



## COOPERATIVE ADAPTIVE RECREATION PROGRAM AGREEMENT

This COOPERATIVE ADAPTIVE RECREATION PROGRAM AGREEMENT (“**Agreement**”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and among the City of Mesa, an Arizona municipal corporation (“**City**”) and Mesa Unified School District No. 4 of Maricopa County, Arizona, a political subdivision of the State of Arizona (“**School District**”). City and School District may also collectively be referred to as the “Parties” or individually referred to as a “Party.”

### RECITALS

WHEREAS, the one of the missions of the Parties involves the provision of quality sports and recreation programs and services to individuals with disabilities; and

WHEREAS, the City, and the School District jointly operate a Cooperative Adaptive Recreation Program (“**Program**”) to meet the needs of individuals with cognitive and/or physical disabilities; and

WHEREAS, the Program generally provides the organization, facilities, equipment and supervision of recreational activities for the benefit of individuals with intellectual and physical challenges; and

WHEREAS, both Parties acknowledge that some or all aspects of Program activities may involve partner organizations such as, but not limited to, Arizona Disabled Sports and Special Olympics Arizona; and

WHEREAS, the Parties agree that School District funding is limited to covering expenses for participants who are actively enrolled in the School District and the City will fund expenses for participants who are not School District students; and

WHEREAS, the Parties, through this Agreement, desire to define their rights and responsibilities with respect to the Program.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and conditions herein set forth, the Parties agree as follows:

1. **Term.** This Agreement shall be in effect for one (1) year, beginning on the 1st day of July, 2024 and ending on the 30th day of June, 2025 (“Initial Term”). Upon the expiration of the Initial Term, this Agreement may be extended or renewed for one additional five (5) year term (“Successive Term”) upon the mutual written consent of both Parties, unless otherwise canceled or terminated as provided herein at Paragraph 5 of this Agreement. A Party wishing to enter into a “Successive Term” will notify the other Party in writing no later than sixty (60) calendar days prior to the expiration of the Initial Term of this Agreement.

2. **City Program Obligations.** With respect to the Program, the City shall provide the following:

a. **Facilities.** The City shall allow the School District to use City-owned property and facilities for Program activities, subject to the limitations and provisions in Paragraph 4, below.

b. **Staff.** The City shall provide City employees, temporary staff, or volunteers for the following:

i. Administration of Program activities to include, but not limited to, operation of the Program, conducting registration, hiring of staff, payment of Program expenses;

ii. Registration of participants for Intellectually Challenged Program activities;

iii. Registration of participants for physical exams, pursuant to Program policies and guidelines;

iv. Hosting and administration of City website for Program;

v. Program coaches at a staffing level to be determined by all Parties on an annual basis; and

vi. Implementation and supervision of events benefiting individuals with intellectual challenges.

c. **Transportation.** The City shall provide transportation, including, without limitation, trucks, vans, and trailers, for equipment and Program participants.

d. **Uniforms and Equipment.** City shall provide uniforms and equipment for Program activities as agreed upon by all Parties on an annual basis.

e. **School District Adaptive Sports Events.** City may promote adaptive sports through the distribution of promotional flyers and the presence of City staff at high school adaptive sports events at a minimum of at least three times each calendar year.

3. **School District Program Obligations.** With respect to the Program, the School District shall provide the following:

a. **Facilities.** The School District shall permit the City to utilize School District - owned property and facilities for Program activities, subject to the terms and conditions set forth herein. The utilization of said facilities shall be contingent upon the limitations and provisions outlined in this Agreement. Specifically, the City shall be permitted to use said facilities at no cost so long as the majority of participants in the Program activities conducted therein are students enrolled in the School District. In the event that the facility is employed for Program activities involving exclusively participants who are not students of School District, such utilization shall be subject to a fee arrangement consistent with the current prevailing rates established between the City and the School District for facility usage.

b. **Transportation of Participants.** The School District shall make its<sup>2</sup> buses and properly licensed drivers available to the City at no charge when the majority of program participants are School District students as a means to transport Program participants, including, when necessary, handicapped-accessible vehicles or buses suitable for the transportation of teams. The City will be responsible for providing dually employed staff with the City and the School District to accompany and supervise participants during travel to and from events when School District transportation is in use. The cost of transportation to the City will be proportionate to the number of non-School District students being transported when the majority are not School District students.

c. **Program Fees.** The City will invoice the School District within forty-five (45) calendar days of the end of each program. School District shall pay the City the invoiced amount within thirty (30) calendar days to cover program costs for School District students, which will include, but not be limited to, staffing, uniform, and equipment costs.

d. **Public Relations.** The School District shall provide appropriate public relations to inform students and faculty within the School District of Program activities. This will include the Adaptive Physical Education and Special Education employees distributing adaptive program promotional material at all levels of educational institutions.

e. **Lettering in Athletics.** The School District shall establish criteria for High School Students to letter when they participate in adaptive sport programs.

4. **Use of City- and School District-Owned Property.** Any use of property owned by either the City or the School District for Program activities shall be governed by the following provisions:

a. **Usage Fee.** The City and School District, where applicable, shall not charge a fee to any other party to this Agreement for the use of the City's or the School District's property and facilities, so long as such use is necessary for a Program activity.

b. **Scheduling.** The Parties shall meet at least once every six months, or sooner if the Parties deem necessary, to establish a schedule for Program activities. The schedule shall

include the time, date and location of each activity. Program activities shall be scheduled so that they do not interfere with previously scheduled uses of the City and School District owned property and facilities. If the Parties cannot agree to a schedule, the use of any property or facility for Program activities shall be determined by the owner of such property or facility, in that Party's reasonable discretion. At a minimum, facilities will be available for two adaptive summer camp locations each year, the adaptive theater program annually, and the appropriate venues for sporting activities.

c. **Maintenance, Repairs and Utilities.** The Owner of the facility shall pay for utilities supplied to, used, or consumed during Program activities including, without limitation, all costs for electricity, gas, water, sewer, solid waste, and similar costs, unless the same are incurred directly as a result of the negligence of a Party, or its employees, agents, contractors, clients, invitees, guests, or other representatives ("Negligent Party") of the non-owner Party, in which case the responsible non-owner Party shall be responsible for all such costs.

5. **Termination for Convenience.** Parties reserve the right to terminate this Agreement in whole or in part upon thirty (30) calendar days written notice to the non-terminating Party. Parties will be responsible only for those goods and/or services that have been delivered and/or performed and accepted as of the date the termination becomes effective and for any costs associated with a non-owner Party's negligence or that of a Negligent Party as set forth in Paragraph 4.c. of this Agreement.

6. **Indemnification.** To the fullest extent permitted by law, each Party (as "Indemnitor") agrees to indemnify, defend and hold harmless the other Party, and its elected and appointed officials, officers, employees, agents, volunteers, successors, and assigns (as "Indemnitees") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney fees) (collectively, "Claims") arising out of 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 indemnitees, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, or its elected or appointed officials, officers, officials, agents, employees or volunteers, successors or assigns, provided, however, that the Indemnitor shall have no obligation to indemnify the Indemnitee for the Indemnitee's passive negligence.

7. **Insurance Requirements.**

a. **Comprehensive General Liability.** Each party shall, at its own cost, maintain comprehensive general liability insurance with limits of not less than \$3,000,000 per occurrence, insuring against all liability of that party and its authorized representatives arising out of and in connection with the Program, or arising out of such party's use of the property or facilities of another party. Said insurance shall include broad form contractual liability covering, without limitation, the liability assumed under the indemnification provisions of this Agreement. If the policy is to be written with an annual aggregate limit, that limit shall be not less than \$5,000,000. The insurance requirements of this Agreement may be satisfied by a self-insured party acceptable to the other Party, provided such self-

insurance equals or exceeds all insurance policy and endorsement requirements, amounts, and limits.

b. Additional Insureds. Each Party's comprehensive general liability insurance policy shall name the other Party, their departments, boards, commissions, council members, officials, officers, agents and employees as additional insureds.

c. Special Items. Each Party's insurance policies shall provide the following: 1) the policies cannot be canceled, or reduced in their coverage amounts, or otherwise substantially modified in any material respect until and unless thirty (30) calendar days written notice is received by the other Party; 2) the insurance company shall have no recourse against the other Party for payment of any premium or for assessments under any form of policy; and 3) the Party registering the students for Program activities (the "Registering Party") policies are intended as primary coverage for the other Party and any insurance or self-insurance maintained by the other Party shall apply only in excess of, and not in contribution with, the insurance provided by the Registering Party's policies or plans.

d. Certificates of Insurance. If this Paragraph's requirements are met by the provision of insurance, certificates of such coverage shall be furnished to the other Party to this Agreement. The insurance requirements under this Agreement may be satisfied by evidence of self-insurance by a Party. The Parties shall provide evidence satisfactory to the other Party of the insurance coverage to be maintained during the duration of this Agreement.

e. No Limitation. The procuring of coverage by insurance, or self-insurance, shall not be construed to be a limitation upon the liability imposed by, or as a full performance of, the indemnification provisions of this Agreement. Failure to maintain the required coverage, by insurance or self-insurance, shall constitute a default of this Agreement.

## 8. Compliance With Federal and State Law.

a. Permits. The Registering Party shall procure all permits and licenses and pay all charges and fees necessary and incidental for the Program and all Program activities. All Parties shall comply with all applicable laws, ordinances, regulations, and policies which in any manner affect the Program, its use of any property or facility, or each Party's performance under this Agreement. The Registering Party shall pay or cause to be paid, before delinquent, any and all taxes levied or assessed and which become payable during the term of this Agreement upon vehicles, fixtures or other personal property used in Program activities.

b. Non-Discrimination. All Parties agree to take all actions necessary to ensure all members of the public, including without limitation applicants, employees, participants, potential participants, guests, spectators and other visitors to Program activities are treated fairly, courteously, and without bias or prejudice so as to preserve human dignity and to respect cultural diversity. All Parties shall comply with all applicable federal, state and

local laws relating to nondiscrimination, equal employment opportunity, and the Americans with Disabilities Act (ADA) in connection with the Program.

c. Drug Free Workplace. The City has adopted a drug free workplace policy applicable to those doing business with the City. All employees of the School District who are providing services in connection with the Program shall be notified in writing by the School District that they are prohibited from the manufacture, distribution, dispensation, possession or unlawful use of a controlled substance in the workplace. Failure to require a drug free workplace may result in termination of the Agreement and possible disqualification from applying for future use of City-owned property or facilities.

d. Residence. All Parties shall comply with A.R.S. §34-301, “Employment of Aliens on Public Works Prohibited”, and A.R.S. §34-302, as amended, “Residence Requirements for Employees<sup>2</sup>.” Under the provisions of A.R.S. §41-4401, City and School District hereby warrants that all Parties, respectively, will comply with all Federal Immigration laws and regulations that relate to its employees and A.R.S. §23-314(A). A breach of this Paragraph 8 d. by any Party shall constitute a material breach of this Agreement and shall subject offending Party to penalties up to and including termination of this Agreement. The Party(s) retain the legal right to inspect the papers of any Party employee who works under this Agreement to ensure that they are complying with this Paragraph 8 d. Parties agree to fully cooperate in regard to any such inspections. Either Party may, at its sole discretion, conduct random verification of the employment records of other Party to ensure compliance with this Paragraph 8 d. Parties agree to fully cooperate in regard to any random verification performed. Parties shall not be deemed to have materially breached this Paragraph 8 d. if it established that they have complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A).

9. **Miscellaneous.**

a. Incorporation by Reference. All Recitals to this Agreement are incorporated into this Agreement by this reference as though fully set forth herein.

b. No Assignment. The Parties expressly covenant that they shall not assign, sublicense, encumber, or otherwise transfer this Agreement, or their right to use the property of another Party, without first obtaining the written consent of the other Party, which may be granted or denied in the other Party’s sole discretion. Any such transfer, without the written consent of the other Party, shall be void.

c. Modification. This Agreement may not be unilaterally modified or changed. It may be amended or modified, however, by a writing signed by the Parties. Formal amendments shall not be needed to notify Parties of address changes, changes in position titles, etc. Such information may be provided via correspondence between the Parties.

d. Governing Law. This Agreement shall be governed by the law of the State of Arizona both as to the interpretation and performance.

e. Jurisdiction and Venue. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement, or any provision thereof, shall only be instituted in a court of competent jurisdiction in Maricopa County Arizona.

f. Headings. Headings are intended for convenience or reference and shall not control or affect the meaning or construction of the provision which follows.

g. Severability. If any term or provision of this Agreement is held to be invalid or unenforceable, the validity of the other provisions shall not be affected, and the Agreement shall be construed and enforced as if it did not contain the particular term or provision that is deemed to be invalid or unenforceable.

h. A.R.S. § 38-511. Under the provisions of § 38-511 A.R.S., as amended, either Party may cancel this Agreement within three (3) years after execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on behalf of the Party so canceling it is, at any time while the Agreement or any extension thereof is in effect, an employee or agent of any other Party to the Agreement in any capacity or a consultant to any other Party to the Agreement with respect to the subject matter of the Agreement.

i. Surviving Provisions. The obligations under Paragraph 4.c. (Maintenance, Repairs & Utilities), Paragraph 6 (Indemnification), Paragraph 7 (Insurance Requirements), Paragraph 8 (Compliance with Federal and State Law), Paragraph 9.b. (No Assignment), Paragraph 9.d. (Governing Law), and any other obligation, which reasonably should survive, shall survive expiration or other termination of this Agreement.

j. This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one and the same Agreement.

k. The Parties certify, pursuant to A.R.S. 35-393.01, that they will not engage in a boycott of Israel.

l. The Parties certify pursuant to A.R.S. 35-394, that they will not use any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

10. Notice. Notices required or permitted hereunder shall be given in writing and personally delivered or sent by registered or certified mail, return receipt requested, postage prepaid, or by a nationally recognized overnight courier service, addressed as follows:

To School District:

School District Superintendent  
Mesa Unified School District No. 4  
63 E. Main Street #101  
Mesa, Arizona 85201

With a Copy To: General Counsel  
Mesa Unified School District No. 4  
63 E. Main Street #101  
Mesa, Arizona 85201

To City of Mesa: City Manager  
City of Mesa  
20 E. Main Street, Suite 750  
P.O. Box 1466  
Mesa, Arizona 85211-1466

With a Copy To: City Attorney  
City of Mesa  
20 E. Main Street, Suite 850  
P.O. Box 1466  
Mesa, Arizona 85211-1466

Or at any other address designated by School District or City in writing.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF MESA,  
an Arizona municipal corporation

SCHOOL DISTRICT NO. 4 OF MARICOPA  
COUNTY, ARIZONA, also known as MESA  
UNIFIED SCHOOL DISTRICT, a political  
subdivision of the State of Arizona

By: \_\_\_\_\_  
Christopher J. Brady  
City Manager

By: \_\_\_\_\_  
Dr. Andi Furlis  
Superintendent