

INTERLOCAL AGREEMENT BETWEEN THE CITY OF AUSTIN AND THE AUSTIN COMMUNITY COLLEGE DISTRICT FOR ADULT EDUCATION PROGRAMMING AND ESL COURSES AT THE ASIAN AMERICAN RESOURCE CENTER

This Interlocal Cooperation Agreement for Facility Use and Adult Education Programming including English as a Second Language (ESL) courses agreement (“Agreement”) is made and entered into by and between the City of Austin, a Texas home-rule municipality (“City”), acting by and through its Parks and Recreation Department (“PARC”), and the Austin Community College District, an institution of higher education (“ACC”), collectively referred to as the “Parties.”

This Agreement is an Interlocal Agreement authorized and governed by the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. Each party represents and warrants that in the performance of its respective obligations as set forth in this Agreement, it is carrying out a duly authorized governmental function, which it is authorized to perform individually under the applicable statutes of the State of Texas and/or its charter.

ACC has received federal and State grant funding to provide Adult Education Programming including English as a Second Language (“ESL”) course instruction at the City of Austin Asian American Resource Center (“AARC” or “Facility”). ACC wishes to hold ESL classes and potentially other Adult Education Programs at the AARC and the City wishes to provide space for such classes at mutually agreed upon dates and times.

ACC’s Adult Education Programming provides classes in English as a Second Language, literacy and civics, and GED preparation. The purpose of the ESL Program is to help Austin residents learn basic English in order to succeed. These are survival classes for beginner students who primarily want to learn English for everyday life, employment skills enhancement, and to assist in situations such as obtaining housing, shopping, and communicating at work.

The Austin City Council approved Ordinance No. 2021118-037 to waive up to \$9,315 in rental fees at AARC for ACC to hold Adult Education classes there.

ACC and the City, intending to be legally bound, hereby agree to the following terms and conditions of this Agreement:

1. **Scope.** ACC agrees to offer ESL classes and potentially other Adult Education programs to the public at AARC, which is owned and controlled by the City and located at 8401 Cameron Road, Austin, TX 78754.
2. **ACC Responsibilities.**
 - a. ACC shall offer ESL classes in accordance with the terms of the grant and in accordance with the schedule set forth in **Attachment A**. ESL classes shall be provided at no charge to the City or to class participants.

- b. ACC shall be responsible for all student registrations and shall provide any necessary class and study materials and equipment.
- c. ACC shall communicate any changes in scheduled ESL classes to the City Contract Manager, as identified in Section 4 below, within 72 hours. ACC acknowledges that City will attempt to provide space for re-scheduled classes, events or meetings that have been previously scheduled.
- d. ACC shall comply with all applicable federal, State and local laws and regulations, including the AARC Facility Rules attached as **Attachment B**, in performing under this Agreement.
- e. ACC is responsible for securing the services, at ACC's sole expense, of qualified instructors and any other personnel needed to safely conduct each class. All classes will be supervised by a qualified ACC instructor and ACC instructors shall not leave minor students unsupervised. Prior to holding the first class at the Facility, ACC shall provide the City's Contract Manager with a written statement that all ACC instructors who will teach classes at the Facility have successfully passed a Criminal Background Investigation (CBI). ACC acknowledges and agrees that no one shall be permitted to substitute for an ACC instructor or to volunteer to assist with the classes unless the person has passed a CBI and been approved by the City's Contract Manager.
- f. ACC and PARD may each promote the classes at the Facility.
- g. ACC must maintain, throughout the term of this Agreement, the insurance coverage described on **Attachment C**, which is attached to and made a part of this Agreement for all purposes. The insurance policies shall contain the correct endorsements in favor of the City of Austin Parks and Recreation Department. ACC agrees to supply evidence of the insurance coverage to the City Contract Manager when ACC submits the signed Agreement. If the required evidence of insurance is not provided at the time ACC signs this Agreement, the City Contract Manager shall refuse to submit the Agreement for City signature. If the City Contract Manager learns that any required insurance coverage has lapsed or been cancelled, they shall immediately terminate this Agreement.
- h. ACC is responsible for maintaining the condition of the room during classes and restoring it to the same condition as it was prior to the class, including any required cleaning of the space. ACC shall not make alterations to the Facility or room space without the prior written approval of the City Contract Manager.
- i. ACC shall not refuse participation to any person on the basis of race, color, age, national origin, or sexual orientation.
- j. ACC shall comply with all applicable federal, State, and local laws and regulations in performing under this Agreement.

- k. ACC agrees that City may conduct periodic program evaluations to assess the efficiency and effectiveness of the classes, and the number of students, and ACC agrees to assist in any such evaluations.
- j. ACC agrees to provide the City an annual report at the end of the program that lists program attendance and student demographics.

3. **City Responsibilities**

- a. City shall provide ACC with access to the Facility and reasonable assistance with room set-up. If, due to an emergency, City cannot provide access to the Facility on a particular day, the City Contract Manager shall, except in emergency circumstances, notify ACC Contract Manager within 72 hours.
- b. At its own cost, City shall maintain the Facility in a clean and presentable manner and shall be responsible for providing heat, light, and ventilation services.
- c. City shall comply with all applicable federal, State and local laws and regulations in performing under this Agreement.
- d. City shall provide ACC instructors with a list of site information which includes information about security, rules for use of classroom space, and any reports required from instructors (see Attachment B).

4. **Contract Managers.** The following shall serve as the Contract Managers for the parties:

ACC:

Kathryn Dowdy, Executive Director, Adult Education
5930 Middle Fiskville Road
Austin, TX 78752
kdowdy@austinacc.edu
Phone: (512) 223-7738

City of Austin:

Laura Esparza, Division Manager, Museums and Cultural Programs
1110 Barton Springs Road
Austin, TX 78704
laura.esparza@austintexas.gov
Phone: (512) 974-4001

5. **Term.** The initial term of this Agreement is January 1, 2022 through December 31, 2022 and will be renewed automatically on the anniversary date for five successive 12-month terms, unless amended or terminated in accordance with other provisions of the Agreement.

6. **Termination.** The Agreement may be terminated with or without cause by either party by providing at least 45 days' written notice. If either party breaches the Agreement, the other party may terminate the Agreement if the party in breach fails to cure the breach within seven calendar days of receipt of written notice of the breach or such additional time as the parties may agree to in writing.
7. **Notices.** Any notice or other communication permitted or required under this Agreement shall be provided in writing to the persons identified in Section 13 below and shall be deemed effective when delivered by email, personal delivery, confirmed facsimile or, if mailed, on the fifth calendar day following deposit in the U.S. mail by certified mail, return receipt requested.
8. **Force Majeure.**
- a. Each Party to this Agreement agrees to excuse the failure of the other Party to perform its obligations under this Agreement to the extent that failure is caused by an event of Force Majeure. Force Majeure means acts and events not within the control of the party, and which the party could not use due diligence to avoid or prevent. Events of Force Majeure include:
 - i. The total or partial destruction of the Facility by any cause, casualty, or unforeseen occurrence;
 - ii. The imposition of local, State or federal measures, orders, declarations, travel restrictions, quarantines, or isolation in response to the outbreak of an infectious disease, epidemic or pandemic in the City that involves, includes, or affects the Facility or the ability to appropriately deploy employees or contractors;
 - iii. Lightning, earthquakes, fires, storms, floods, and landslides;
 - iv. An act of terrorism, strike, sabotage, civil disturbance, or disaster declaration; and
 - v. Circumstances beyond the party's control that render the party's performance impossible.
 - b. Force Majeure does not include economic or market conditions which affect a party's cost but not its ability to perform.
 - c. The party invoking Force Majeure shall give timely and adequate notice to the other party of the event by telephone or e-mail, and then the party must promptly provide written notice of the Force Majeure in the manner required by this Agreement. The party shall use due diligence to remedy the effects of Force Majeure as soon as reasonably possible. If a party's performance is delayed by the event of Force Majeure, the parties will mutually agree to extend the time for the completion of obligations by a period of time reasonably necessary to overcome the effect of the Force Majeure event.

9. **Independent Contractors.** The parties' relationship during the term of this Agreement shall be that of independent contractors.
10. **Waiver.** Any waiver of any breach of this Agreement shall not be effective unless set forth in writing signed by an officer of the waiving party.
11. **Assignment.** Neither party may assign this Agreement without the other party's prior written consent. A party in its sole discretion may withhold its consent to assignment, and any attempted assignment in violation of the foregoing shall be void.
12. **No Third-Party Beneficiaries.** City and ACC agree that the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties and is made solely and specifically for their benefit. No other person, including but not limited to any ACC student, prospective student, or instructor shall have any rights, interest or claims under this Agreement.
13. **Notice Addresses.** Any notice required or permitted under this Agreement shall be sent to the following addresses:

City of Austin:

Laura Esparza, Division Manager, Museums and Cultural Programs
1110 Barton Springs Road
Austin, TX 78704
laura.esparza@austintexas.gov
Phone: (512) 974-4001

With copy to:

Bianca Galvan, Acting Cultural & Arts Education Manager, AARC
8401 Cameron Road
Austin, TX 78754
sona.shah@austintexas.gov
Phone: (512) 974-1690

ACC:

David Borden, Executive Director, Adult Education
5930 Middle Fiskville Road
Austin, TX 78752
dborden@austinacc.edu
Phone: (512) 223-7738

14. **Entire Agreement.** This Agreement shall be construed in accordance with the laws of the State of Texas excluding its conflicts of laws rules. This Agreement constitutes the entire

agreement between the parties with respect to Adult Programming and ESL classes at of the Facility. All proposals, negotiations, and representations (if any) made prior, and with reference to the subject matter of this Agreement, are superseded by this Agreement. This Agreement may be executed in two or more counterparts and each counterpart will be deemed an original, but all counterparts together will constitute a single instrument. Neither ACC nor City shall be bound by any oral agreement or representation, irrespective of when made.

15. **No Funding.** The parties agree that nothing in this Agreement obligates either party to provide any funding or payment to the other party. To the extent that a party incurs costs or expenses as part of this Agreement, the party incurring those expenses or costs represents to the other party that it will pay for those costs or expenses from current revenues available to that party. The parties further acknowledge that the benefits that they each receive from this Agreement fairly compensate them for the obligations they must perform under this Agreement.
16. **Authority.** Each party warrants that this Agreement has been authorized by its governing body in accordance with Chapter 791 of the Texas Government Code.
17. **Amendments.** This Agreement may only be modified by a written instrument executed by an authorized representative of each party.
18. **Jurisdiction and Venue.** This Agreement is made under and shall be governed by the laws of the State of Texas, without regard to conflicts of law principles which would apply the law of any other jurisdiction. Venue for any dispute arising out of or concerning this Agreement shall be proper in Travis County.
19. **Publicity.** Where such action is appropriate as determined by City, ACC will publicize the activities conducted by ACC under this Agreement. Any news release, sign, brochure, or other advertising medium including websites disseminating information prepared or distributed by or for ACC will recognize City as a partner.
20. **Survivability of Obligations.** All provisions of the Agreement that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Agreement.
21. **Dispute Resolution.**
 - a. If a dispute arises out of or relates to the Agreement, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a

resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

- b. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; the City and ACC agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Agreement prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session, and ACC agrees it will compel participation of its vendors in mediation if applicable to the dispute. The City and ACC will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

IN WITNESS WHEREOF, the parties hereto intending to be legally bound have read and executed this Agreement.

[Signature page follows]

CITY OF AUSTIN

By: _____
Stephanie Hayden-Howard
Assistant City Manager

Date: _____

AUSTIN COMMUNITY COLLEGE DISTRICT

By: _____
Richard Rhodes, Ph.D.
President/ CEO

Date: _____

APPROVED AS TO FORM:

Assistant City Attorney

Attachments:

Attachment A: Class Schedule

Attachment B: AARC Facility Rules

Attachment C: Insurance Requirements