

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF COSTA MESA
AND THE NEWPORT MESA UNIFIED SCHOOL DISTRICT (NMUSD)
FOR SPORTS, MUSIC, AND ART (SMART) CAMP**

This Memorandum of Understanding ("Agreement"), entered into this 12 day of June, 2023 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and the NEWPORT MESA UNIFIED SCHOOL DISTRICT (NMUSD), to establish joint programming opportunities for the benefit of youth in Costa Mesa.

MISSION STATEMENT

It is the stated goal of this Agreement to have a working partnership between the City and NMUSD to provide a seasonal Sports, Music, and Art (SMART) Camp to the community's youth at no cost to the participants.

RECITALS

Whereas, City is a municipal corporation duly organized and validly existing under the Constitution and the laws of the State of California.

Whereas, NMUSD is a government entity that provides public elementary and/or secondary education to students within a specific territory.

Whereas, the City is committed to providing programs and services in an equitable manner that enrich the lives of its youth and whose desire it is to expand its services to reach as many youth as possible.

Whereas, NMUSD in partnership with the Costa Mesa - Newport Beach communities, has a mission to graduate students who have acquired the knowledge, skills, and attitudes necessary to achieve significant career, educational, civic, and personal goals, which will enrich our society.

Whereas, NMUSD and the City have collaborated to provide free summer instructional classes in sports, music, and art on NMUSD campuses, taught by NMUSD teachers and coaches, to the community's youth since 2014.

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

1.0 TERM

The term of this Agreement shall commence on the Effective Date and continue for a period of five (5) years, ending on August 30, 2028, and will automatically renew every five

(5) years thereafter, provided both parties are in agreement and unless previously terminated as provided herein.

2.0 SMART CAMP OPERATION

2.1 Structure

- (a) SMART Camp will consist of a series of instructional classes separated into three components: 1) sports, 2) music, and 3) visual and performing arts.
- (b) Each component of SMART Camp shall be led by a Camp Coordinator. Coordinators shall develop the course curriculum, select classrooms and athletic facilities, procure Camp equipment, and supervise SMART Camp Instructors.
- (c) SMART Camp Instructors will provide instruction to Camp participants under the general supervision of the Camp Coordinator.
- (d) SMART Camp Instructors and Coordinators shall be compensated by the City as independent contractors but must hold qualifications as determined by NMUSD, or another district in Orange County, as teachers or coaches in good standing and must maintain all relevant certifications and credentials required of those positions.
- (e) Each component of SMART camp shall provide adequate instruction to accommodate all skill levels of each activity.
- (f) The sports component shall exclude any aquatic-related activities or sports and any use of artificial turf fields.
- (g) SMART Camp shall require advance participant registration; drop-in participation will not be permitted.
- (h) SMART Camp will be limited to Costa Mesa residents and NMUSD students entering the fourth through eighth grades.
- (i) SMART Camp must be free to all eligible participants.

2.2 Duration

- (a) SMART Camp shall take place only within the summer season, as established by the NMUSD academic calendar.
- (b) Sports, Music, and Art components will not exceed twelve (12) total class sessions.

- (c) Art and Music class sessions will be held daily on weekdays unless otherwise noted for holidays, will not take place more than 4 days per week, and may not exceed three (3) hours in length per day. Sports class sessions will be held daily on weekdays unless otherwise noted, will not take place more than 4 days per week, and may not exceed two (2) hours in length.

2.3 Location

- (a) SMART Camp shall be conducted exclusively on the designated NMUSD campuses, as determined by NMUSD, and no portion of the camp shall be held off NMUSD property.

3.0 CITY RESPONSIBILITIES

3.1 Staff

- (a) City will provide a primary staff liaison to represent the City during the planning and operation of SMART Camp.
- (b) City will provide ancillary staff prior to and through the duration of SMART Camp to assist with handling class registration and to provide a point of contact for the public.
- (c) City will employ NMUSD personnel as independent contract Instructors and Coordinators for the agreed upon duration of SMART Camp.
- (d) All independent contractors will report to and be supervised by the City's designated staff liaison.

3.2 Marketing & Registration

- (a) City will prepare and disseminate marketing and registration materials to promote SMART Camp.
- (b) City staff will seek NMUSD approval on all materials prior to dissemination containing both the City and NMUSD insignia.
- (c) City shall be the exclusive point of contact for registration for SMART Camp, offering online and in-person registration throughout the duration of camp.

- (d) City shall require parent and/or guardian signatures of all Camp participants on waivers that indemnify and hold harmless both the City and NMUSD prior to participation in any Camp activities.
- (e) City shall maintain accurate participant records, including participant contact information and camp rosters, in accordance with City's Record Retention Schedule.
- (f) City will provide registration information and statistics to NMUSD upon request.
- (g) If NMUSD elects to provide transportation as stipulated in Section 4.4 (a), City will provide relevant NMUSD personnel with weekly transportation rosters beginning the week prior to Camp's start date and through Camp's conclusion.

3.3 Funding

- (a) City will allocate funding to pay NMUSD personnel as contracted instructors for the duration of SMART camp as established in Section 2.2 of the Memorandum of Understanding.
- (b) SMART Camp Coordinator and Instructor hourly wage shall be based off the NMUSD's salary schedule.
- (c) The City will provide funding to NMUSD for the purchase camp materials. The amount of funding provided will be mutually agreed upon by NMUSD and City on an annual basis.

3.4 Miscellaneous

- (a) City shall be responsible for placing adequate directional signage at the designated camp location and removing signage materials at the conclusion of camp.
- (b) City will handle minor disciplinary issues with camp participants in accordance with the City's Disciplinary Rules and Regulations for youth camps and programs. City staff shall report all disciplinary issues to NMUSD that include, but are not limited to: criminal behavior, unlawful harassment, and suspected instances of child abuse.

4.0 NMUSD DUTIES

4.1 Staff

- (a) NMUSD personnel authorized to allocate space on NMUSD property for the purposes of conducting SMART Camp in coordination with NMUSD summer school activities and programs shall participate in SMART Camp planning meetings with City staff beginning in February of each calendar year.
- (b) NMUSD will make recommendations to the City on qualified personnel to serve as Camp Coordinators as described in 2.1 (a) and 2.1 (b). Once selected, and prior to working as independent contractors for the City, Coordinators will attend planning meetings with aforementioned NMUSD and City personnel.
- (c) NMUSD may allow its interested and eligible employees to work as independent contractors for the City for the duration of SMART Camp, subject to the following conditions:
 - (i) NMUSD employees shall not be required to work as independent contractors for the City for SMART Camp and may decline to participate at their discretion.
 - (ii) NMUSD employees who choose to work as independent contractors for the City during SMART Camp shall do so on a voluntary basis and shall be compensated as independent contractors by the City.
 - (iii) NMUSD employees who work as independent contractors for the City during SMART Camp shall neither be considered employees of the City nor NMUSD, and the City nor NMUSD shall not be responsible for providing them with any employee benefits, including workers' compensation, unemployment insurance, or any other benefits that may be available to City or NMUSD employees.
 - (iv) NMUSD employees who work as independent contractors for the City during SMART Camp shall be subject to the City's policies and procedures governing independent contractors, including but not limited to those related to insurance, liability, and compliance with all applicable laws and regulations.
- (d) In addition to joint planning meetings beginning in February, NMUSD will allocate limited staff time to allow for the planning and preparation of SMART Camp, which may include: producing or procuring camp materials and equipment, planning curriculums, and establishing a Camp Instructor roster.

- (e) NMUSD will provide on-site contact information for custodial personnel for the duration of SMART Camp.

4.2 Facilities and Equipment

- (a) NMUSD will reserve athletic facilities and classrooms, that it deems most appropriate, prior to the beginning of SMART Camp for the agreed upon duration of Camp.
- (b) NMUSD will reserve and coordinate use of NMUSD-owned athletic equipment, musical instruments, art materials, and use of any other relevant equipment with Camp Coordinators prior to and throughout the duration of SMART Camp.
- (c) NMUSD will ensure SMART Camp classrooms, athletic fields, and all pedestrian walkways from the exterior of the campus are accessible prior to the beginning of SMART Camp and are locked and secured at the end of SMART Camp.
- (d) NMUSD will provide established emergency procedures for the designated SMART Camp location(s). This may include but is not limited to: emergency procedures for fires, earthquakes, and campus lockdowns; designated evacuations routes; and designated rally points.
- (e) NMUSD will provide limited space to City for storage of a portable canopy, a folding table, and a supply box for the purpose of supporting on-site and day-of registration at select dates during the duration of SMART Camp.

4.3 Marketing

- (a) NMUSD will provide free access to distribute SMART camp flyer through PeachJar.
- (b) NMUSD insignia shall be printed on all marketing and registration materials alongside City insignia for joint program display.

4.4 Transportation

- (a) NMUSD may elect to provide transportation to or from SMART Camp at the expense of the NMUSD. If NMUSD elects to provide transportation, NMUSD transportation staff shall provide the City with route plans with accurate drop-off and pick-up times prior to the established SMART Camp registration date. Transportation staff will

remain in communication with City staff throughout the duration of SMART Camp to ensure safe transit for all eligible participants.

4.5 Nutrition

- (a) NMUSD may elect to provide meals to SMART Camp participants, free of charge, as a part of its summer nutritional program, if camp sessions take place in the morning and in the afternoon.

5.0 TERMINATION

NMUSD or City may terminate this Agreement without cause at any time, by giving one hundred-eighty (180) days' written notice to the other party. The notice shall be deemed given when personally delivered to the NMUSD or City representative or three (3) days after the date the notice is deposited in the United States mail, first-class postage paid, and addressed to the appropriate representative as specified in this Agreement.

6.0 INDEMNIFICATION

6.1 NMUSD Obligations NMUSD agrees to defend, indemnify, and hold harmless City, its elected and appointed officials, officers, agents, employees, and volunteers from and against any and all losses, claims, actions, damages, expenses or liabilities, including reasonable attorneys' fees, arising out of or in any way connected with NMUSD's negligent performance of this Agreement. NMUSD assumes workers' compensation liability for injury or death of its officers, agents, employees, and volunteers, and, except as provided herein, assumes no workers' compensation responsibility for the elected and appointed officials, officers, and employees of the City.

6.2 City Obligations City agrees to defend, indemnify, and hold harmless NMUSD, its officers, agents, employees, and volunteers harmless against and from any and all losses, claims, actions, damages, expenses or liabilities, including reasonable attorneys' fees, arising out of or in any way connected with City's negligent performance of this Agreement. Except as provided herein, City assumes workers' compensation liability for injury or death of its elected and appointed officials, officers, and employees, and assumes no workers' compensation responsibility for the officers, agents, employees, and volunteers of NMUSD.

7.0 ASSIGNMENT

This Agreement may not be assigned or transferred by either Party without the express written consent of the other Party.

8.0 NOTICE/REPRESENTATIVES

The City and NMUSD have designated the following representatives to receive notices and act on their agency's behalf in the administration of this Agreement.

CITY: Parks and Community Services Director
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

DISTRICT: Assistant Superintendent of Secondary Education
2985 Bear Street
Costa Mesa, CA 92627

9.0 NO THIRD PARTY BENEFICIARIES

This Agreement, including, but not limited to, the indemnification provisions, is for the benefit of the Parties only and does not create, nor is it intended to create benefit or liability to third parties.

10.0 ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral 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 to this Agreement.

11.0 ATTORNEYS' FEES

In the event that 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.

12.0 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.

13.0 AMENDMENTS

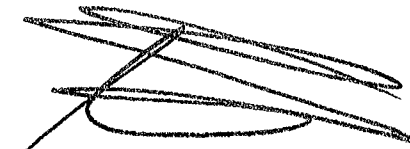
Only in writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

14.0 COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by and through their respective authorized officers, as of the date first written above.

CITY OF COSTA MESA:

By: 

Mayor

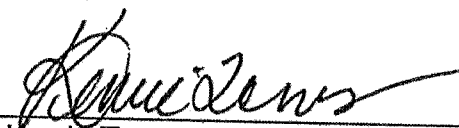
Date: 09/19/23

By: 

City Manager

Date: 9/14/23

NEWPORT MESA UNIFIED SCHOOL DISTRICT (NMUSD):

By: 

Kerrie Torres, Assistant Superintendent
Secondary Education

Date: 6/16/23

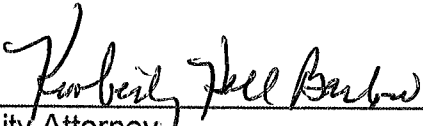
ATTEST:




Brenda Green
City Clerk
City of Costa Mesa

Date: 9/20/2023

CITY: APPROVED AS TO FORM:




City Attorney
City of Costa Mesa

CITY: APPROVED AS TO CONTENT:



Parks and Community Services Director
City of Costa Mesa

NMUSD: APPROVED AS TO FORM:



Kerrie Torres, Assistant Superintendent
Secondary Education

Date: 6/20/23