

INTERGOVERNMENTAL AGREEMENT
BETWEEN Vail Unified School District
AND Payson Unified School District
FOR THE BEYOND TEXTBOOKS PROGRAM

THIS AGREEMENT is made by and between Vail Unified School District No. 20 of Pima County (hereinafter called "AGENCY") and Payson Unified School District No. 10 of Gila County (hereinafter called the "DISTRICT"):

WITNESSETH:

WHEREAS, the AGENCY, through its Governing Board, and the DISTRICT, through its Governing Board, are empowered and authorized to contract, employ faculty and staff, and provide educational courses and/or programs pursuant to A.R.S. §§ 15-341, 15-342, and 15-183, and

WHEREAS, it would further the public interest if this educational and professional development opportunity is provided by the AGENCY to provide **curricular materials**, assessments, and staff development for the DISTRICT students and teachers, and

WHEREAS, the AGENCY and the DISTRICT are each authorized pursuant to A.R.S. § 15-342(13) to enter into intergovernmental agreements pursuant to A.R.S. § 11-952 for the provision of services; and

WHEREAS, the AGENCY and the DISTRICT desire to enter into an Agreement for the implementation and administration of the educational program described herein;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the AGENCY and the DISTRICT do hereby agree as follows:

ARTICLE I. PURPOSE

The purpose of this Agreement is for the AGENCY to provide specified AGENCY **curricular materials**, assessments, and staff development to the DISTRICT's students and teachers who participate in the Beyond Textbooks program (hereinafter called the "BT"). This Agreement is based upon the mutual desire of the AGENCY and the DISTRICT to provide high quality **curricular resources**, assessments, and staff development to students and teachers. The DISTRICT's teachers must complete the required BT trainings to gain access to the **curricular materials** and assessments.

ARTICLE II. OBLIGATIONS OF THE DISTRICT

THE DISTRICT AGREES:

- A. To abide by the Terms of Use Policy as may be amended from time to time, and which is found on the BT website. Additionally, the District agrees to require its employees to use the collaborative features of the BT website appropriately as outlined in the user Appropriate Use Policy, as may be amended from time to time, and which is found on the BT website. These Policies as may be amended from time to time are specifically incorporated into this Agreement. (*Terms of Use Policy is attached as Exhibit A & Appropriate Use Policy is attached as Exhibit B*)
- B. To provide a building level coordinator for each of the participating schools or sites.
- C. To provide administrative support for all educational and staff development activities required to implement the terms of this Agreement, including but not limited to faculty orientations for the BT, supervision, program coordination and direction to all appropriate staff and faculty.

ARTICLE III. OBLIGATIONS OF THE AGENCY

THE AGENCY AGREES:

- A. To provide the DISTRICT with access to AGENCY instructional calendars and the BT website containing curriculum documents, assessments, model product rubrics, and instructional resources.
- B. To provide a set of curriculum calendars, using the AGENCY Instructional sequence, which fits the DISTRICT's yearly academic calendar.

ARTICLE IV. STANDARD PROVISIONS

- A. Each party shall retain complete control and jurisdiction over such programs of its own that are outside of this Agreement, and nothing in the execution of this Agreement or in its performance shall be construed to establish a joint venture of the parties hereto.
- B. The parties to this Agreement agree that they will not discriminate against any employee or applicant due to race, color, religion, sex, or national origin, and in this regard they will comply with all applicable federal and state employment laws, rules and regulations, including the Americans with Disabilities Act.
- C. The term of this Agreement shall commence when executed by both parties hereto, and shall expire on the 30th of June, 2015.
- D. The continuation and renewal of this Agreement shall require a new Agreement and shall be subject to approval by the DISTRICT Governing Board and subject to the appropriation and receipt of sufficient funds by the AGENCY and the DISTRICT to administer and support the program. In the event sufficient funds are not available or appropriated at any time, the DISTRICT may cancel the Agreement by delivering written notice to the AGENCY.
- E. Upon termination of this Agreement, equipment furnished or purchased by the DISTRICT for the program shall be retained by the DISTRICT, and equipment furnished or purchased by the AGENCY shall be retained by the AGENCY.
- F. The Agreement shall be subject to and interpreted under the laws of the State of Arizona. Any controversy or claim arising out of or relating to this Agreement, its enforcement or interpretation, or because of an alleged breach, default, or misrepresentation in connection with any of its provisions, shall be submitted to arbitration, to be held in Pima County, Arizona, in accordance with the Uniform Arbitration Act, A.R.S. § 12-1501 et seq. The arbitrator shall be selected by mutual agreement of the parties; if none, then by striking from a list provided by an entity such as the American Arbitration Association. In the event either party institutes arbitration under this Agreement, the party prevailing in any such arbitration shall be entitled, in addition to all other relief, to reasonable attorneys' fees relating to such arbitration. The non-prevailing party shall be responsible for all costs of the arbitration, including but not limited to, the arbitration fees and court reporter fees. The decision of the arbitrator shall be final and binding upon the parties.
- G. To the extent allowed by law, the AGENCY agrees to indemnify and hold harmless the DISTRICT from all injuries to persons or property caused by acts or omissions of the AGENCY arising out of the AGENCY's activities under this Agreement. To the extent allowed by law, the DISTRICT agrees to indemnify and hold harmless the AGENCY from all injuries to persons or property caused by acts or omissions of the DISTRICT arising out of the DISTRICT's activities under this Agreement. In the event of concurrent liability, the parties shall have the right of contribution from each other to the extent allowed by law. This indemnification provision shall survive termination of the Agreement and remain in effect.
- H. The students, faculty, and staff of the DISTRICT who participate in this program shall not be

considered as employees or students of the AGENCY, and agents or employees of the AGENCY shall not be considered employees of the DISTRICT. Accordingly, employees of one party shall not be entitled to employee benefits normally provided to bona fide employees of the other party. Nothing in this Agreement or its performance except as provided in A.R.S. § 23-1022(D) shall be construed to result in any person being the officer, agent, employee, or servant of either party when such person, absent this Agreement and the performance thereof, would not in law have such status.

I. The AGENCY shall comply with the requirements of A.R.S. § 15-512(H) regarding the fingerprinting of employees of the AGENCY, its subcontractors of every tier and vendors who are likely to have unsupervised contact with pupils as determined by the DISTRICT, in its sole and absolute discretion. The AGENCY shall be responsible for payment of all costs associated with compliance with A.R.S. § 15-512(H). However, the Superintendent may exempt from this requirement a contractor whom the Superintendent has determined is not likely to have independent access or unsupervised contact with students as part of their normal job duties while performing services to the DISTRICT. The exemption shall be in writing and a copy filed in the DISTRICT's office.

J. This Agreement is subject to the provisions of A.R.S. § 38-511, which provides in pertinent part:

The state, its political subdivisions or any department of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

K. FEES. The DISTRICT shall pay the AGENCY fees for the services provided hereunder as follows (please note these fees will be prorated based upon less than a full year of service):

1. Training Session Fees: \$1,500 per training (up to 30 participants) plus travel fees
2. Basic Annual Administrative Fee \$3,000
3. Student Use Fee shall be \$9.50 per student (*Note: Every year as a BT Partner this total amount shall be based on not less than the original number of students from when the District first became a BT Partner*)

L. Total payments by the DISTRICT are due and payable within 60 days of the executed agreement and shall not exceed amounts set forth in Section L, and shall be funded from _____. The _____ budget will cover the staff development costs as this is within the scope of the grant. Each party will be solely responsible for the expenses related to its performance obligations under this IGA.

M. Assignment and Delegation. No right or interest in this Agreement and no delegation of any obligation owed, or of the performance of any obligation, shall be assigned without written agreement between the parties.

N. Modification. This IGA may be modified in writing by mutual agreement signed by both of the parties.

O. Breach. Failure by either party to perform at the time and in the manner described in this

Agreement shall constitute a breach by that party of this Agreement.

P. Notices. All written communications shall be addressed and mailed or delivered personally to the respective parties, as follows:

DISTRICT	AGENCY
To:	To:
Greg Wyman, Superintendent	Kevin Carney, Executive Director of Beyond Textbooks
Payson Unified School District #10	Vail Unified School District #20
902 West Main Street	13801 E. Benson Highway
PO Box 919	PO Box 800
Payson, AZ 85547	Vail, AZ 85641
(928) 474-2070	(520) 879-3961

Q. Savings Clause. Should any part of this Agreement be held to be invalid or void, the remainder of the Agreement shall remain in full force and effect with those offending portions omitted.

R. This document contains the entire Agreement between the parties and may not be modified, amended, altered or extended except through a written amendment by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on this 7th day of July, 2014.

AGENCY:
VAIL UNIFIED SCHOOL DISTRICT NO. 20

By: _____

Its: Executive Director of Beyond Textbooks

DISTRICT:
PAYSON UNIFIED SCHOOL DISTRICT NO. 10

By: _____

Its: _____

APPROVED as required by A.R.S. §11-952(D)

Attorney for AGENCY

Attorney for DISTRICT

Exhibit A: Beyond Textbooks: TERMS OF USE

PLEASE READ CAREFULLY BEFORE USING THIS WEBSITE. BY ACCESSING AND USING THIS WEBSITE, YOU AGREE TO BE LEGALLY BOUND BY THE TERMS AND CONDITIONS SET FORTH HEREIN. IF YOU DO NOT AGREE, YOU MAY NOT USE THIS WEBSITE.

I. Grant of Rights.

Pursuant to an agreement (the “Subscriber Agreement”) between Beyond Textbooks Program (“BT”) and the subscribing entity (“Subscriber”), for a subscription to BT streaming™, BT has granted to Subscriber, and the authorized educators, administrators and students under the Subscriber Agreement (or, as otherwise defined in the Subscriber Agreement, the “Users”), for the term of the applicable Subscriber Agreement, a limited, non-exclusive, terminable, non-transferable license to access the Beyond Textbook website (the “Website”) and any and all content included therein (the “Content”), and to download, and edit the Content pursuant to the terms and conditions set forth in the Subscriber Agreement and these Terms of Use, such grant of rights subject to BT’s rights thereto.

All rights not expressly granted to Subscriber and its Users pursuant to the Subscriber Agreement are reserved to BT, and all uses of the Content by Subscriber and its Users not expressly permitted hereunder are prohibited.

II. Permitted and Prohibited Uses.

- a. **Use for Educational, Non-Commercial Purposes Only.** Subscriber and its Users may use the Website and the Content for bona fide educational and research purposes only, and may not use them in any commercial or for-profit manner.

BT reserves the right, in its sole and absolute discretion, to limit Subscriber's and/or any Users' use of the Website in the event that BT, in its sole and absolute discretion, deems Subscriber's and/or such Users' use thereof to be inconsistent with educational and research purposes, and/or inconsistent with these Terms of Use.

- b. **Downloading of Content.** Users may download, for noncommercial instructional use, including for lesson plans, copies of (i) images and (ii) videos and video clips designated on the website as downloadable. Copies must be deleted or erased after use or expiration of the Term, whichever occurs first. Such downloading shall be for individual User convenience only, and Users may not (1) systematically download any of the Content, (2) create distribution “libraries”, or (3) transfer, sell, rent, display, or exhibit any of the Content to any third party.
- c. **Editing Content.** Users may edit content solely in connection with classroom or other school-related projects. Such content, as edited by User, as well as any work containing User-edited videos or video clips, may not contain any libelous or unlawful materials or content or any commercial advertising materials, will not infringe upon any party's proprietary rights, including but not limited to statutory or common-law copyright, trademark and right of privacy, and may not violate any law, regulation or right of any

kind whatsoever or give rise to any actionable claim or liability.

User must maintain all copyright, trademark and proprietary notices included with, attached to or embedded all editable videos and video clips without modification, obstruction or deletion.

- d. **Dissemination of Content.** In the course of using any Content as permitted hereunder, Subscriber and its Users may not make the Content, or any part thereof, available to any party who is not a Subscriber or a User, except as permitted herein. Subscriber and its Users must ensure that the Content is at all times kept on a secure server, viewable only by Subscribers and/or its Users. If Subscriber wishes to use a third party to host the Content, BT must approve the use of such host in advance and in writing, and BT shall have the right to approve the terms of agreement between such host and Subscriber. In addition, any Subscriber or User using the Local Host support option must use the Website, rather than a local directory, to search for and access the Content.
- e. **Prohibited Uses.** Except as expressly set forth herein, neither Subscriber nor the Users may (i) copy, reproduce, alter, modify, transmit, perform, create derivative works of, publish, sub-license, distribute, or circulate the Website, the Content, or any portion thereof; (ii) disassemble, decompile, or reverse engineer the Website or any portion thereof, or use a robot, spider, or any similar device to copy or catalog the Content or any portion thereof; (iii) take any actions, whether intentional or unintentional, that may circumvent, disable, damage or impair the Website's or the Content's control or security systems, nor allow or assist a third party to do so; or (iv) use the Content in a manner that disparages the Website, the Content or BT or its content providers, or in any manner that BT may, in its sole discretion, deem inappropriate.

III. Ownership.

As between Subscriber, the Users, and BT, the Website and the Content are the property of BT, and are protected by United States and international copyright and trademark law. By using the Website and the Content, even as permitted hereunder, neither Subscriber nor any of its Users gain any ownership interest in the Website or the Content.

IV. Security and Use of Passwords.

Each User shall have a valid username, password, and passcode for the purpose of accessing the Website and the Content (the "Log-In Information"). Subscriber and its Users must keep all Log-In Information strictly confidential, and all Log-In Information may be used only by the assigned User. Subscriber and its Users are responsible for maintaining the security and confidentiality of all Log-In Information, and for preventing access to the Website and/or the Content by unauthorized persons using a User's Log-In Information. Unauthorized access to or use of the Website and/or the Content by someone using a User's Log-In information may be attributed to such User.

V. Citations.

User must include citation information, including BT or the applicable content provider (if identified) as the source, for all portions of the Content used in any end product.

VI. User-Generated Contributions

BT allows you to post your own materials, which may be viewed by other users. You agree only to submit materials where you have the right to do so and agree that you will not submit any materials that belong to other people unless they have granted you the right to do so.

In submitting user-generated materials to BT, you agree to the following terms and conditions:

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, you grant BT and its successors a non-exclusive, perpetual, royalty-free, fully paid up license to use and distribute, perform, display, and reproduce your user-generated materials submitted hereunder, which shall include without limitation all materials submitted by you (the "User Submission"), as further described below. You acknowledge and agree that you shall not be entitled to share in any revenue that the BT may or may not earn or generate through its use of your User Submission.

BT's Right to Use Your User Submission. You grant the BT the non-exclusive right to use and distribute and license others to use and distribute, perform, display, reproduce and create derivative works from, your User Submission, or any portions, reproductions or versions thereof, on BT to the users of BT.

Clearance of Your User Submission for the BT's Use. You represent and warrant that your User Submission is your original work and that you have secured any and all rights, releases and permissions necessary for the BT use and distribution of your User Submission hereunder, including without limitation those related to any people, places, music, performances of dance or music, video, photographs and/or graphics in your User Submission (collectively, the "Elements"). You represent and warrant that, to the best of your knowledge, no further permissions or fees are due for the BT's use and distribution of your User Submission or any Elements therein. You further represent and warrant that any statements made by you or others in the User Submission are true to the best of your knowledge and that neither they, nor any Element of your User Submission, will violate any law or regulation or violate or infringe upon the rights of any third party.

Access; Backing Up Your User Submission. We work hard to make BT a secure and stable environment. However, as with any computer system, there is always the risk of data loss and that data may be made available to others despite security safeguards. You should maintain your own copies of all of your materials, so that in the event of lost data affecting BT, you will not lose your User Submissions. You should not include any confidential materials as part of your User Submissions.

Release and Waiver; Indemnification. You acknowledge that the BT will rely on the foregoing terms and conditions potentially at substantial cost to them, and you hereby waive the right to assert any claim of any nature whatsoever against any party relating to the exercise of the rights and permissions granted hereunder. You also waive the right to assert any claim of any nature against any party relating to the loss of data (whether yours or someone else's data, including User Submissions) stored on, through, or by BT or relating to the access by any party to your

User Submissions or the failure of any technology designed to limit access to your User Submissions. You agree to indemnify, defend and hold harmless the BT from any and all claims arising from their use and distribution of your User Submission as permitted herein or the access by any party to your User Submissions.

Furthermore, you agree not to forge headers or otherwise manipulate identifiers in order to disguise the origin of any content transmitted through BT.

VII. USE OF MATERIALS

Except your own User Submissions, the materials available to you through Beyond Textbooks are the property of Beyond Textbooks or its licensors, or of other users of Beyond Textbooks, and are protected by copyright, trademark and other intellectual property laws. You are free to display and print for your personal, non-commercial use information you receive through Beyond Textbooks. But you may not otherwise reproduce any of the materials without the prior written consent of the owner. You may not distribute copies of materials found on Beyond Textbooks in any form (including by e-mail or other electronic means), without prior written permission from the owner.

VIII. NO SOLICITING

You agree not to use Beyond Textbooks to advertise, or to solicit anyone to buy or sell, products or services, nor to solicit anyone to make donations of any kind, without our express written approval.

IX. Communications from BT.

BT may periodically contact Users for customer service purposes. By accessing the Website and the Content, Users consent to receive such communications. Subscriber shall promptly provide BT with any and all information regarding its Users and/or use of the Website and the Content by its Users that BT reasonably requests. Subscriber agrees that BT may reference its business relationship with Subscriber in its marketing or sales materials.

X. Changes to Terms of Use.

BT reserves the right to change these Terms of Use from time to time. Such changes will become effective when BT posts the revised Terms of Use on the Website. Users should check the Terms of Use from time to time, as they are bound by the Terms of Use posted on the Website at the time of access. Any revised Terms of Use shall supersede all previous versions.

XI. Termination of the Subscriber Agreement; Effect of Termination or Expiration

In the event that Subscriber breaches any term of the Subscriber Agreement, or Subscriber and/or any of its Users breach these Terms of Use, and such breach is not cured within 10 days after receipt of notice thereof from BT, BT may terminate the Subscriber Agreement in whole or in part immediately upon written notice to Subscriber. Notwithstanding the foregoing, there shall be no cure period for any Event of Default that is not cureable.

Upon expiration or prior termination of the Subscriber Agreement, all rights granted herein shall

revert to BT; all access to and use of the Website and the Content by Users must cease; all materials downloaded from the Website must be erased, deleted, or destroyed; and all storage devices provided by BT, including without limitation the servers and drives provided in connection with the Local Host support option, must be immediately returned to BT at its business address.

XII. No Warranties, Limitation of Liability.

THE WEBSITE AND THE CONTENT ARE PROVIDED AS IS, AND ALL WARRANTIES OF ANY KIND, PAST OR PRESENT, WHETHER STATUTORY, COMMON-LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SECURITY AND, EXCEPT AS MAY BE OTHERWISE STATED IN THIS AGREEMENT, NON-INFRINGEMENT, ARE EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMITTED BY LAW. BT DOES NOT GUARANTEE OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR ACCURACY OF THE WEBSITE OR THE CONTENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY BT OR ITS EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF BT'S OBLIGATIONS HEREUNDER, AND SUBSCRIBER MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE. IN NO EVENT SHALL BT BE LIABLE FOR ANY LOST DATA, LOST PROFITS, BUSINESS INTERRUPTION, REPLACEMENT SERVICE OR OTHER SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR INDIRECT DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THEORY OF LIABILITY.

Exhibit B: Beyond Textbooks: Appropriate Use Policy

CONTENT CRITERIA

The resource or idea:

- Must be congruent to the stated performance objective of the wiki page.
- Must have been successfully used within the classroom by the teacher prior to populating the resource/idea on a wiki page.

TECHNICAL CRITERIA

The resource or idea:

- Can be populated on a wiki page by any Vail or BT partner certified staff.
- Has file attachments that are printed to PDF file (only used for AppleWorks documents) or archived to a ZIP file (used for all other documents) to ensure accessibility across District computer systems.
- Can be made available through the Vail School District web filter.
- Is properly formatted to match the existing wiki page formatting.
- Has file attachments, hyperlinks, media attachments, and comments that are properly linked to ensure long-term accessibility. (Please be sure to type a brief description of the resource, and include your first and last name as well as your school's name.)
- Is made up of, or links to, quality primary source materials.
- Is free of excessive or inappropriate advertisement, unrequested pop-ups, and/or unrelated distracting content.

COPYRIGHT/FAIR-USE CRITERIA

- The resource being posted is being used and distributed within the rules of educational fair-use.
- If the resource is copyrighted, it will only include a link to the material, not the actual downloaded materials.

COMMENT POPULATION CRITERIA

- If commenting on another person's populated resource or idea, staff should work to insure that populated comments are positive in nature.