

**AMENDMENT NO. 1 TO
AGREEMENT FOR INSTRUCTOR SERVICES
[Liberty Adult Education]**

This Amendment No. 1 is entered into and effective as of the 21st day of November, 2022, amending the agreement dated July 11, 2022 (the "Agreement") by and between the City of Brentwood, a municipal corporation of the State of California ("City"), and Liberty Union High School District ("Instructor" or "Liberty Adult Education") (collectively, the "Parties").

RECITALS

A. The City has a need for additional services by credentialed and non-credentialed instructors that are specifically trained and experienced in teaching a variety of senior programs and classes, both in person and virtually; and

B. The Parties desire to increase the Agreement amount by \$15,000.

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, the Parties agree as follows:

1. The total amount of compensation to be paid to Instructor under the Agreement is hereby increased by \$15,000 for a total not to exceed Agreement amount of \$65,000 for FY 2022/23.

2. Except as amended herein, all provisions of the Agreement will remain in full force and effect.

3. All requisite insurance policies to be maintained by Instructor pursuant to the Agreement will include coverage for this Amendment.

4. The individuals executing this Amendment and the instruments referenced in it on behalf of Instructor each represent and warrant that they have the legal power, right and actual authority to bind Instructor to the terms and conditions of this Amendment.

5. Signatures.

5.1 Counterparts. This Amendment may be executed in two or more counterparts, each of which together will be deemed an original, but all of which together will constitute the same instrument.

5.2 Digital/Electronic Signatures. Using a City-approved method, this Amendment may be executed through the use of digital or electronic signatures in accordance with Government Code Section 16.5. The presence of an electronic signature on this Amendment will be construed as the Parties' consent to do business electronically.

INSTRUCTOR:

CITY:

By: DocuSigned by:
Eric Volta
1359D10CADF346A
Eric Volta, Superintendent

By: DocuSigned by:
Tim Y. Ogden
6774DAB6C1474E2...
Tim Y. Ogden, City Manager

APPROVED AS TO FORM:

By: DocuSigned by:
Shanna Edwards FIC:
1E89901B14FC485...
Damien Brower, City Attorney

**AGREEMENT FOR INSTRUCTOR SERVICES
(Liberty Adult Education)**

THIS AGREEMENT is made and entered into as of the 11th day of July, 2022, by and between the City of Brentwood, a municipal corporation of the State of California ("City"), and Liberty Union High School District, ("Instructor" or "Liberty Adult Education") (each a "Party" and collectively, the "Parties").

RECITALS

City requires the services of Adult Education credentialed and non-credentialed instructors that are specifically trained and experienced in teaching a variety of senior programs and classes, both in person and virtually, which are outside of services offered by City. Instructor has the necessary experience in providing these instructional services, has submitted a proposal to City and has affirmed its willingness and ability to perform such work.

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, the Parties agree as follows:

1. Scope of Work. City retains Instructor, as an independent contractor, to perform, and Instructor agrees to render, those services (the "Services") that are defined in Exhibit "A," attached and incorporated by this reference in accordance with the terms and conditions set forth in this Agreement.
2. Term. Unless earlier terminated, this Agreement will be effective from July 1, 2022 through June 30, 2023.
3. Compensation. Payment will be made, upon submission of a payment request and required documents, pursuant to Exhibit "A." No other compensation for the Services will be allowed except for items covered by subsequent amendments to this Agreement. Pursuant to Exhibit "B" Acknowledgement of Customer Service Standards, attached and incorporated by this reference, Instructor understands that any time a customer requests a refund or credit, that amount will be reduced from the final payment for Services. Payment for work under this Agreement shall not exceed \$50,000.
4. Status of Instructor. Instructor will perform the Services as an independent contractor, free from the control and direction of City, in pursuit of Instructor's independent calling, and not as an employee of City. Instructor and/or the persons used by Instructor to provide the Services under this Agreement will not be considered employees of City for any purposes whatsoever and City will not pay any tax, workers' compensation insurance, retirement contributions or unemployment contributions on behalf of Instructor or its employees or subcontractors. Instructor agrees to indemnify and pay City within thirty (30) days for any tax, retirement contribution, social security, overtime payment, unemployment payment or workers' compensation payment, including, but not limited to, those based on any provision of the Federal Affordable Care Act, which City may be required to make on behalf of Instructor or any agent, employee, or contractor of Instructor for work done under this Agreement. At the City's election, City may deduct the amounts paid pursuant to this Section, from any balance owing to Instructor.
5. Indemnification. Instructor will hold harmless, defend and indemnify City and its officers, agents, volunteers and employees from and against any and all claims, demands, costs or liability including attorney fees arising out of or in any way connected with the performance of this Agreement, caused in whole or in part by any act or omission of the Instructor, any of its subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except to the extent caused by the active negligence, sole negligence, or willful misconduct of City.
6. Insurance. Instructor will obtain and maintain, at its cost and expense, for the duration of the Agreement and any and all amendments, insurance against claims for injuries to persons or damage to property which may arise out of or in connection with performance of the Services by Instructor or Instructor's agents, representatives, employees or subcontractors. The insurance will be obtained from an insurance carrier admitted and authorized to do business in the State of California. The insurance carrier is required to have a current Best's Key Rating of not less than "A:VII."

6.1 Coverages and Limits. Instructor will maintain the types of coverages and minimum limits indicated below, unless the Risk Manager or City Manager, in consultation with the City Attorney approves a lower amount. These minimum amounts of coverage will not constitute any limitations or cap on Instructor's indemnification obligations under this Agreement. City, its officers, agents, volunteers and employees make no representation that the limits of the insurance specified to be carried by Instructor pursuant to this Agreement are adequate to protect Instructor. The coverage will contain no special limitations on the scope of its protection to the above-designated insureds except for Workers Compensation. Instructor will obtain occurrence coverage. If Instructor believes that any required insurance coverage is inadequate, Instructor will obtain such additional insurance coverage, as Instructor deems adequate, at Instructor 's sole expense.

6.1.1 Commercial General Liability Insurance. \$2,000,000 combined single-limit per occurrence for bodily injury, personal injury and property damage.

6.1.2 Automobile Liability. \$1,000,000 combined single-limit per accident for bodily injury and property damage.

6.1.3 Workers' Compensation and Employer's Liability. Workers' Compensation limits as required by the California Labor Code and Employer's Liability limits of \$1,000,000 per accident for bodily injury. Workers' Compensation and Employer's Liability insurance will not be required if Instructor has no employees other than self, and provides a No Employees Declaration Form provided by the City.

6.2 Endorsements. For Commercial General Liability Insurance, Instructor will ensure that the policies are endorsed to name the City, its officers, agents, volunteers and employees as additional insureds. Prior to City's execution of this Agreement, Instructor will furnish, to the satisfaction of the City, certificates of insurance and endorsements.

6.3 Cancellation. Insurance will be in force during the life of the Agreement and any extensions of it and will not be canceled without thirty (30) days prior written notice to City sent pursuant to the notice provisions of this Agreement.

6.4 Failure to Maintain Coverage. If Instructor fails to maintain any of these insurance coverages, then City will have the option to declare Instructor in breach of this Agreement, or may purchase replacement insurance or pay the premiums that are due on existing policies in order to maintain the required coverages. Instructor is responsible for any payments made by City to obtain or maintain insurance and City may collect these payments from Instructor or deduct the amount paid from any sums due Instructor under this Agreement.

6.5 Submission of Insurance Policies. City reserves the right to require, at any time, complete and certified copies of any or all required insurance policies and endorsements.

6.6 Primary Coverage. For any claims related to the Services and this Agreement, the Instructor's insurance coverage will be primary insurance with respect to City, its officers, agents, volunteers and employees. Any insurance or self-insurance maintained by City for itself, its officers, agents, volunteers and employees, will be in excess of Instructor's insurance and not contributory with it.

6.7 Reduction in Coverage/Material Changes. Instructor will notify City in writing pursuant to the notice provisions of this Agreement thirty (30) days prior to any reduction in any of the insurance coverage required pursuant to this Agreement or any material changes to the respective insurance policies.

7. Compliance With Laws. Instructor will comply with all applicable local, state and federal laws and regulations, including but not limited to, those prohibiting discrimination and harassment ("Laws") and will obtain and maintain a City of Brentwood Business License for the term of this Agreement.

8. Mandatory Reporting. Instructor agrees that only those who have been trained in mandatory reporting as required by Penal Code §§ 11164 et. seq. (Child Abuse and Neglect Reporting Act) ("Mandated Reporters") will perform the Services. Upon City's request, Instructor will produce statement of mandated reporter forms

that are completed and signed by all Mandated Reporters providing the Services. Statement of mandated reporter forms are available from the City and/or the State.

9. TB Requirements. If the Services include contact with minors, Instructor shall produce a certificate, issued by a licensed physician or other authorized agency, showing that within the last two years the Instructor has been examined and has been found to be free of communicable tuberculosis (TB).

Thereafter, Instructors who are skin test negative shall be required to undergo the foregoing examination at least once each four years for so long as the Instructor remains skin test negative. Once Instructor has a documented positive skin test which has been followed by an X-ray, the foregoing examination is no longer required and a referral shall be made within 30 days of the examination to the local health officer to determine the need for follow-up care.

10. Fingerprint Requirements. If the Services include direct contact with any minor, Instructor must be fingerprinted prior to the start of any instructional services and City is authorized to screen Instructor for criminal background by requesting from the Department of Justice records of all convictions and any arrests pending adjudication involving certain offenses specified in Section 5164 of the Public Resources Code, as that section may be amended from time to time. Section 5164 prohibits City from engaging Instructor in a position having supervisory or disciplinary authority over any minor, if the Instructor has been convicted of certain criminal offenses.

11. Instructor Affidavit. If the Services require background checks, medical examinations and insurance, and the Instructor provides a completed Exhibit "C" Instructor Affidavit (attached and incorporated by this reference), including a complete and accurate list of Instructor's employees who may come in contact with the City participants during the course and scope of the Agreement, then submission of such Affidavit will satisfy requirements 9 and 10 of this Agreement. The list of Instructor's employees must be submitted to City prior to the start of Services.

12. Other Instructors. The City reserves the right to employ other instructors in connection with the Services.

13. Pandemic Health Laws. Instructor's duty to comply with Laws includes compliance by Instructor, and any of its subcontractors, and anyone directly or indirectly employed by any of them, with all local, state, or federal Laws that have been or may be enacted in response to the COVID-19 pandemic (collectively, "Health Laws"), which include all of the County of Contra Costa Health Orders. Failure to fully comply with the Health Laws constitutes a material default, subject to all available remedies including suspension or termination.

14. Liability Waivers - Instructors. Instructor is required to sign, and obtain signatures on the COVID-19 Risk Assumption, Waiver, and Indemnity Agreement (Exhibit "D" or "Risk Assumption Waiver") attached hereto, from each and every subcontractor or employee, and anyone directly or indirectly employed by Instructor, who performs Services under this Agreement, and return the signed Risk Assumption Waivers to the City, prior to the start of the Services.

15. Liability Waivers – Participants. Instructor is required to obtain signatures on the Liability, Medical Consent, and other Terms of Participation waiver ("Participant Waiver") from each and every participant registered for classes under this Agreement, and return them to the City. These waivers are provided to the Instructor at the same time class rosters are distributed to Instructor.

16. Transporting Participants. Instructor or its employees, agents and/or volunteers shall not transport any participant in his/her own vehicle. Transportation is the responsibility of the program participant.

17. Equipment/Storage. Instructor may only store equipment related to their program on City property with written approval of the Recreation Supervisor. If approved, storage of equipment/supplies on City property is at Instructor's own risk and City assumes no responsibility for the equipment/supplies. At time of termination

of the Agreement, Instructor has fifteen (15) calendar days to remove equipment/supplies. If equipment/supplies are not removed from City property within fifteen (15) calendar days, the City will dispose of the items.

18. Termination. City or Instructor may terminate this Agreement at any time after a discussion, and written notice to the other Party. City will pay Instructor's costs for Services completed up to the time of termination, if the Services have been completed in accordance with the Agreement.

19. Notices. Any notices relating to this Agreement shall be given in writing to the address below and shall be deemed sufficiently given and served for all purposes when delivered personally, by facsimile or by generally recognized overnight courier service, or five (5) days after deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, sent to the addresses below. Either Party may change its address for purposes of this section by giving the other Party written notice of the new address in the manner set forth above.

CITY:

Mailing Address: 150 City Park Way
Brentwood, CA 94513
Phone Number: (925) 516-5444
Fax Number: (925) 516-5447
Email: oalvarez@brentwoodca.gov

INSTRUCTOR:

Mailing Address: 20 Oak St.
Brentwood, CA 94513
Phone Number: (925) 634-2166
Email: voltae@luhsd.net

20. Claims and Lawsuits. By signing this Agreement, Instructor agrees it may be subject to civil penalties for the filing of false claims as set forth in the California False Claims Act, Government Code sections 12650, *et seq.* Instructor further acknowledges that debarment by another jurisdiction is grounds for the City of Brentwood to terminate this Agreement.

21. Venue, Jurisdiction and Governing Law. Instructor agrees and stipulates that the proper venue and jurisdiction for resolution of any disputes between the Parties arising out of this Agreement is the Superior Court, Contra Costa County, California, and the Parties waive all provisions of law providing for a change of venue in those proceedings to any other county. This Agreement will be governed by the laws of the State of California.

22. Waivers. The waiver by either Party of any breach or violation of any term, covenant, or condition of this Agreement or of any applicable law will not be deemed to be a waiver of such term, covenant, condition or law or of any subsequent breach or violation of same or of any other term, covenant, condition or law. The acceptance by either Party of any fee or other payment which may become due under this Agreement will not be deemed to be a waiver of any preceding breach or violation by the other Party of any term, covenant, or condition of this Agreement or any applicable law.

23. Entire Agreement. This Agreement, together with any other written document referred to or contemplated by it embody the entire Agreement and understanding between the Parties.

24. Assignment. Instructor may not assign this Agreement or any part of it, or any monies due or to become due under it, without the prior written consent of City.

25. Amendments. This Agreement may be amended by mutual consent of City and Instructor. Any amendment will be in writing, signed by both Parties.

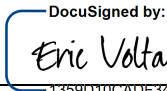
26. Signatures.

26.1 Counterparts. This Agreement may be executed in two or more counterparts, each of which together will be deemed an original, but all of which together will constitute the same instrument.

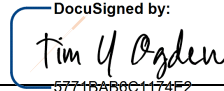
26.2 Digital/Electronic Signatures. Using a City-approved method, this Agreement may be executed through the use of digital or electronic signatures in accordance with Government Code Section 16.5. The presence of an electronic signature on this Agreement will be construed as the Parties' consent to do business electronically.

27. Authority. The individuals executing this Agreement and the instruments referenced in it on behalf of Instructor each represent and warrant that they have the legal power, right and actual authority to bind Instructor to the terms and conditions of this Agreement.

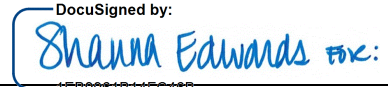
INSTRUCTOR:

By: 
Eric Volta, Superintendent

CITY:

By: 
Tim Y. Ogden, City Manager

APPROVED AS TO FORM:

By:  **EX:**
Damien Brower, City Attorney

If required by City, proper notarial acknowledgment of execution by Instructor must be attached.

If a Corporation, Agreement must be signed by one corporate officer from each of the following two groups.

***Group A.**
Chairman,
President, **or**
Vice-President

****Group B.**
Secretary,
Assistant Secretary,
CFO **or** Assistant Treasurer

Otherwise, the corporation **must** attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.

If an LLC:

- The Agreement must be signed by a Managing Member **or** the LLC must attach a resolution empowering the signatory to bind the LLC.

If a partnership:

- The Agreement must be signed by the Managing Partner **or** the Partner authorized to execute agreements of this type. Additional documentation, such as the partnership agreement, confirming this signature authority may be required.

If a sole proprietorship:

- The Agreement must be signed by the owner.

EXHIBIT "A"**SCOPE OF SERVICES/FEE SCHEDULE****LIST OF CLASSES AND FEE PER CLASS**

Class	Fee	Class Minimums
Adults Ages 50+ Exercise Classes	\$60	60 Students
Adults Ages 50+ Yoga Classes (7 weeks)	\$55	10 Students
Adults Ages 50+ Yoga Classes (9 weeks)	\$65	10 Students
Adults Ages 50+ Art Classes (3 hr classes)	\$80	12 Students
Adults Ages 50+ Meditation	\$65	10 Students
Ballroom Dance Class (8 weeks)	\$125 per person \$230 per couple	10 Students
Ballroom Dance Class (6 weeks)	\$95 per person \$175 per couple	10 Students
Stress Management Class (4 weeks)	\$55	8 Students
Stress Management Class (8 weeks)	\$65	8 Students
Miscellaneous Classes	\$8 per session	10 Students

For in-person classes, Instructor agrees to collect hard copy, signed Participant Waivers for ALL program participants on the first date of the programs. Registered participants are not to participate in the program until the Participant Waiver has been signed and submitted to Instructor. While classes are taught virtually, the Instructor will be responsible for obtaining acknowledgment of the City's waiver from each participant. Instructor is required to submit all signed Participant Waivers for ALL program participants by the 5th business day after the second meeting of the class/program to the City. Instructor agrees to submit a minimum of two classes per Activities Guide session.

FEE SCHEDULE

The City of Brentwood will pay Liberty Union High School District the fee per participant listed above and the City will retain a \$5.00 fee per participant for the above classes.

City will issue payment to Instructor within 30 working days after services have concluded. **Prior to City processing payment, Instructor must submit course attendance sheets, and completed evaluation forms, if applicable, to the Parks and Recreation Department within 5 working days of the Services concluding.**

Fees shall remain as indicated for the term of this Agreement unless revised by the City Council due to changes in the Consumer Price Index (CPI) – Urban Wage Earners and Clerical Workers, San Francisco-Oakland-San Jose, California. City shall notify Instructor, in writing, of any fee revisions and Instructor shall have 10 days from delivery of the notification to notify the City of Instructor's intent to terminate the Agreement pursuant to Section 17. Failure to notify City of Instructor's intent to terminate the Agreement within the ten day period shall constitute Instructor's consent to the fee revisions.

EXHIBIT "B"

ACKNOWLEDGEMENT OF CUSTOMER SERVICE STANDARDS


In meeting the mission of the Parks and Recreation Department, following is the customer service refund policy:

Our department strives to provide you with high quality programs. Some situations that occur are beyond our control. Withdrawals/refunds could cause the class/activity/program to drop below the minimum required attendance, which could cause the class/activity/program to be cancelled. City reserves the right to cancel a program and issue refunds under extenuating circumstances. Should you be dissatisfied, contact us and staff will work with you to the best of our ability.

- *Refunds will be considered upon request to the Park & Recreation Department.*
- *Refund requests will not be considered after first day of class per Liberty Adult Education Refund Policy.*
- *Refunds are processed within 30 days.*
- *Refund policies may vary for Adult Leagues, Aquatics, Senior Trips and Facility Permits.*

As an Instructor for the City of Brentwood Parks and Recreation Department, I understand that any time a refund or credit is issued to a customer, that amount will be reduced from the final payment for services.

I, the undersigned Instructor, understand and agree to the Parks and Recreation Department Customer Service Standards outlined above.

DocuSigned by:

Eric Volta, Superintendent

7/7/2022
Date

EXHIBIT "C"

INSTRUCTOR AFFIDAVIT

BACKGROUND CHECKS, MEDICAL EXAMINATIONS AND INSURANCE

The undersigned does hereby certify that:

1. I am an agent of **Liberty Adult Education**, ("Instructor"): I am familiar with the facts herein certified and am authorized and qualified to execute this certificate on behalf of Instructor.
2. Instructor certifies that it has complied with fingerprinting and criminal background investigation requirements of the California Public Resources Code Section 5164 with respect to all instructors, and any employees of the Instructor, who may have contact with City participants in the course of providing services pursuant to this Agreement for Instructor Services.
3. According to records of the California Department of Justice, neither the Instructors nor any employees of the Instructor have been convicted of any offense prohibited by Section 5164.
4. Instructor has a contract with the Department of Justice for subsequent arrest notification services. Instructor will advise the City of subsequent criminal history information for all instructors and employees of Instructor.
5. All instructors and employees of Instructor have reported a negative tuberculosis test within the past two years and that these tests are kept on file by Instructor and shall be provided to City upon request. Subsequent testing will occur at least once every four years as long as the test result remains skin test negative pursuant to California Public Resources Code Section 5163.
6. Instructor maintains all of the insurance and indemnifications required by the Agreement.
7. Instructor understands that its Agreement for the Services with the City is contingent on Instructor meeting the requirements listed in this Affidavit.
8. A complete and accurate list of Instructor's employees who may come in contact with City participants during the course and scope of the Agreement must be submitted to City prior to the start of Services".

By executing this document, I certify that I have read the Affidavit in its entirety, understand all of its terms. I understand that even if faxed, copied or sent electronically, my signature on this application shall have the same force and effect as the original signature.

Signed: Eric Volta
1359D1UCADF346A...

Date: 7/7/2022

Title: Eric Volta, Superintendent

Exhibit "D"

COVID-19 Risk Assumption, Waiver, and Indemnity Agreement

Liberty Adult Education, ("Instructor") and City of Brentwood ("City") under this Agreement hereby agree as follows:

1. Instructor warrants and represents that Instructor has reviewed all applicable governmental policies relating to the COVID-19 pandemic and has concluded that the Services are permitted under any and all applicable government-issued mandates, orders, executive orders, recommendations, stay-at-home orders, quarantines, or prohibitions against non-essential activities.
2. Instructor expressly assumes any and all risk relating to any illness, injury, infection, economic injury, or death arising from or relating to the Services, except where caused by the active negligence or willful misconduct of the City.
3. Instructor waives and releases the City from any and all claims, causes of action, allegations, or assertions that may arise relating to infection of any person by COVID-19 that occurs, or is alleged to occur, during the Services.
4. Instructor agrees to defend, indemnify, and hold City harmless from any and all claims, causes of action, allegations, or assertions made against City or City's employees arising from or relating to actual or alleged infection occurring during the Services.
5. Instructor must follow Centers for Disease Control (CDC) guidelines and local county and city public health recommendations regarding social distancing, facial coverings and limited number of program participants to help prevent and slow the spread of COVID-19 in the workplace and the community.

DocuSigned by:

Eric Volta

4359D10CADE346A

Eric Volta, Superintendent

7/7/2022

Date