RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT the Mayor be authorized to sign an Interlocal Cooperation Agreement between The El Paso County Community College District ("EPCC") and City of El Paso ("The CITY"), for EPCC's use of space at no cost in designated senior and recreational centers, to provide social and educational classes for the City's seniors at no cost to the seniors or the City, for an initial term of five years with the options to extend for three additional terms of three years each.

PASSED AND APPROVED this 9th day of May, 2023.

CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:

Karla A. Saenz
Assistant City Attorney

APPROVED AS TO CONTENT:

FOR Pablo Caballero

Ben Fyffe, Director
El Paso Parks and Recreation

STATE OF TEXAS	)	
	)	**INTERLOCAL COOPERATION**
	)	**AGREEMENT**
COUNTY OF EL PASO	)	

This Interlocal Cooperation Agreement (hereinafter "Agreement") is entered into on this the 9th day of May, 2023 by and between the City of El Paso, a municipal corporation (the "CITY") and El Paso County Community College District ("EPCC").

WHEREAS, the CITY provides recreational services to the citizens of El Paso through the Department of Parks and Recreation (the "Department") at its recreational facilities; and

WHEREAS, the CITY offers a variety of recreational programs to seniors at senior centers; and

WHEREAS, the El Paso Community College desires to provide social and educational classes and workshops to seniors at designated senior centers and recreationalfacilities of the CITY (the "Program") at no cost to the participants or the CITY; and

WHEREAS, the Mayor and City Council recognize that the Program would serve the public purpose and governmental purpose of providing recreational, cultural and quality of life benefits to the citizens of El Paso and find that the value of the Program is equal to the value of the facilities that will be made available for use under this Agreement.

WHEREAS, the CITY and EPCC are authorized to enter into this Agreement under the provisions of Chapter 791, Texas Government Code; and

NOW THEREFORE, THE CITY AND EPCC HEREBY ENTER INTO THIS INTERLOCAL COOPERATION AGREEMENT UNDER THE FOLLOWING TERMS AND CONDITIONS:

1.0 CONTRACTUAL RELATIONSHIP

1.1 The parties to this Agreement are independent contractors. Except as may be expressly and unambiguously provided in this Agreement, no partnership or joint venture is intended to be created by this Agreement, nor any principal-agent or employer-employee relationship between the parties or any of their officers, employees, agents or representatives.

1.1.1 As an independent contractor, EPCC understands and agrees that it will be responsible for its respective acts or omissions, and the CITY shall in no way

be responsible as an employer to EPCC's officers, employees, agents or representatives who perform any service in connection with this Agreement.

1.1.2 As an independent contractor, the CITY understands and agrees that it will be responsible for its respective acts or omissions, and EPCC shall in no way be responsible as an employer to the CITY's officers, employees, agents or representatives who perform any service in connection with this Agreement.

1.2 EPCC acknowledges and agrees that it does not have, and will not attempt to assert, the authority to make commitments for or to bind the CITY to any obligation other than the obligations set forth in this Agreement. The CITY also acknowledges and agrees that it does not have, and will not attempt to assert, the authority to make commitments for or to bind EPCC to any obligation other than the obligations set forth in this Agreement.

2.0 SCOPE OF SERVICES

2.1 CITY and EPCC will create a schedule agreeable to both parties for the Program. The CITY shall provide EPCC with spaces in those senior and recreational centers of the CITY that the Director of the Department (the "Director") for the Program designates for that purpose. The Director, or designee, with the participation and consent of EPCC, or designee, shall establish administrative guidelines for training, class selection, instructor participation, the processing of complaints regarding the Program, and for initiating and terminating individual classes offered through the Program. In exchange, EPCC shall abide by those administrative guidelines and shall offer CITY approved social and educational classes to seniors at the designated locations, free of charge.

2.2 The Program activities shall not interfere or conflict with the CITY's normal services at the designated senior and recreational centers for the Program.

3.0 TERM. This Agreement shall be for a period of five (5) years and may be renewed for three (3) successive periods of three (3) years each thereafter upon written notice issued from EPCC to the CITY at least ninety (90) days prior to the end of the initial term or any renewal period, unless or until otherwise cancelled or terminated as provided for herein.

4.0 CONSIDERATION. In exchange for the use of the CITY facilities through the Program, EPCC shall provide the services described in this Agreement at no cost to the Program participants. Other than as herein described, the Program shall be offered at no cost to the CITY. The parties agree that the value of EPCC's services offered through the Program are equal to the value of the City's facilities that will be made available for use under this Agreement.

5.0 RIGHT OF ENTRY. The CITY herein grants a right of entry to EPCC, to include its designated agents, employees, and contractors, onto the designated CITY senior and recreational centers of the Program.

6.0 UTILITY USAGE. The CITY shall pay for all utilities provided at the Program facilities.

7.0 TERMINATION

7.1 Termination - Cause. The parties agree that either party may terminate this Agreement in whole or in part. Such termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted (a) written notice of intent to terminate enumerating the failures for which the termination is being sought; (b) a minimum of **thirty (30) consecutive calendar days** to cure such failures; and (c) an opportunity for consultation with the terminating party prior to such termination.

7.2 Termination - Convenience. Either party may terminate this Agreement without cause upon thirty (30) days written notice to the other party.

7.3 Termination Shall Not Be Construed as Release. Termination by either party shall not be construed as a release of any claims that the terminating party may be lawfully entitled to assert against the other party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

7.3.1 Except as otherwise provided herein, all duties and obligations of the CITY and EPCC shall cease upon termination or expiration of this Agreement.

8.0 MAINTENANCE AND REPAIRS. The CITY shall accept general maintenance and repair responsibilities except as herein identified.

8.1 Maintenance. The CITY and EPCC agree that the CITY shall be responsible for general clearing of trash and debris in the CITY facilities following Program activities. However, EPCC shall retain responsibility for additional clearing of trash and debris should the Director notify EPCC that the Program activities have resulted in excessive trash and debris.

8.1.1 Repairs. The CITY shall keep the Program facilities in good condition and repair at all times during the effective period of this Agreement except that EPCC shall repair damage to Program area when notified by the Director of substantial damageat any time provided that such damage is caused by an EPCC instructor associated with the Program or by the Program participants at the direction of EPCC's instructor in the Program. The CITY shall notify EPCC of any such damage within seventy-two (72) hours of the incurrence of same.

9.0 RISK ALLOCATION - LIMITATION OF LIABILITY

9.1 Liability. This Agreement is not intended to alter or reallocate any defense or immunity authorized or available to either party by law.

9.1.1 Exclusion of Incidental and Consequential Damages. Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, neither party shall be liable to the other party (nor to any person claiming rights derived from such party's rights) for incidental, consequential, special, punitive, or exemplary damages of any kind - including lost profits, loss of business, and further including, mental anguish and emotional distress - as a result of breach of any term of this Agreement, regardless of whether the party was advised, had other reason to know, or in fact knew of the possibility thereof, except as expressly provided herein. Neither party hereto shall be liable to the other party or any third party by reason of any inaccuracy, incompleteness, or obsolescence of any information provided or maintained by the other party regardless of whether the party receiving said information from the other party was advised, had other reason to know, or in fact knew thereof.

9.1.2 Maximum Aggregate Liability. Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, **IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY (INCLUDING LIABILITY TO ANY PERSON OR PERSONS WHOSE CLAIM OR CLAIMS ARE BASED ON OR DERIVED FROM A RIGHT OR RIGHTS CLAIMED BY THE OTHER PARTY), WITH RESPECT TO ANY AND ALL CLAIMS AT ANY AND ALL TIMES ARISING FROM OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE AMOUNT OF CONSIDERATION ACTUALLY PAID OR PAYABLE BY THE ONE PARTY TO THE OTHER PARTY UNDER THE TERMS OF THIS AGREEMENT, SUBJECT TO SECTION 8.0 ABOVE.**

9.1.3 Intentional Risk Allocation. The CITY and EPCC each acknowledge that the provisions of this Agreement were negotiated to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with the transactions associated with this Agreement. The disclaimers and limitations in this Agreement are intended to limit the circumstances of liability. The remedy limitations, and the limitations of liability, are separately intended to limit the forms of relief available to the parties.

9.1.4 No Indemnification. The Parties expressly agree that neither Party shall have the right to seek indemnification or contribution from the other Party for any losses, costs, expenses, or damages directly or indirectly arising, in whole or part, from this Agreement.

10.0 GOVERNMENTAL FUNCTION AND IMMUNITY.

10.1 Governmental Function. The parties expressly agree that, in all things relating to this Agreement, the CITY enters into this Agreement for the purpose of performing a governmental function and is performing a governmental function, as defined by the Texas Tort Claims Act. Neither party waives any immunity under the Texas Tort Claims Act. The parties further expressly agree that every act or omission of the CITY, which in any way pertains to or arises out of this Agreement, falls within the definition of governmental function.

The parties also agree that EPCC is entering into this Agreement as party of its duty to provide educational and community services.

10.2 Sovereign Immunity. The CITY and EPCC reserve, and do not waive, their respective rights of sovereign or governmental immunity and similar rights and do not waive their rights under the Texas Tort Claims Act. No provision of this Agreement that imposes an obligation or restriction on either party not permitted by applicable law shall be enforceable.

11.0 GENERAL PROVISIONS

11.1 Security. The CITY shall generally retain responsibility for providing security personnel at its facilities in accordance with standard policy. EPCC shall provide security for the Program immediately preceding, during, and following any Program activities when the CITY determines and gives prior 24-hour notice of a need for additional security personnel.

11.2 Amendments and Waiver. EPCC shall perform all services under this Agreement in accordance with all applicable local, state, and federal laws and regulations.

11.3 Discrimination Prohibited. No person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, the Program.

> 11.3.1 Specific Discriminatory Actions Prohibited. Neither party shall utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination on the basis of race, creed, color, sex, national origin. age or disability, or having the effect of defeating or substantially impairing accomplishment of the objectives of the Program or activities funded pursuant to this Agreement or any written amendment hereto with respect to individuals of a particular race, color, national origin, creed, sex, age or disability.

11.4 Assignment. The services to be provided under this Agreement by EPCC cannot be assigned or delegated without the prior written consent of the CITY.

11.5 Complete Agreement. This Agreement, together with the Attachment(s) attached hereto, constitutes the entire agreement between the parties relating to the terms and conditions of the Agreement. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto. This Agreement shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Agreement.

11.6 Governing Law. This Agreement shall be construed and interpreted in accordance

with the laws of the State of Texas, along with any applicable provisions of the federal law, the City Charter and/or any ordinance of the City of El Paso, and EPCC Board Policies.

11.7 Severability. All agreements and covenants contained in this Agreement are severable. Should any term or provision of this Agreement be declared invalid by a court of competent jurisdiction, the parties intend that all other terms and provisions of this Agreement should be valid and binding and have full force and effect as if the invalid portion had not been included.

11.8 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received via personal delivery with signed receipt or via United States Postal Service post office or certified mail, return receipt requested addressed to the respective other party at the address provided below or at such other address as the receiving party may have theretofore prescribed by written notice to the sending party.

The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as follows:

CITY: City of El Paso
Attention: Office of the City Manager
300 N. Campbell, 2nd Floor
El Paso, Texas 79901-1196

COPY TO: City of El Paso
Parks and Recreation Department
Attention: Director
911 S. Ochoa St.
El Paso, TX 79902

EPCC: EPCC Senior Adult Program
Attention: Mary A. Yanez,
Director of the Senior Adult Program
El Paso Community College
Administrative Service Center
B-Bldg. Room B420
9050 Viscount Blvd.
El Paso, Texas 79925

11.9 Warrant of Capacity to Execute Contract. The person signing this Agreement on behalf of EPCC warrants that he/she has the authority to do so and to bind EPCC to this Agreement and all the terms and conditions contained herein.

Each person signing below represents that he or she has read this Agreement in its entirety; understands its terms; and agrees on behalf of such party that such party will be bound by those terms.

Executed this 9th day of May, 2023.

CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Laura D. Prine
City Clerk

EL PASO COUNTY COMMUNITY COLLEGE DISTRICT

Name: Dr. William Serrata
Position: President

APPROVED AS TO FORM:

Karla A. Saenz
Assistant City Attorney

APPROVED AS TO CONTENT:

FOR
Ben Fyffe
Managing Director, Cultural Affairs & Recreation

APPROVED AS TO FORM:

Attorney for EPCC