

**COOPERATIVE AGREEMENT
BETWEEN
CITY OF COSTA MESA
AND
CHUCK JONES CENTER FOR CREATIVITY**

THIS COOPERATIVE AGREEMENT ("Agreement") is made and entered into as of January 1, 2020 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and the CHUCK JONES CENTER FOR CREATIVITY, a non-profit corporation ("CJCC").

WHEREAS, City provides the Recreation on Campus for Kids (R.O.C.K.S.) After-School Program ("R.O.C.K.S. Program") at Newport-Mesa Unified School District elementary schools located within Costa Mesa; and

WHEREAS, CJCC is a non-profit arts organization that aims to provide children creative experiences that also teach learning skills in order to lay the foundation for a lifetime of productive creative expression and divergent thinking; and

WHEREAS, CJCC provides the Mix it Up Program – Exploring the Foundational 6 Elements of Art ("Art Program"), which has been developed to give students in kindergarten through sixth grade a project-based understanding of the foundational six elements of art: Line, Shape, Value, Space, Texture and Color; and

WHEREAS, City and CJCC desire to collaborate to provide the Art Program at nine (9) Newport-Mesa Unified School District elementary schools through the R.O.C.K.S. Program, as further described herein; and

WHEREAS, City and CJCC desire to set forth their respective roles and obligations with respect to implementation of the Art Program through the R.O.C.K.S. Program.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions set forth herein, City and CJCC agree as follows:

1. PURPOSE.

The purpose of this Agreement is to define the City's and CJCC's obligations as they relate to visual arts programming presented by CJCC through the R.O.C.K.S. Program at nine (9) Title 1 Newport-Mesa Unified School District elementary schools located in Costa Mesa: College Park, Adams, Victoria, Killybrooke, Sonora, Paularino, Whittier, Pomona, and Rea ("Costa Mesa Schools").

2. TERM AND TERMINATION.

2.1. Term. The term of this Agreement shall commence on the Effective Date and end on December 31, 2020, unless sooner terminated as provided herein. This Agreement may be extended by mutual written agreement of the parties.

2.2. Termination. City reserves the right to terminate this Agreement at any time with or without cause, and whether or not the services have been completed, by providing written

notification to CJCC. Any termination notice from the City shall be in writing and delivered in person or mailed to CJCC at the address provided herein and shall be effective immediately unless otherwise provided in said notice.

3. COMPENSATION.

CJCC's services are paid for through a sponsorship from the Segerstrom Foundation. CJCC shall receive no compensation from City, the Costa Mesa Schools or Art Program participants for providing the services set forth in this Agreement.

4. CJCC'S RESPONSIBILITIES.

CJCC agrees to:

- a. Develop the Art Program to implement at the Costa Mesa Schools through the R.O.C.K.S. Program.
- b. Administratively implement the Art Program in accordance with the agreed upon Program Schedule at the Costa Mesa Schools.
- c. Provide sixty-three (63) teaching hours for the Art Program at the Costa Mesa Schools.
- d. With assistance from R.O.C.K.S. Program staff, teach class sizes of up to twenty-five (25) students.
- e. Provide all art supplies, tools and materials required to teach the Art Program at each of the Costa Mesa Schools.
- f. Start each class at the time specified by City staff.
- g. Provide personnel that are qualified to teach the Art Program.
- h. Ensure that, prior to providing any services to the City, any CJCC personnel that will provide services to the City as part of the Art Program complete and pass a City background check, including but not limited to fingerprinting (Live Scan) and testing for tuberculosis (TB). CJCC shall coordinate fingerprinting with City staff and agrees to be responsible for all costs associated with fingerprinting and TB testing for any of its personnel that will provide services to the City as part of the Art Program.
- i. Provide written notice to City at least one (1) business day in advance if CJCC will not be able to teach a scheduled class. If a scheduled class is cancelled, the hours for such class will be transferred to the summer session.
- j. Conduct a student evaluation at the conclusion of the Art Program at each elementary school utilizing the Guilford Test of Divergent Thinking, and provide results of the evaluation to City.
- k. Cooperate with City in implementing the Art Program.

5. CITY'S RESPONSIBILITIES.

City agrees to:

- a. Provide an in-kind contribution to the Art Program in the form providing sixty-three (63) hours of assistance from City staff with the Art Program.
- b. Compose and distribute a letter to all of the Costa Mesa Schools announcing the Art Program. The letter will include logos from the partnering organizations, including logos for CJCC and Segerstrom Center for the Arts. Prior to distribution of the letter, City will provide the letter to CJCC for its review and feedback. CJCC will provide feedback within the time specified by City. The final content of the letter shall be in the City's discretion.
- c. Provide a classroom location with access to a working sink for CJCC to teach classes at each of the Costa Mesa Schools. To the extent possible, City will provide an indoor classroom space with smooth surface tables at each of the Costa Mesa Schools.
- d. Coordinate the Program Schedule with each of the Costa Mesa Schools.
- e. Coordinate registration and enrollment for all participants at all Costa Mesa Schools.
- f. Cooperate with CJCC in implementing the Art Program.

6. PROGRAM SCHEDULE.

The schedule for the Art Program shall be as set forth in Exhibit "A," attached hereto and incorporated herein.

7. INSURANCE.

7.1. Minimum Scope and Limits. CJCC shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages:

- a. General liability insurance with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence.
- b. Automobile liability coverage for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence, for bodily injury and property damage.
- c. Workers' compensation insurance as required by the State of California. If applicable, CJCC agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving, subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by CJCC for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.

7.2. Additional Insureds. The required insurance policies shall name the City of Costa Mesa and its elected and appointed boards, officers, officials, agents, employees, and volunteers as additional insureds. CJCC shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement.

7.3. Primary Insurance. CJCC's insurance coverage shall be primary insurance as respects the City of Costa Mesa, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by CJCC.

7.4. Notice. CJCC's insurance policies shall provide that such policies shall not terminate, be suspended, or voided, nor shall they be cancelled nor the limits reduced, until thirty (30) days after written notice is given to the City.

8. GENERAL PROVISIONS.

8.1. Independent Contractor. CJCC is and shall be acting at all times as an independent contractor and not as an employee of City. CJCC shall secure, at CJCC's sole expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for CJCC and CJCCs officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. CJCC shall indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against the City by reason of the independent contractor relationship created by this Agreement.

8.2. PERS Eligibility Indemnification. In the event that CJCC or any employee, agent, or subcontractor of CJCC providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, CJCC shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of CJCC or CJCCs employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, CJCC and any of CJCC's employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

8.3. Prohibited Employment. CJCC represents that no official or employee of the City has a financial interest in the subject matter of this Agreement. CJCC shall not employ any regular employee of the City while this Agreement is in effect.

8.4. Non-Discrimination. CJCC, in performing this Agreement, shall not engage in nor permit CJCC's employees or subcontractors to engage in unlawful discrimination of persons because of their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity,

gender expression, age, sexual orientation, or military or veteran status, except as permitted by law.

8.5. Compliance with All Laws. CJCC shall, at CJCC's sole cost and expense, comply with all applicable federal, state, and local statutes, ordinances, regulations, and requirements in the performance of this Agreement, including but not limited to obtaining a Costa Mesa business license.

8.6. Indemnification. CJCC shall protect, defend, indemnify, and hold free and harmless the City and its elected officials, officers, employees, agents and volunteers, at CJCC's sole expense, from and against any and all claims, actions, suits, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury to or death of any person, and for injury to any property, arising out of or in any way connected with the performance of this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by CJCC, but shall be required whenever any claim, action, complaint, or suit asserts as the basis the negligence or misconduct of CJCC or CJCC's agents, employees, subcontractors, and/or volunteers, and/or whenever any claim, action, complaint, or suit asserts liability against the City of Costa Mesa, its elected officials, officers, employees, agents and volunteers based upon the services performed by CJCC or CJCC's agents, employees, subcontractors, and/or volunteers under this Agreement, whether or not CJCC is specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, CJCC shall not be responsible for the defense or indemnification of the City of Costa Mesa for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City of Costa Mesa.

8.7. Notices. Unless otherwise indicated, all notices, including change of address notices, requests, approvals, and communications concerning this Agreement, shall be given in writing and may be delivered by personal delivery, email, or regular United States (U.S.) mail. If by U.S. mail, it shall be addressed as set forth below and placed in a sealed envelope, postage prepaid, and deposited with the United States Postal Service. Such communication shall be deemed served or delivered: (a) at the time of delivery if such communication is sent by personal delivery; (b) at the time of transmission if such communication is sent by email; and (c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular U.S. mail. All notices, requests, approvals, and communications shall be addressed to each party as set forth below.

TO CITY:

City of Costa Mesa
Parks & Community Services Dept. – R.O.C.K.S. After-School Program
P.O. Box 1200
Email: Ashley.Thomas@costamesaca.gov
Attn: Ashley Thomas

Copy to:

City of Costa Mesa
Parks & Community Services Dept. – R.O.C.K.S. After-School Program
P.O. Box 1200
Email: Emily.Pulaski@costamesaca.gov
Attn: Emily Pulaski

TO CJCC:

The Chuck Jones Center for Creativity
3396 Sunland Way
Costa Mesa, CA 92626
Email: Denise@chuckjonescenter.org
Attn: Denise Dion-Scoyni

Copy to:

The Chuck Jones Center for Creativity
3396 Sunland Way
Costa Mesa, CA 92626
Email: Cyndi@chuckjonescenter.org
Attn: Cyndi Burgess

8.8. Drug-Free Workplace Policy. CJCC shall abide by the Costa Mesa City Council's Drug-Free Workplace Policy (Policy No. 100-5), incorporated by this reference as if fully set forth herein, while this Agreement is in effect.

8.9. Delegation, Assignment, and Subcontracting. This is a personal service contract, and CJCC's rights, duties and obligations set forth herein shall not be delegated, assigned, or subcontracted to any person or entity without the prior written consent of City. Subcontracts, if any, shall contain a provision making them subject to all provisions of this Agreement.

8.10. Non-Exclusive Agreement. CJCC acknowledges and agrees that this is a non-exclusive agreement and that City may enter into agreements with other contractors for services similar to the services that are the subject of this Agreement or may have its own employees perform services similar to those contemplated by this Agreement, and CJCC may perform similar services for other entities.

8.11. Attorneys' Fees. In the event that any litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

8.12. Governing Law. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

8.13. Entire Agreement. This writing constitutes the entire Agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior oral or written representations or negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits, if any, to this Agreement.

8.14. Order of Precedence. In the event of an inconsistency in this Agreement and any of the attached exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of any document, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over the document referenced.

8.15. Authority to Enter Agreement. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so, the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

CHUCK JONES CENTER FOR CREATIVITY



Signature

DENISE DION-SCODYNLI
Name

Date: 1/7/2020


Social Security or Taxpayer ID Number

CITY OF COSTA MESA

Ignite E. Aguilas

Acting Parks & Community Services
Director

Date: 01/21/20

Robert M.

Recreation Supervisor

Date: 1-21-20

APPROVED AS TO FORM:

Frederick Hall Barlow

City Attorney

Date: 1/22/20

EXHIBIT A
PROGRAM SCHEDULE

Spring 2020

School 1	Fridays	January 10, 17, 24, 31, February 7, 14
School 2	Mondays	February 24, March 2, 9, 16, 23, 30
School 3	Mondays	February 24, March 2, 9, 16, 23, 30
School 4	Fridays	February 28, March 6, 13, 20, 27
School 5	Fridays	February 28, March 6, 13, 20, 27
School 6	Mondays	April 13, 20, 27, May 4, 11, 18
School 7	Mondays	April 13, 20, 27, May 4, 11, 18
School 8	Friday	May 1, 8, 15, 22, 29, June 5
School 9	Mon/Tue	June 1, 2, 8, 9, 15, 16

Each class will be one (1) hour in duration. The class start time will be as specified by City staff.

Summer 2020

CJCC will provide a Summer Session at Sonora Elementary, on dates mutually agreed upon by City and CJCC. The Summer Session will consist of a one-hour class once a week for nine (9) weeks.

If any of the nine elementary schools declines the Spring 2020 program, the City may add a second Summer Session location.