

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
MESA UNIFIED SCHOOL DISTRICT NO. 4  
AND  
THE CITY OF MESA**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017 ("Effective Date"), by and between the City of Mesa, a municipal corporation of the State of Arizona ("Mesa" or "City") and School District No. 4 of Maricopa County, Arizona, also known as Mesa Unified School District No. 4, a political subdivision of the State of Arizona ("District"). The City and District may collectively be referred to as the "Parties" and individually as a "Party".

**RECITALS:**

**WHEREAS**, City owns and holds public facilities for use and benefit of its citizens;

**WHEREAS**, District owns and holds public school facilities located within City boundaries;

**WHEREAS**, City and District on September 25, 2003 entered into an Intergovernmental Agreement (the "2003 IGA") for the cooperative use of City and District facilities;

**WHEREAS**, City and District wish to enter into a revised agreement for the cooperative use of City and District facilities;

**WHEREAS**, City's and District's cooperative use and improvement of their facilities will offer greater personal, social, recreational, and economic benefits to the general public, including District students, with less duplication of services and facilities and less expenditure of public dollars by City and District; and

**WHEREAS**, City and District are authorized to enter into intergovernmental agreements for services or for the exercise of joint or common powers, pursuant to Arizona Revised Statutes Section 11-951, et. seq. and 15-342 (13)

**NOW, THEREFORE**, in consideration of the promises, mutual covenants, and agreements contained herein, the parties agree as follows:

**AGREEMENT:**

**Section 1. Definitions**

- 1.1 City Facilities. The term "City Facilities" shall mean City-owned facilities that are operated and maintained by the City's Parks, Recreation and Community Facilities Department for the use and benefit of the community. Notwithstanding the foregoing, the term City Facilities shall not include the City of Mesa aquatic centers or any other City-owned facility governed by a separate joint-use agreement between the City and District in effect on the Effective Date. Use of the Mesa Arts Center, i.d.e.a. Museum, Museum of Natural History, or Mesa Libraries shall be governed by a separate agreement between the parties.
- 1.2 District Building Facilities. The term "District Building Facilities" shall mean rooms of buildings, including without limitation multipurpose rooms, classrooms, gymnasiums, and auditoriums, located at elementary, junior high, and high schools operated and maintained by the District.
- 1.3 District Field Facilities. The term "District Field Facilities" shall mean the athletic fields and multi-use fields, including the City-owned lights thereon, located at elementary, junior high, and high school fields operated and maintained by the District.
- 1.4 District Facilities. The term "District Facilities" shall mean District Field Facilities and District Building Facilities, except a District-owned facility governed by a separate joint-use agreement between City and District and in effect on the Effective Date.

- 1.5 City Activities. The term “City Activities” shall mean activities organized and funded by City or a City-supported event organized and funded by Visit Mesa. Activities include meetings, practices, games, and tournaments.
- 1.6 District Activities. The term “District Activities” shall mean activities organized and funded by District, including its schools and Community Education Program. Activities include meetings, practices, games, and tournaments. District Activities shall also include activities organized and funded by school-related groups, such as parent-teacher organizations, employee organizations, and camps and clinics for students.
- 1.7 City Priority Uses. The term “City Priority Uses” shall mean City Activities, including scheduled maintenance of City Facilities.
- 1.8 District Priority Uses. The term “District Priority Uses” shall mean District Activities, including scheduled maintenance of District Facilities.
- 1.9 School Days / Non-School Days. The term “School Days” shall mean the designated 180 school instruction days of the school calendar adopted by the Governing Board of the District. The term “Non-School Days” shall mean all other days of the calendar year, including Saturdays, Sundays, holidays, and intersession periods.
- 1.10 Instructional Hours / Non-Instructional Hours. The term “Instructional Hours” shall mean the period beginning 60 minutes prior to the first class and 60 minutes after the last class of a School Day. The term “Non-Instructional Hours” shall mean the remainder of a School Day.
- 1.11 Out-Of-Pocket Costs. The term “Out-Of-Pocket Costs” shall mean the direct costs incurred by City or District from use of a City or District Facility by the other party that are over and above its normal operating costs budgeted for and expended for the operation and maintenance of a City or District Facility. The intent of this Agreement is to waive only the rental fee for a use, not the additional direct costs resulting from the use.

## **Section 2. Term and Termination of Agreement**

- 2.1 Term. The initial term of this Agreement shall be for the period beginning on the Effective Date and ending June 30, 2018. Thereafter, this Agreement shall automatically renew for subsequent terms of one year each, provided neither party terminates the Agreement as provided in Section 2.2 of this Agreement.
- 2.2 Termination. This Agreement may be terminated by either party, without cause, at the end of its initial term or at the end of each subsequent term. The party terminating the Agreement shall provide the other party prior written notice of its intent to terminate the Agreement not less than sixty (60) calendar days prior to the end of the term.

## **Section 3. Use of District Facilities by City**

- 3.1 Obligation. If District is not using a District Facility for a District Priority Use, City shall have the right to use the District Facility for a City Activity during a Non-School Day or during Non-Instructional Hours of a School Day. After scheduling for District Priority Uses, District shall give City first priority for use of District Facilities located within the geographical boundaries of City.
- 3.2 Scheduling.
- 3.2.1 Scheduling Procedures. City shall request use of District Facilities by following the procedures published on District’s Facility Rental website.
- 3.2.2 Advance Notice. City is encouraged to schedule uses as far in advance as feasible and shall not request a use or cancellation of District Facilities less than three (3) City business days prior to the planned use. District business days are Monday through Thursday 8:00am-5:00pm.

3.2.3 Conflicts. District may require that a City use of a District Facility be relocated or re-scheduled in the event of a District Priority Use. District shall take every action possible to find an alternative location to host City use at a District Facility.

### 3.3 Costs.

3.3.1 Obligation. City shall pay District the Out-Of-Pocket Costs for its use of District Facilities. District shall maintain a current Fees and Charges Schedule adopted by its Governing Board that establishes the standard and reoccurring Out-of-Pocket Costs for specific events and other uses of District Facilities. District may assess documented Out-of-Pocket Costs that are listed in its current Fee and Charges Schedule and that occur from use of a District Facility for a specific City Activity.

3.3.2 Invoices. District shall invoice City on a monthly basis for Out-of-Pocket Costs according to City's standard procedures for accounts payable.

3.3.3 Payment. City shall pay Out-of-Pocket Costs in a timely manner. Absent an unresolved discrepancy regarding Out-of-Pocket Costs, City shall make payment within sixty (60) days of receipt of District's invoice.

3.4 Supervision. City shall properly supervise its use of District Facilities for City Activities by appropriately qualified and trained personnel.

3.5 Maintenance. District shall maintain District Facilities, excluding City-owned lights at District Fields Facilities, at its expense.

3.6 Emergency Use. In the event of a major incident that requires evacuation at one or more District schools, City agrees that District may use one or more of the following City Facilities as a temporary evacuation/relocation site: Red Mountain Multigenerational Center, Mesa Convention Center and Amphitheater, Gene Autry Park and Hohokam Park. Subject to City's approval, District may designate additional City Facilities to serve as temporary evacuation/relocation sites for District schools.

## **Section 4. Use of City Facilities by District**

4.1 City Use. If City is not using a City Facility for a City Priority Use, District shall have the right to use the City Facility. After scheduling for City Priority Uses, City shall give District first priority for use of City Facilities located within the geographical boundaries of City.

### 4.2 Scheduling.

4.2.1 Scheduling Procedures. District shall request use of City Facilities by following the procedures published on City's Facility Rental website.

4.2.2 Advance Notice. District is encouraged to schedule uses as far in advance as feasible and shall not request a use or cancellation of City Facilities less than three (3) City business days prior to the planned use. City business days are Monday through Thursday 7:00am-6:00pm.

4.2.3 Conflicts. City may require that a District use of a City Facility be relocated or re-scheduled in the event of a City Priority Use. City shall take every action possible to find an alternative location to host District use at a City Facility.

### 4.3 Costs.

4.3.1 Obligation. District shall pay City the Out-Of-Pocket Costs for its use of City Facilities. City shall maintain a current Fees and Charges Schedule adopted by the City Council that establishes the standard and reoccurring Out-of-Pocket Costs for specific events and other uses of City Facilities. City may assess documented Out-of-Pocket Costs that are listed in its current Fee and Charges Schedule and that occur from use of a City Facility for a specific City Activity.

4.3.2 Invoices. City shall invoice District on a monthly basis for Out-of-Pocket Costs according to District's standard procedures for accounts payable.

4.3.3 Payment. District shall pay Out-of-Pocket Costs in a timely manner. Absent an unresolved discrepancy regarding Out-of-Pocket Costs, District shall make payment within sixty (60) days of receipt of City's invoice.

4.4 Supervision. District shall properly supervise its use of City Facilities for District Activities by appropriately qualified and trained personnel.

4.5 Maintenance. City shall maintain City Facilities, including City-owned lights at District Field Facilities, at its expense.

4.6 Emergency Use. In the event of a major emergency or catastrophic event, City may use District Facilities to provide temporary emergency shelter and other services. District shall work with City to determine which District Facilities would be most suitable in the event of specific emergencies or catastrophic events.

## **Section 5. Repair of Damaged Property**

5.1 Obligation. Each party shall be financially responsible for repair or replacement of property damaged during its use of City or District Facilities. If the property damage is normal wear and tear from joint use by the parties over time, and the parties mutually agree that repair or replacement is necessary, City and District shall share equally in the cost to repair or replace the damaged property.

## **Section 6. Public Fees**

6.1 Collection of Fees. City and District shall agree in writing in advance concerning the collection of any fees from the public for their use of City and District Facilities covered under this Agreement.

## **Section 7. Improvements to District Facilities**

7.1 Approval and Addendum. City may request authorization from District to make improvements to District Field Facilities. Before such improvements are made, City and District shall negotiate in good faith and execute an addendum to this Agreement with terms that include scope of work, costs, allocation of costs, construction schedule, ownership, and any other provisions appropriate for the project.

## **Section 8. Insurance and Indemnification**

8.1 Indemnification. Each party (the "Indemnifying Party") shall, to the extent permitted by law, defend, indemnify and hold harmless, jointly and severally, the other party and each official, or employee thereof (any such person being referred to herein as an "Indemnified Party"). This indemnity applies to any and all losses, claims, damages, expenses (including reasonable attorney fees), or liabilities ("Liabilities"), joint or several, which the Indemnified Party may be subject to in law or in equity, but only to the extent that such Liabilities arise out of or are based upon the use of facilities by the Indemnifying Party, as provided in Sections 3 and 4 hereof. The obligations of the foregoing indemnification provision shall not apply to the extent that any such Liability is found to have resulted from the negligence or intentional misconduct of such Indemnified Party.

8.2 Insurance. Each party, at its cost, shall maintain comprehensive general liability insurance with limits of not less than \$2,000,000 per occurrence, insuring against all liability of said party and its authorized representatives arising out of and in connection with said party's use or occupancy of the facilities. Said insurance shall include broad form contractual liability covering, without limitation, the liability assumed under this indemnification provisions of this Agreement. If the policy is to be written with an annual aggregate limit, that limit shall be not less than \$3,000,000. Comprehensive general liability shall name the other party to this Agreement as an additional insured. All insurance policies shall provide that the policies cannot be canceled, not renewed, nor limited in scope of coverage or limits until and unless thirty (30) calendar days' prior notice is given to the other party.

- 8.3 Self-Insurance. Notwithstanding the provisions of Section 8.2, the obligations of the City and District with respect to the insurance specified in this Section 8 may be satisfied by the existence of a self-insurance program containing the same coverage and elements specified herein with respect to third party insurance.
- 8.4 Workers Compensation. Each party shall maintain worker's compensation insurance as required by statute and employer's liability insurance in an amount not less than \$1,000,000 per occurrence, which may consist of self-insurance.

## **Section 9. Notices**

- 9.1 Notices. All notices given, or to be given, by either party to the other, shall be given in writing, by registered mail, and shall be addressed to the parties at the addresses hereinafter set forth, or at such other address as the parties may be written notice hereafter designate. All notices shall be deemed received upon actual receipt or 3 business days after deposit in the United States mail, whichever date is earlier. Notices shall be addressed as follows:

To City:  
City of Mesa  
PRCF, MS 7010  
P.O. Box 1466  
Mesa AZ 85211-1466  
Attn: PRCF Director

To District:  
Mesa Public Schools  
63 E. Main Street #101  
Mesa AZ 85201-7422  
Attn: Superintendent

## **Section 10. Miscellaneous Provisions**

10.1 Communication between Parties. City and District agree to cooperate in providing regular communication regarding procedures, concerns, problems, or other pertinent issues related to the site improvements.

10.2 Conflict Resolution. If an issue arises that cannot be resolved at the front-line staff level, District's Director of Community Education Program and City's Assistant Director of the Parks, Recreation and Commercial Facilities Department shall review the issue. If the issue is not resolved at the second level of review, District's Associate Superintendent and City's Parks, Recreation and Commercial Facilities Department Director shall review the issue.

10.3 Good Faith. City and District hereby acknowledge and agree that they shall cooperate in good faith with each other and use commercially reasonable efforts to pursue the obligations imposed by this Agreement.

10.4 Continuation During Disputes. City and District agree that during any dispute between the parties, the parties will continue to perform their obligations under this Agreement until the dispute is settled, instructed to cease performance by City, enjoined or prohibited by judicial action, or otherwise required or obligated to cease performance by other provisions in this Agreement.

10.5 2003 IGA. City and District acknowledge and agree that the 2003 IGA, and all rights, obligations, and promises contained therein, is rendered null and void with no further effect upon the execution of this Agreement.

10.6 Entire Agreement, Amendments. This Agreement, including the recitals and any exhibits attached hereto, if any, and any agreements contemplated herein, represents the entire agreement between the parties pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are superseded by and merged in this Agreement. No supplement, modification or amendment of this Agreement will be binding unless in writing and executed by District and City.

10.7 Waivers. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, whether or not similar, nor will any waiver be a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver. Either party may waive any provision of this Agreement

intended for its benefit; provided, however, such waiver will in no way excuse the other party from the performance of any of its other obligations under this Agreement.

10.8 Governing Law, Choice of Forum. This Agreement shall be deemed to be governed by, and construed in accordance with, the laws of the State of Arizona. Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action).

10.9 Section Headings. The Section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

10.10 Severability. If any term or provision in this Agreement is declared void or unenforceable, such term or provision shall be deemed severed from this Agreement and the remaining terms and provisions shall remain in full force and effect to the fullest extent allowed by law.

10.11 Non-Discrimination. City and District represents and warrants that neither party knowingly discriminates against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and represents and warrants that it complies with all applicable federal, state, and local laws and executive orders regarding employment. City and District personnel will comply with all applicable provisions of Title VII of the U.S. Civil Rights Act of 1964, as amended, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), and applicable rules in performance under this Agreement.

10.12 No Assignment. No party shall transfer or assign all or any part of its rights or obligations under this Agreement without the prior express written consent of the other party, which approval may be given or withheld in said other party's sole and unfettered discretion.

10.13 Conflicts of Interests. The provisions of Arizona Revised Statutes Section 38-511 are applicable to this Agreement.

10.14 Provisions Required by Law. Any provision required by law to be in this Agreement is a part of this Agreement as if fully stated in it.

10.15 Approval by Parties. Before this Agreement shall become effective and binding upon the parties, the appropriate governing authorities of each party must approve it. In the event that such appropriate authority fails or refuses to approve this Agreement, it shall be null and void with no effect whatsoever.

10.16 Surviving Provisions. The obligations under Section 8.1 (Indemnification), Section 10.5 (Entire Agreement, Amendments), Section 10.8 (Governing Law, Forum), Section 10.9 (Headings Not Controlling), Section 10.10 (Severability), 10.11 (No Assignment), and this Section 10.16 (Surviving Provisions) shall survive expiration or other termination of this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date as of the date indicated below.

**City of Mesa**

**Mesa Unified School District No. 4**

By: \_\_\_\_\_  
Chris Brady  
Its: City Manager

By: \_\_\_\_\_  
Michael Cowan  
Its: Superintendent

STATE OF ARIZONA                    )  
  ) ss.  
County of Maricopa                    )

On this, the \_\_\_\_ day of \_\_\_\_\_, 2017, before me, the undersigned Notary,  
\_\_\_\_\_, and being authorized to do, executed the foregoing document for the purpose  
therein confirmed.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

STATE OF ARIZONA                    )  
  ) ss.  
County of Maricopa                    )

On this, the \_\_\_\_ day of \_\_\_\_\_, 2017, before me, the undersigned Notary,  
\_\_\_\_\_, and being authorized to do, executed the foregoing document for the purpose  
therein confirmed.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

#### ATTORNEY DETERMINATION

The intergovernmental agreement between the City of Mesa, Arizona, and Mesa Unified School District No. 4, entitled Joint Use Agreement, has been reviewed pursuant to A.R.S. § 11-952 by the undersigned School District attorney who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to both parties to the Agreement represented by the School District attorney.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2017

\_\_\_\_\_  
School District Attorney

#### ATTORNEY DETERMINATION

The intergovernmental agreement between the City of Mesa, Arizona, and Mesa Unified School District No. 4, entitled Joint Use Agreement, has been reviewed pursuant to A.R.S. § 11-952 by the undersigned City of Mesa attorney who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to both parties to the Agreement represented by the City of Mesa attorney.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2017

\_\_\_\_\_  
City of Mesa Attorney