

**NJIT/NEWARK MATH SUCCESS INITIATIVE (MSI) – COHORT 2023**

**AGREEMENT BETWEEN**

**NEWARK BOARD OF EDUCATION**

**AND**

**NEW JERSEY INSTITUTE OF TECHNOLOGY**

This NJIT/Newark Math Success Initiative (MSI) Agreement (the “Agreement”) is made by and between the Newark Board of Education (“NBOE”), having its principal offices at 765 Broad Street, Newark, NJ 07102 and New Jersey Institute of Technology (“NJIT”), located at 323 Dr. Martin Luther King, Jr. Boulevard, Newark, NJ 07102. NBOE and NJIT, each individually a “Party,” are collectively referred to herein as the “Parties.”

**WHEREAS**, NBOE is a comprehensive community public school district that serves the entire City of Newark;

**WHEREAS**, NJIT is a public research university located in the City of Newark;

**WHEREAS**, the City of Newark challenged NJIT to double the number of students who reside in Newark and enroll at NJIT by 2022, and NJIT accepted and endeavors to exceed such challenge, in part, through community engagement, professional development and conducting college-readiness programs to increase the applicant pool with strong candidates seeking enrollment at NJIT;

**WHEREAS**, as one of the pipelines to increase the applicant pool, which in turn the Parties hope will increase the enrollment of students who reside in Newark and enroll at NJIT, thus, meeting the City’s challenge, the Parties will work together to operate the NJIT/Newark Math Success Initiative (MSI), which is designed to identify and strengthen qualified NBOE high school students’ mathematics knowledge, skills and preparation for college work, as well as provide professional development opportunities to NBOE teachers; and

**WHEREAS**, the activities contemplated by this Agreement are of mutual interest and benefit to NBOE and NJIT and will further the objectives of the Parties in a manner consistent with their respective non-profit, tax-exempt, educational status.

**NOW, THEREFORE**, in consideration of the promises and mutual covenants herein contained, the Parties hereto agree to the following:

1. Scope of the Program.

NBOE and NJIT will continue to work collaboratively to conduct the NJIT/Newark Math Success Initiative (MSI) (the “Program”) by performing the roles and responsibilities outlined in the Scope of Work, attached hereto as Exhibit A and incorporated herein (the “Scope of Work”). As more fully described in the Scope of Work, the Parties will:

- a. Identify and recruit students to participate in the Program, as well as NBOE school lead contacts and mathematics teachers to participate in the professional development component of the Program; and
- b. Develop and implement the 2023 summer component and the 2023-2024 academic year component, during which students will receive mathematics instruction and college preparation and support services and teachers will receive professional development.

NBOE will obtain the written permission of the parent/guardian to allow their child to participate in the Program, as well as an acknowledgment from each student evidencing their willingness to participate in the Program. Upon request by NJIT, NBOE shall provide copies of such consents and acknowledgments.

Each Party agrees that all activities conducted under this Agreement will be performed on a “best efforts” and “good faith” basis and neither Party can guarantee specific results or outcomes.

2. Points of Contact.

For Newark Board of Education, the Superintendent will be the main point of contact for all activities conducted under this Agreement. For NJIT, the Provost will be the main point of contact for all activities conducted under this Agreement.

3. Funding.

The Program is a collaborative effort among NJIT, NBOE and the City of Newark and its agencies. Each Party will provide financial support and/or in-kind contributions for the implementation of the Program as detailed in the Budget (the “Budget”), attached hereto as Exhibit B and incorporated herein. NBOE’s contribution to the Program is \$281,714.50 (Two Hundred Eighty-One Thousand Seven Hundred Fourteen Dollars and 50/100), This sum also includes \$9,992.50 for which NJIT will invoice NBOE to cover expenses related to the provision of meals for student participants in the 2023 summer component from the sending high schools identified by NBOE.

4. Term.

- a. Term. The term of this Agreement shall commence upon the date last signed below by a Party hereto (the “Effective Date”) and terminate on August 31, 2023<sup>4</sup> (such period, the “Term”). If the Parties mutually agree to conduct the Program in subsequent years, the Parties may extend the Term by written amendment executed by both Parties.
- b. Termination. Either Party may terminate this Agreement early by submitting thirty (30) days’ prior written notification before the end of Program course to the other Party. In the event that this Agreement expires and/or is terminated early, NBOE

shall remain liable to NJIT for any and all amounts due to NJIT up to the effective termination date. Termination or cancellation of this Agreement shall not affect the rights and obligations of the Parties accrued prior to termination.

5. Student Information and Academic Matters.

As described in the Scope of Work, NJIT is requesting a list of students and information (name, permanent address, expected semester of graduation, and other necessary information). Prior to transmitting, NBOE will obtain written releases from the parents/guardians of the participating students to permit the transmittal of such information as required by the Family Educational Rights and Privacy Act of 1974 (Buckley Amendment) or the Parties will enter into a separate data sharing agreement to cover the same. As necessary during the academic year, NBOE will provide NJIT an updated and accurate list of enrolled students taking the college credit courses. All student records created by NJIT and related to the Program shall be the property of NJIT, and shall only be disclosed to NBOE in accordance with applicable U.S. privacy laws and regulations. Any transmittal of said student records by NJIT to NBOE will require NBOE first obtaining and supplying to NJIT written consent and/or release for the same.

While participating in the Program courses at NJIT, NBOE students shall be considered non-matriculated enrolled students (someone who is enrolled on a course-by-course basis and has not been accepted as a regular student pursuing a degree). All NBOE students shall be subject to and expected to follow all applicable NJIT policies, procedures and/or guidelines pertaining to other NJIT students. NBOE acknowledges and agrees that NJIT shall have sole and final authority and oversight with respect to all academic matters regarding the Program, including but not limited to admission and registration processes, awarding of college course credit, and maintenance of student records.

Implementation and interpretation of this Agreement will be consistent with and subject to all applicable and mandatory approvals, policies and procedures established by the appropriate accreditation bodies, including Middle States Commission on Higher Education, the New Jersey Secretary of Higher Education, the New Jersey Department of Education, and other agencies that have jurisdiction over the operation of either Party. This Agreement is subject to any required approvals for the Program from said accreditation bodies and NJIT shall not be in breach or default of this Agreement if it is unable to obtain the same.

6. Confidentiality.

Both Parties will keep confidential all information marked and/or identified as confidential at the time of disclosure by the other Party other than to the extent disclosure is required to perform this Agreement. "All information" referred to herein excludes information: (a) generally available to the public otherwise than by disclosure in breach of this Agreement; (b) that is known to the receiving Party prior to the time of disclosure; (c) that is independently developed by or for the receiving Party; or (d) that is required by any law (e.g., New Jersey Open Public Records Act), regulation, subpoena, statute and/or court or

administrative order to be disclosed. The terms of this confidentiality provision shall survive expiration and/or termination of this Agreement for three (3) years thereafter.

7. Compliance with All Laws.

The Parties shall comply with all applicable laws and shall not discriminate against any person or group of persons on the basis of race, color, creed, sex, age, national origin, ancestry, religion, marital status, disability, sexual orientation, gender identity or expression, pregnancy, genetic information, domestic partnership or civil union status, atypical hereditary cellular or blood trait, AIDS and/or HIV status, service in the Armed Forces of the United States, status as a disabled veteran or as a veteran of the Vietnam era or any other protected category under Federal or State of New Jersey law.

8. Insurance.

Each Party shall procure and maintain insurance, or a program of self-insurance, to adequately protect against claims for bodily and personal injury, including death, and damage to property which may arise or result from performance of this Agreement. The type, form and minimum amount of coverage of this insurance is as follows:

- a. Commercial General Liability Insurance (“CGL”) coverage, in an amount not less than ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS per occurrence, TWO MILLION and 00/100 (\$2,000,000.00) DOLLARS aggregate per year;
- b. If using owned or leased vehicles in connection with its performance hereunder, Commercial Automobile Liability Insurance covering owned and/or hired vehicles, with a minimum liability limit of ONE MILLION and 00/100 (\$1,000,000) DOLLARS Combined Single Limit; and
- c. Worker’s Compensation and Employers’ Liability coverage at New Jersey statutory limits and Employers’ Liability coverage of not less than ONE MILLION and 00/100 (\$1,000,000) DOLLARS per accident.

All of the above-listed insurance shall be written by financially sound and responsible insurance companies authorized to conduct business in the State of New Jersey. Each Party shall name the other Party, its officers, directors, agents, trustees and employees as an additional insured on such Party’s CGL insurance policy with respect to third party claims covered under each Party’s indemnity obligations herein. Each Party shall submit to the other Party certificates of all insurance required to be maintained, such certificates to specify that the respective party will provide thirty (30) days prior written notice of any cancellation or intent not to renew such coverage.

9. Indemnification, Limitation of Liability.

Subject to the provisions of the New Jersey Tort Claims Act and the New Jersey Contractual Liability Act, NJIT shall be responsible for and defend itself against any and

all suits, claims, losses, demands or damages of whatsoever kind or nature arising out of or in connection with any wrongful or negligent act or omission of its employees, agents or officers, in the performance of this Agreement.

NBOE shall be responsible for and defend itself against any and all suits, claims, losses, demands or damages of whatsoever kind or nature arising out of or in connection with any wrongful or negligent act or omission of its employees, agents or officers, in the performance of this Agreement.

Neither Party waives any right or defense to indemnification that may exist under law or equity. Neither Party shall have any liability to the other for any consequential, exemplary, special, incidental or punitive damages even if advised of the possibility of such damages, including without limitation lost profits and opportunity.

#### 10. General Provisions.

- a. Board Approval. This Agreement is subject to ratification and final approval by the NBOE's Board of Education. Accordingly, this Agreement shall not become effective unless signed by the Board President of NBOE and NJIT is provided with a copy of NBOE's board resolution authorizing NBOE to proceed with the Program. A fully-executed copy of this Agreement and the foregoing resolution must be received by NJIT no later than October 2, 2023.
- b. No Assignment. This Agreement may not be assigned or delegated by either Party without the prior written consent of the other Party.
- c. No Agency, No Third Party Rights. Each Party acknowledges and agrees that the relationship with each other is that of independent contractors, and this Agreement shall not be construed to create a joint venture or agency relationship between the Parties. This Agreement is not intended to and shall not be so construed as to create any independent rights in any students nor include students as parties hereto. The Parties have not and did not intend to create any enforceable rights of any third party under this Agreement.
- d. No Warranties. Except as otherwise contained herein, each Party disclaims all warranties and representations, either express or implied, with respect to its programs, courses and/or services to be performed hereunder.
- e. Enforcement. In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, all other provisions of the Agreement shall remain in full force and effect. It is understood and agreed that nothing which is contained in this Agreement shall be construed as a waiver on the part of the Parties, or of any right which is not explicitly waived in this Agreement.
- f. Force Majeure. If the performance of any obligation under this Agreement on the part of either Party should be prevented or delayed by an event of force majeure

beyond its reasonable control, including but not limited to acts of war, revolution, insurrection, terrorism, civil unrest, strikes or work stoppages, fire, flood, earthquake or other natural disaster, then the affected Party's duty to perform its obligations under this Agreement shall be excused as reasonably required or justified by the circumstances, and this Agreement may be terminated upon the written request of either Party.

- g. Survival. Any provisions of this Agreement, which by their nature extend beyond expiration or termination, e.g., without limitation, Sections 4(b), 5-10, shall survive such expiration or termination.
- h. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, excluding its conflicts of laws principles and rules, with all disputes venued in Essex County.
- i. Notices. All notices, consents, demands and other communications between the Parties under or regarding this Agreement shall be in writing (which includes facsimile) and shall be sent to the recipient's address set forth above to the attention of the signatories below.
- j. Counterparts. This Agreement may be executed in any number of original, facsimile or pdf counterparts. Each such counterpart shall for all purposes be deemed an original.
- k. Entire Agreement. This Agreement constitutes the entire understanding between the Parties regarding this matter and merges all prior discussions. There are no representations, warranties or promises not expressly set forth in this Agreement. This Agreement may not be modified, amended or renewed except by writing, signed by both Parties.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have executed this Agreement as of the date of the later of the two signatures below.

**Newark Board of Education**

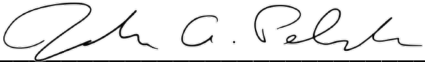
By: \_\_\_\_\_

Name: Asia J. Norton

Title: Board President

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

**New Jersey Institute of Technology**

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

Name: John A. Pelesko

Title: Provost and Senior Vice President for Academic Affairs

Date: 8/16/2023 \_\_\_\_\_