

INTERLOCAL AGREEMENT BETWEEN THE CITY OF AUSTIN AND THE AUSTIN INDEPENDENT SCHOOL DISTRICT

This Interlocal Agreement is between the City of Austin, a Texas municipal corporation, through its Parks and Recreation Department (City) and the Austin Independent School District (AISD). 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.

Recognizing the importance of education and improving the skills of Austin youth, the City supports Athletics/Physical Education classes at select AISD schools that include Akins High School and any other identified AISD high schools. The purpose of this Agreement is for the City and AISD to provide a year-long swim lesson program (lifeguard certification program), consisting of the 36-hour lifeguard certification course, to the students of select AISD high schools that will have the option of testing for the StarGuard Elite Lifeguard Certification. Students possessing a StarGuard Elite Lifeguard Certification will then be eligible to apply for lifeguard positions to guard City pools that are currently experiencing a shortage of lifeguards.

There will be no exchange of funds between the City and AISD.

A. Term

The term of this Agreement is September 1, 2023 through August 31, 2026, with two automatic extension options for the duration of two years each upon agreement by both parties.

B. Deliverables to be Provided by AISD

AISD agrees to provide the following services and activities:

1. Provide a total of 50 or more students per semester from Akins High School, or any other identified AISD high schools over the course of the school year consisting of one semester at 50 or more students from each school per year, who will attend a 24-36 week swim program, consisting of four hours each week.
 - a. Students that successfully complete the SwimATX program become eligible to participate in the StarGuard Elite Lifeguard Certification Course taught by the City.
 - b. Students, possessing an StarGuard Elite Lifeguard Certification, are eligible to apply for lifeguard positions at City-owned pools to address the City's lifeguard shortage.
 - c. Students will receive Physical Education course credits upon completion of the SwimATX program regardless of their receipt of an StarGuard Elite Lifeguard Certification.

2. Provide a Physical Education educator to monitor and assist the students in the lifeguard certification program. The Physical Education educator will also serve as the program's single point of contact. Each school shall provide a Physical Education educator.
3. Provide lunches to the students in the lifeguard certification program.
4. Recruit students to participate in the lifeguard certification program by allowing City employees to present information regarding the lifeguard certification program onsite to AISD students at Akins High School or any other identified high school.
5. The principal of each participating campus will complete and submit the attached agreement two weeks prior to the commencement of student participation in the program (see Attachment "A").

C. Services and Deliverables to be Provided by the City

1. Allow use of the Big Stacy Neighborhood Pool located at 700 East Live Oak Street, Austin, Texas 78704 during the months of August to November and March to May by AISD students participating in the SwimATX program.
2. Provide scholarships valued at \$425 in the form of the StarGuard Elite Lifeguard Certification course that will be provided to each of the 50 or more AISD students in the lifeguard certification program.
3. Provide Water Safety Instructor (WSI) certification course during its regular training schedule at no cost to AISD Physical Education educators.
4. Provide four Recreation Program Specialists that will teach swim lessons to AISD students in the lifeguard certification program.
5. Recruit students to participate in the lifeguard certification program by providing informational presentations to AISD students at AISD schools that include Akins High School and any other identified AISD high schools.

D. Compliance with Laws

AISD agrees to comply with all applicable federal, state, and local laws and regulations in providing services under this Agreement.

E. Right to Audit

AISD agrees that the representative of the Office of the City Auditor, or other authorized representatives of the City, shall have access to, and the right to audit, examine, or reproduce, any and all AISD records related to its performance under this Agreement during normal business hours (Monday – Friday, 8 a.m. – 5 p.m., excluding state holidays), AISD shall retain all such

records in an accessible location for a period of three years after the termination of this Agreement or until all audit and litigation matters that the City has brought to the attention of AISD are resolved, whichever is longer.

F. Designation of Contract Managers

1. City's Contract Manager for this Agreement is Ashley Wells, Division Manager PARD Aquatics, 2818 San Gabriel, Austin, Texas 78702, (512) 974-9459, ashley.wells@austintexas.gov. She will be responsible for assigning appropriate staff for oversight and monitoring of AISD's performance under this Agreement.

City's Contract Manager:

- May meet with AISD to discuss any operational issues or the status of the services or work to be performed; and
- Will promptly review all written requests, submitted by AISD, and will give AISD timely feedback on the adequacy of its progress.

2. AISD's Contract Manager for this Agreement is Michele Rusnak, who will represent AISD with regard to performance of this Agreement and will be the designated point of contact for the City Contract Manager.

3. If either party replaces its Contract Manager, the party will promptly send written notice of the change to the other party. The notice will identify a qualified and competent replacement and provide contact information.

G. Termination

1. City reserves the right to terminate this Contract at any time and for any reason, including convenience, with respect to undelivered goods or unperformed services. Such termination shall be by written or electronic notice or by oral notice confirmed in writing.
2. Except as otherwise provided for in this Contract, the City and the Contractor shall consider this Contract terminated upon completion of the performance obligations and upon completion of payment obligations.

H. Miscellaneous

GENERAL LIABILITY AND INDEMNIFICATION: CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE CITY, INCLUDING ITS OFFICERS, OFFICIALS, EMPLOYEES, OR AGENTS, AGAINST LIABILITY, CLAIMS, DAMAGES, LOSSES OR EXPENSES, INCLUDING ATTORNEY FEES, ONLY TO THE EXTENT THAT THE LIABILITY, DAMAGES, LOSSES OR COSTS ARE CAUSED BY, OR ARISE

OUT OF, THE ACTS OR OMISSIONS OF CONTRACTOR OR ITS OFFICERS, EMPLOYEES, OR AGENTS. THIS INDEMNITY PROVISION SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS CONTRACT.

Complete Agreement. This is the complete agreement between the parties regarding the lifeguard certification program. It supersedes any other agreement or understanding between the parties, written or oral, and any other commitments, promises, undertakings, understandings, proposals or representations of either party to the other, written or oral, concerning the subject matter of this Agreement.

Amendment. This Agreement may be modified or renewed only in a writing executed by each party following approval by each party's representative. Neither any representation nor promise made after the execution of this Agreement, nor any modification or amendment of this Agreement, will be binding on either party unless approved in writing by each party's representative.

Independent Contractors. This Agreement will not be construed as creating an employer/employee relationship, a partnership, joint enterprise, or a joint venture between the parties. City and AISD are independent contractors. AISD agrees and understands that the Agreement does not grant to AISD or its employees any rights or privileges established for employees of the City.

Indemnification. To the extent allowed by Texas law, the City and AISD agree that each entity is responsible for its own proportionate share of any liability for any claims or damages arising out of or connected to its negligent acts or omissions in connection with this Agreement as determined by a court of competent law.

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.

Non-waiver. Failure of a party to exercise any right or remedy in the event of default by the other party shall not constitute a waiver of such right or remedy for any subsequent breach or default.

Severability. If any term or provision of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

Assignment. Neither party shall transfer any right or obligation under this Agreement without the prior written consent of the other party.

No Third-Party Beneficiaries. The parties agree that nothing in this Agreement shall be construed to be for the benefit of any third party.

Conflict of Interest. AISD covenants that neither it, nor any member of its governing body, presently has any interest or shall acquire any interest, direct or indirect, which would conflict in any manner with the performance of services required to be performed under this Agreement. AISD further

covenants that, in the performance of this Agreement, no person having such interest shall be employed or appointed as a member of its governing body. AISD further covenants that no member of its governing body or its staff, subcontractors or employees shall possess any interest in or use their position for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves, or others, particularly those with which they have family, business, or other ties. AISD acknowledges that no officer, employee, independent consultant or elected official of City who is involved in the development, evaluation or decision-making process, or the performance of any solicitation regarding this Agreement shall have a financial interest, direct or indirect, in the Agreement. AISD acknowledges that if it takes action, directly or indirectly, that results in a violation of this provision, City in its sole discretion may void this Agreement.

Termination for Public Safety. The City will have the right to terminate this Agreement without prior notice, due to AISD's or its vendors' action or inaction that results in an immediate threat to public health, safety, and welfare, and for which there is no cure.

Dispute Resolution.

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 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 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 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.

If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within 30 calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and AISD 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 30 calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center. The parties agree to participate in mediation in good faith for up to 30 calendar days from the date of the first mediation session, and AISD agrees it will compel participation of its vendors in mediation if applicable to the dispute. The City and AISD 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.

Force Majeure: Contractor may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, pandemic, sovereign conduct, or court order provided that the Contractor experiences the event of force majeure and prudently and promptly acts to take any and all steps that are within the Contractor's control to ensure performance and to shorten the duration of the event of force majeure. Contractor shall provide notice of the force majeure event to the City within three (3) business days of the event or delay, whichever occurs later, to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, the City may terminate an order under the Contract if it is determined by the City that the Contractor will not be able to deliver goods or services in a timely manner to meet the business needs of the City.

Employees, Insurance, Indemnification:

- a. In providing goods, materials, equipment, parts or performing services hereunder, Contractor is an independent contractor, with sole responsibility for all persons employed in connection therewith, including without limitation, exclusive liability for the payment of all Federal, State, and Local Unemployment and Disability Insurance and all Social Security and/or other taxes and contributions payable in respect of such persons, FROM AND AGAINST WHICH LIABILITY THE CONTRACTOR AGREES TO INDEMNIFY, EXONERATE AND HOLD HARMLESS THE CITY.
- b. Prior to the commencement of any services hereunder, Contractor must have purchased insurance to show evidence that at least an appropriate level of personal and business insurance to ensure the City is adequately indemnified for any and all claims related to the Contractor's performance. At the City's option, higher limits and additional insurance policies may be required. Contractor shall, when required by the terms of the contract or solicitation documents, provide to the City with certificate of insurance coverage.
- c. Contractor's insurance policies, regardless of any like insurance coverage that the City may have, shall be primary with respect to the interest of the City, and any insurance maintained by the City is in excess and not contributory to Contractor's insurance policies regardless of any like insurance coverage that the City may have.
- d. Contractor will (or will cause the respective insurance carrier to) provide the City with written notice prior to the cancellation, termination, non-renewal, or any other material change in the policies.
- e. Nothing in this Contract shall limit Contractor's liability to the limits of the insurance coverages required hereunder. Contractor shall be solely responsible for payment of all deductible or retention amounts pertaining to any insurance policies required herein or by law.
- f. Where applicable, all insurance policies shall provide for waiver of subrogation in favor of the City, include cross liability provisions, and all policies, except Workers' Compensation or Professional Liability, shall name the City and its directors, officers, officials, managers, representatives, agents and employees as additional insured, to the extent allowable under such policies.

Notices. Any notice to be given under this Agreement will be considered delivered: (i) upon personal delivery to the person named below; (ii) within three days after deposit in the United States mail, if mailed by certified mail, return receipt requested, and addressed to the person designated below for receipt of notice; or (iii) one business day after being sent by overnight delivery by a commercial courier service that tracks shipping and notice delivery. In cases where there is an emergency or other need for immediate notice to be given, written notice may be faxed to the person designated below, provided that a written copy of the notice is also delivered promptly to the person by one of the three means identified above.

The parties designate the following persons for receipt of notices:

If to AISD: Austin Independent School District
4000 S. I-H35 Frontage Rd.
Austin, TX 78704
Attention: Superintendent, Matias Segura- Interim
cc: Chief Schools Officer
Phone Number: 512.414.1700
Facsimile: 512.414.1486

If to City of Austin: Stephanie Hayden-Howard, Assistant City Manager
City of Austin
P.O. Box 1088
Austin, Texas 78767
Phone Number: 512.974.7905
Facsimile: 512.974.2833

With Copy to: Kimberly McNeeley, Director
City of Austin
Parks & Recreation Department
200 S. Lamar Blvd
Austin, Texas 78704
Phone Number: 512.974.6722
Facsimile: 512.974.6703

The parties may change the person designated for receipt of notice by giving notice in writing to the other party, identifying the new person designated for receipt of notice and providing the person's mailing address and contact information.

AGREED AND APPROVED:

AUSTIN INDEPENDENT SCHOOL DISTRICT

By: _____ Date: _____
Matias Segura , Interim Superintendent

By: _____ Date: _____
Kendall Pace, Board of Trustees President

CITY OF AUSTIN

By: _____ Date: _____
Stephanie Hayden-Howard, Assistant City Manager

Approved as to form:

Assistant City Attorney

Attachment A – Principal Agreement

Attachment B – Insurance Requirements