COTTONWOOD HEIGHTS

RESOLUTION NO. 2021-41

A RESOLUTION APPROVING ENTRY INTO AN INTERLOCAL AGREEMENT WITH CANYONS SCHOOL DISTRICT FOR USE OF SCHOOL BUSES FOR THE 2021 BIG COTTONWOOD MARATHON AND HALF

WHEREAS, the Interlocal Cooperation Act, UTAH CODE ANN. §11-13-101 *et. seq.* (the "*Interlocal Cooperation Act*"), provides that any two or more public agencies may enter into agreements with one another for joint or cooperative action following the adoption of an appropriate resolution by the governing body of each participating public agency; and

WHEREAS, Canyons School District ("*District*") and the city of Cottonwood Heights ("*City*") are public agencies for purposes of the Interlocal Cooperation Act; and

WHEREAS, in order to, *inter alia*, promote public health and the benefits of physical exercise, City is co-sponsoring the "Big Cottonwood Marathon & Half" (the "*Event*") on Saturday, 11 September 2021, consisting of two road races commencing at 6:45 a.m. at Guardsman Pass and the Spruces Campground, respectively, in Big Cottonwood Canyon (the "*Canyon*") and ending at a location in City's boundaries; and

WHEREAS, to avoid public safety concerns arising from hundreds of small, private vehicles transporting the Event's runners up the Canyon during pre-dawn hours on September 11th, the Event promoter, Brooksee, LLC ("*Brooksee*") and City desire for such transportation to occur via buses so that smaller, private vehicles can be prohibited from accessing the Canyon before and during the Event; and

WHEREAS, District owns and operates a fleet of school buses for its weekday operations which are not typically used on weekends; and

WHEREAS, in a cooperative response to City's request, District is willing to provide 30 of its buses and qualified drivers to transport runners up the Canyon on September 11th prior to the Event, on the terms and conditions specified in a proposed interlocal agreement (the "*Agreement*") between City and District; and

WHEREAS, the City's municipal council (the "*Council*") met in regular session on 17 August 2021 to consider, among other things, approving the City's entry into the Agreement; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

WHEREAS, the city attorney of the City has approved the form of the Agreement as required by *Utah Code Ann.* §11-13-202.5(3); and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve the City's entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the city council of the city of Cottonwood Heights that the attached Agreement be, and hereby is, approved, and that the City's mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City.

This Resolution, assigned no. 2021-41, shall take effect immediately upon passage.

PASSED AND APPROVED this 17th day of August 2021.

ATTEST:

By _____
Paula Melgar, Recorder

COTTONWOOD HEIGHTS CITY COUNCIL

By _____
Michael J. Peterson, Mayor

VOTING:

Michael J. Peterson	Yea ✓	Nay ___
Douglas Petersen	Yea ✓	Nay ___
J. Scott Bracken	Yea ✓	Nay ___
Tali C. Bruce	Yea ✓	Nay ___
Christine Watson Mikell	Yea ✓	Nay ___

DEPOSITED in the office of the City Recorder this 17th day of August 2021.

RECORDED this 19 day of August 2021.

Interlocal Cooperation Agreement

THIS INTERLOCAL COOPERATION AGREEMENT (this "*Agreement*") is made effective 3 August 2021 between **CANYONS SCHOOL DISTRICT**, whose address is 9361 South 300 East, UT 84070 ("*District*"), and the city of **COTTONWOOD HEIGHTS**, whose address is 2277 East Bengal Blvd., Cottonwood Heights, UT 84121 ("*City*").

RECITALS:

A. UTAH CODE ANN. 11-13-202 and other provisions of the Interlocal Cooperation Act (UTAH CODE ANN. 11-13-101 *et seq.*) (the "*Interlocal Act*") provide that any two or more public agencies may enter into an agreement with one another for joint or cooperative action.

B. District and City are public agencies for purposes of the Interlocal Act.

C. In order to, *inter alia*, promote public health and the benefits of physical exercise, City is co-sponsoring the "Revel Big Cottonwood Marathon & Half" (the "*Event*") on Saturday, 11 September 2021, consisting of two road races commencing at 6:45 a.m. at Guardsman Pass and the Spruces Campground, respectively, in Big Cottonwood Canyon (the "*Canyon*") and ending at a location in City's boundaries.

D. To avoid public safety concerns arising from hundreds of small, private vehicles transporting the Event's runners up the Canyon during pre-dawn hours on September 11th, the Event promoter, Brooksee, LLC ("*Brooksee*") and City desire for such transportation to occur via busses so that smaller, private vehicles can be prohibited from accessing the Canyon before and during the Event.

E. District owns and operates a fleet of school busses for its weekday operations which are not typically used on weekends. In a cooperative response to City's request, District is willing to provide 30 of those busses, and qualified drivers, to transport runners up the Canyon on September 11th prior to the Event, on the terms and conditions specified in this Agreement.

F. The parties desire to memorialize their agreement concerning such matters, and have determined that their entry into this Agreement is mutually beneficial.

AGREEMENT:

NOW, THEREFORE, the parties agree as follows:

Section 1. **Provision of Busses and Drivers**. At approximately 4:00 a.m. on 11 September 2021, District will provide 30 of its "school busses," with qualified, licensed drivers, at a location near 1300 East 6855 South, Cottonwood Heights, UT that is specified by Brooksee. The busses then will transport the Event's runners, support personnel, etc. up the Canyon to the starting point of the half-marathon at the Spruces Campground on such schedule and utilizing such logistics as Brooksee reasonably shall designate, and then exit the Canyon before the Event commences, returning to District's storage facility.

Section 2. **Payment**. As full compensation for use of the 30 busses, drivers, fuel and other equipment, personnel and supplies as needed for District's full and timely performance under

Section 1, above, District shall be paid a total of $10,000 ($333.33/bus) (the "*Fee*"). The Fee shall be paid in advance by Brooksee to District so that it is received by District on or before 1 September 2021. If the Fee is not so paid by Brooksee by that deadline, then District is excused from its obligation to perform under Section 1, above, and this Agreement shall be deemed terminated.

Section 3. **Insurance and Indemnification**.

(a) *Insurance*. The Utah Local Governments Trust has agreed to provide a broad form comprehensive liability insurance policy or policies (hereinafter collectively referred to as the "*Liability Policy*") against claims for damage or injury to persons or property arising out of the Event, including, without limitation, the use of District's busses to transport runners up the Canyon and their return down the Canyon in connection with the Event. The Liability Policy shall be maintained on the minimum basis of $1,000,000 for damage to property, $1,000,000 for bodily injury to or death of any one person in any one accident, and an aggregate of $2,000,000 for bodily injury to or death of more than one person in one accident. District shall be named as an additional insured under the Liability Policy. A duplicate original, certificate or binder of the Liability Policy shall be furnished to District promptly on District's demand. The Liability Policy shall be provided at Brooksee's cost, paid to ULGT at least three business days before the Event.

(b) *Indemnification*. Both parties are governmental entities under the Governmental Immunity Act, UTAH CODE ANN. Section 63G-7-101 *et. seq.* (the "*Immunity Act*"). Consistent with the terms of the Immunity Act, the parties agree that each party is responsible and liable for the wrongful or negligent acts which it commits or which are committed by its agents, officials, or employees. Neither party waives any defenses or limits of liability otherwise available under the Immunity Act and all other applicable law, and both parties maintain all privileges, immunities, and other rights granted by the Immunity Act and all other applicable laws.

To the fullest extent permitted by law City will indemnify, hold harmless and, at the option of District, defend District, its Board, officers, directors, agents, representatives, employees, assigns, affiliates, insurers, and successors in interest from and against all claims, lawsuits, damages, losses and expenses, including but not limited to attorneys' fees and costs of litigation, or other liabilities or losses of any kind or nature whatsoever arising out of or in any way related to the use of District's school buses for the Event by City or Brooksee, or their respective employees, agents, volunteers, attendees, and invitees, including, without limitation, death or bodily injury to any passenger in a District vehicle, or damage or destruction to any property of either party to this Agreement. Notwithstanding the first paragraph of this subsection 3(b), this indemnity applies even where a claim, lawsuit, damage, injury, death or property damage arises out of the negligence of District or its Board, officers, agents, representatives or employees.

For purposes of this indemnity, City agrees that any driver of District vehicles is an agent of City and that any act, whether negligent, intentional or otherwise, of the driver shall be deemed to be an act of City and not of District, such that any such act will not be considered to be negligence of District.

City agrees that it shall have no recourse against District or its Board, officers, directors, agents, representatives, employees, assigns, affiliates, insurers, and successors in interest for matters covered by this indemnity, and City waives, on behalf of itself and any insurers, any and all rights of recovery, including but not limited to subrogation rights, against District, its Board, officers,

directors, agents, representatives, employees, assigns, affiliates, insurers, and successors in interest.

To the extent any part or portion of this indemnity is held to be unenforceable, the parties intend that that part or portion be reformed to be consistent with the law and public policy and that it be enforced to the fullest extent permitted by law and that all other parts be enforced.

Section 4. **Additional Interlocal Act Provisions**. In compliance with the requirements of the Interlocal Act and other applicable law:

(a) *No Separate Entity*. The parties agree that this Agreement does not create an interlocal entity.

(b) *Joint Board*. As required by UTAH CODE ANN. Section 11-13-207, the parties agree that the cooperative undertaking under this Agreement shall be administered by a joint board consisting of District's superintendent or designee and City's manager or designee. Any real or personal property used in the parties' cooperative undertaking herein shall be acquired, held, and disposed of in accordance with this Agreement.

(c) *Financing and Joint Cooperative Undertaking and Establishing Budget*. There is no financing of joint or cooperative undertaking and no budget shall be established or maintained.

(d) *Attorney Review*. This Agreement shall be reviewed as to proper form and compliance with applicable law by the authorized attorneys for the parties in accordance with UTAH CODE ANN. Section 11-13-202.5.

(e) *Copies*. Duly executed original counterparts of this Agreement shall be filed with the keeper of the records of each party pursuant to UTAH CODE ANN. Section 11-13-209.

Section 5. **General Provisions**. The following provisions are also integral parts of this Agreement:

(a) *Binding Agreement*. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties.

(b) *Captions*. The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

(c) *Counterparts*. This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

(d) *Severability*. The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable, or invalid provision shall not affect the other provision of this Agreement.

(e) *Waiver of Breach.* Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of or consent to any subsequent breach of this Agreement.

(f) *Amendment.* This Agreement may not be modified except by an instrument in writing signed by the parties.

(g) *Time of Essence.* Time is of the essence in this Agreement.

(h) *Interpretation.* This Agreement shall be interpreted, construed, and enforced according to the substantive laws of the state of Utah.

(i) *Notice.* Any notice or other communication required or permitted to be given hereunder shall be deemed to have been received:

(i) Upon personal delivery or actual receipt thereof; or

(ii) Within three (3) days after such notice is deposited in the United States mail, certified mail postage prepaid and addressed to the parties at their respective addresses.

(j) *Exhibits and Recitals.* The Recitals set forth above and all exhibits to this Agreement are incorporated herein to the same extent as if such items were set forth herein in their entirety within the body of the Agreement.

IN WITNESS WHEREOF, District, by resolution duly adopted by its Board, caused this Agreement to be signed by its superintendent and attested, and City, by resolution of its City Council, caused this Agreement to be signed by the Mayor and attested.

[*Signature page follows*]

CITY:

ATTEST:

COTTONWOOD HEIGHTS, a Utah municipality

Paula Melgar, City Recorder

Michael J. Peterson, Mayor

Approved and reviewed as to proper form and compliance with applicable law:

Wm. Shane Topham,
Cottonwood Heights City Attorney
Date: 10 August 2021

DISTRICT:

ATTEST:

CANYONS SCHOOL DISTRICT

_____, _____

Leon Wilcox, Business Administrator

Approved and reviewed as to proper form and compliance with applicable law:

District's Attorney
Date: 2 August 2021