hereunder may not be assigned or transferred by any Party, unless mutually agreed in writing by duly authorized representatives of the Parties. This Agreement shall inure to the benefit of and be binding upon each Party's successors and assigns.

8.8 Limitation of Damages. In no event shall any party be liable to any other party for any claims by the other party for indirect, incidental, consequential, special, punitive, or exemplary damages, including lost profits, arising or alleged to arise from this Agreement, its breach, or the transactions contemplated herein, however caused, under any theory of liability.

8.9 Headings. The headings of the several sections of this Agreement are inserted for convenience and reference only, and are not intended to be a part of, or to affect the meaning or interpretation of, this Agreement.

8.10 Entire Understanding. This Agreement embodies the entire understanding of the Parties and supersedes all previous communications, representations, or understandings, either oral or written, between the Parties relating to the subject matter of this Agreement.

8.11 Signatories' Authority to Bind. The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement.

8.12 Conflict Resolution. In the event of a dispute between the Parties relating to the terms and conditions of this Agreement or the performance of the Parties hereunder, the Parties shall first attempt to resolve the dispute by initiating a discussion in good faith between the contacts listed in Section II. In the event the Parties are unable to resolve any such dispute within thirty (30) business days (or other such time period to which both Parties may agree in writing), then each Party may take such action as it deems appropriate in its sole discretion.

8.13 Legal Compliance. The Parties intend this Agreement to comply with all applicable laws, regulations and requirements. The Parties further agree this Agreement shall be applied and interpreted in a manner consistent with full compliance with all such laws, regulations and requirements. If at any time any party has reasonable grounds to believe that this Agreement may not conform to the then-current requirements or interpretations relevant to such matters, the Parties agree that they will immediately negotiate in good faith for the purposes of bring this Agreement into full compliance with such then-current requirements and interpretations.

8.14 Nondiscrimination. The Parties agree that they will not engage in any unlawful discrimination nor will they discriminate against any person because of race, color, religion, national origin, age, handicap, status as a Vietnam era or disabled veteran, sex, or sexual orientation with respect to their employment, personnel, or patient care policies and practices as those matters may relate to the performance of the Parties' respective obligations under this Agreement.

8.15 Counterparts. This Agreement may be executed in any number of counterparts or, if mutually agreeable to the undersigned authorized signatories for the Parties, through the exchange by facsimile or other electronic means of duly-signed duplicates hereof, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

## **9. Notices**

Any notice or other communication required or permitted to be given by any Party shall be deemed to have been properly given and delivered, if delivered in writing to the respective addresses set forth below, or to such other address as either party shall designate by written notice given to the other Parties, on the dates as follows; immediately after being sent by facsimile transmission and/or email transmission and confirmed by prompt delivery of the hardcopy original.

<p>PLU:</p> <p>Name: Patrick Gehring  Title: Associate Vice President for Finance  Address: Pacific Lutheran University</p> <p>Telephone: (253) 535-7119  Email: <a href="mailto:gehrinpd@plu.edu">gehrinpd@plu.edu</a></p> <p>With a copy to:  Name: Sue Liden  Title: Director of Risk Services  Address: Pacific Lutheran University  12180 Park Ave S  Tacoma, WA 98447  Telephone: (253) 535-7116  Email: <a href="mailto:lidensj@plu.edu">lidensj@plu.edu</a></p>	<p>SPS:</p> <p>Name: Dr. Denise Juneau  Title: Superintendent  Address: PO Box 34165  Seattle, WA 98124-1165  Telephone: (206) 252-0167  Email: <a href="mailto:denise.juneau@seattleschools.org">denise.juneau@seattleschools.org</a></p>
<p>AFE:</p> <p>Name: Lisa Chick  Title: President/CEO  Address: 509 Olive Way, Suite 500  Seattle, WA 98101-2551  Telephone: (206) 205-0333  Email: <a href="mailto:Lisa@alliancc4ed.org">Lisa@alliancc4ed.org</a></p> <p>With a copy to:  Name: Amy Ward  Title: CFO  Address: 509 Olive Way, Suite 500  Seattle, WA 98101-2551  Telephone: (206) 205-0327  Email: <a href="mailto:amy@alliance4ed.org">amy@alliance4ed.org</a></p>	



IN WITNESS WHEREOF, the Parties have executed this Agreement, by their respective duly authorized officers, on the dates indicated below.

**Signature of PLU:**

By:



Patrick Gehring  
Associate Vice President for Finance

Date Signed: 3-9-20

**Signature of SPS:**

By:



Denise Juneau  
Superintendent

Date Signed: May 22, 2020

**Signature of AFE:**

By:



Lisa Chick  
President/CEO

Date Signed: 6/17/20