

OFFICE OF THE CITY ATTORNEY
DAWN MCINTOSH, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664

1 FACILITIES USE AGREEMENT

2 36663

3 THIS FACILITIES USE AGREEMENT ("Agreement") is made and entered,
4 in duplicate, as of August 23, 2023, pursuant to a minute order of the City of Long
5 Beach adopted at its meeting held on August 8, 2023, by and between the CITY OF LONG
6 BEACH, a municipal corporation, whose address is 411 W. Ocean Blvd., 10th Floor, Long
7 Beach, California 90802, Attention: Economic Development Department ("City"), and the
8 LONG BEACH COMMUNITY COLLEGE DISTRICT a public agency, whose address is
9 4901 E. Carson Street, Long Beach, California 90808 ("District").

10 City and District, in consideration of the mutual terms, covenants, and
11 conditions herein, agree as follows:

12 1. Premises. City hereby grants District the non-exclusive use of those
13 certain premises consisting of approximately 4400 square feet located on the first floor of
14 the building currently existing at 635 South Street (the "Building"), as more particularly
15 described and/or depicted in Exhibit "A" attached hereto (the "Premises") at no cost to the
16 District. City shall also provide access to restrooms, parking and storage. District shall
17 otherwise have no access rights or any obligations with respect to areas of the Building.
18 City currently leases the real property on which the Building sits and the Building itself from
19 the Long Beach Arts District, LLC ("LBAD"), pursuant to a Lease (the "Lease") executed
20 by and between LBAD, as landlord, and City, as tenant.

21 2. Term. The term of this Agreement shall commence on August 1, 2023
22 ("Commencement Date"), and shall continue indefinitely thereafter until terminated by
23 either party upon at least sixty (60) days' advance written notice and after completion of
24 any classes provided by District which are then-in session at the time of delivery of the
25 termination notice; provided, however, that City may terminate this Agreement sooner if
26 required by the terms of the Lease.

27 3. Use. The Premises shall be used by District as classroom space for
28 providing instruction and other related education uses, including without limitation

1 enrollment assistance. District shall use that portion of the Premises noted on Exhibit "A"
2 as a secure server room supporting the provision of classes ("Server Room"). The Server
3 Room shall be secured and accessible only by District and City informational technology
4 staff. All non-Server Room portions of the Premises will be accessible to City and City
5 agents and invitees when not being used by District.

6 4. City Responsibilities.

7 A. City shall be solely responsible for its obligations as tenant under the
8 Lease, including without limitation the payment of rent.

9 B. City shall identify and execute a contract with a community-based
10 organization (or similar entity) ("Property Manager") for management and day-to-day
11 operation of the Building and the Premises.

12 C. City shall provide door locks and security cameras at the Premises.

13 D. City shall require the Property Manager to, among other things, open
14 and close the Premises, provide security, schedule use of the Premises, adopt an access
15 policy and visitor log, adopt a policy for use of the Computers (as defined below), adopt a
16 cost recovery policy with respect to damage to the Computers, and adopt a policy provided
17 by District governing any software to be installed on the Computers after delivery and initial
18 installation of software by District.

19 E. City may market and/or promote the services provided by District at
20 the Premises, but only with the prior written approval of District which shall not be
21 unreasonably withheld.

22 5. District Responsibilities.

23 A. District shall provide and install at the Premises approximately 30
24 computers and related equipment, including dedicated servers and wiring (the
25 "Computers") for use in providing the classroom services. The Computers shall remain the
26 property of District and District shall promptly remove the Computers upon termination of
27 this Agreement.

28 B. District shall make the Computers available for use by City and/or

1 Property Manager and the invitees of either; provided that such use does not interfere with
2 District's classes and other services.

3 C. District shall maintain the Server Room.

4 D. District shall provide everything necessary for classroom instruction
5 and enrollment services at the Premises, including without limitation, curriculum,
6 instructors, support staff, and systems necessary to enroll students, track performance,
7 collect fees, provide counseling, and report grades.

8 E. District shall provide small business advising and consulting services
9 at the Premises.

10 F. District may market and/or promote the services provided by City at
11 the Premises, but only with the prior written approval of City which shall not be
12 unreasonably withheld.

13 6. Maintenance Obligations. City and District shall cooperate in good
14 faith to keep the Premises in a neat, safe and sanitary condition. District shall be
15 responsible for repairs to the Building or the Premises directly caused by District's use of
16 the same. City shall be responsible for all other maintenance and repairs to the Premises
17 and the Building.

18 7. Utilities. City shall ensure that all utilities necessary for District's
19 approved use are available at the Premises.

20 8. Taxes. District shall be responsible for all taxes which may be
21 assessed against it as a result of this Agreement, including without limitation possessory
22 interest taxes, if any.

23 9. Hazardous Materials. In the event any Hazardous Materials are
24 detected during the term of this Agreement, such materials shall be removed promptly in
25 accordance with applicable law at the sole cost and expense of City, except to the extent
26 that such materials result from the actions of District. In the event City determines it is cost
27 prohibitive to remove such materials, District's only remedy shall be the option to
28 immediately terminate this Agreement by giving written notice. No goods, merchandise,

1 supplies, personal property, materials, or items of any kind shall be kept, stored, or sold in
2 or on the Premises which are in any way explosive or hazardous. District shall comply with
3 California Health and Safety Code Section 25359.7 or its successor statute regarding
4 notice to City on discovery by District of the presence or suspected presence of any
5 hazardous material on the Premises. "Hazardous Materials" means any hazardous or toxic
6 substance, material or waste which is or becomes regulated by the City, the County of Los
7 Angeles, the State of California or the United States government.

8 10. Indemnity. The following provisions shall survive termination of this
9 Agreement:

10 A. District shall protect City and shall hold, keep and save City from any
11 and all suits, claims or less or liabilities to any person or damage to the Premises or City's
12 personal property located thereon to the extent resulting from District's use of the
13 Premises. District agrees to indemnify and hold harmless City from all injuries to persons
14 and property to the extent caused, in whole or in part, by the following: a) any breach by
15 District or any undertaking or representation under this Agreement, or b) any negligent or
16 willful acts by District (or its employees or agents) in connection with District's activities on
17 the Premises or at the Building.

18 B. City shall protect District and shall hold, keep and save District from
19 any and all suits, claims or less or liabilities to any person or damage to the Computers or
20 District's personal property located at the Premises to the extent resulting from City's,
21 Property Manager's, and/or their respective invitees' use of the Premises. City agrees to
22 indemnify and hold harmless District from all injuries to persons and property to the extent
23 caused, in whole or in part, by the following: a) any breach by City or any undertaking or
24 representation under this Agreement, or b) any negligent or willful acts by City (or its
25 employees or agents) in connection with City's activities on the Premises or at the Building.

26 11. Insurance. City and District shall each maintain in full force and effect
27 a policy of policies of insurance (or self-insurance), evidenced by a certificate of insurance
28 and including an endorsement naming City or District, as applicable, as additional insured

1 (except for workers' compensation insurance) to be delivered concurrent with execution of
2 this Agreement, in accordance with the following requirements:

3 A. Commercial general liability insurance in an amount not less than
4 \$1,000,000 per occurrence, \$1,000,000 Personal Injury and Advertising Injury, \$1,000,000
5 Products/Completed operations annual aggregate, and \$2,000,000 General annual
6 aggregate; and

7 B. Statutory Workers' Compensation Insurance covering all employees
8 of the respective party as required by law in the State of California and in compliance with
9 all federal, state and local laws and ordinances applicable to the work to be performed
10 under this Agreement and \$1,000,000 limit Employers Liability.

11 12. Default. Failure by either party to perform any of the terms, covenants,
12 or conditions of this Agreement shall constitute a default under this Agreement if said failure
13 is not cured within ten (10) days after written notice of said failure from the non-defaulting
14 party. If a default occurs, then either party may immediately terminate this Agreement
15 provided, however, that this remedy is not exclusive but cumulative to other remedies
16 provided by law in the event of a default, and the exercise by the non-defaulting party of
17 one or more rights and remedies shall not preclude such party's exercise of additional or
18 different remedies for the same or any other default by the defaulting party.

19 13. Right of Entry. City shall have at all times the right of access to the
20 Premises.

21 14. Assignment. District shall not assign or transfer this Agreement or any
22 interest herein.

23 15. Access. District shall have access to the Building and Premises at
24 such times as are necessary to accommodate District's approved use of the Premises, and
25 as such times are reasonably acceptable to Property Manager.

26 16. Notice. Any notice required hereunder shall be in writing and
27 personally served or deposited in the U.S. Postal Service, first class, postage prepaid to
28 City and District at the respective addresses first stated above. Notice shall be deemed

1 effective on the date of mailing or on the date personal service is obtained, whichever first
2 occurs. Change of address shall be given as provided herein for notice.

3 17. Waiver of Rights. The failure or delay of either party to insist on strict
4 enforcement of any term, covenant, or condition herein shall not be deemed a waiver of
5 any right or remedy that such party may have and shall not be deemed a waiver of any
6 subsequent or other breach of any term, covenant, or condition herein.

7 18. Force Majeure. In any case where either party is required to do any act,
8 the inability of that party to perform or delay in performance of that act caused by or
9 resulting from fire, flood, earthquake, explosion, acts of God, war, strikes, lockouts, or any
10 other cause whether similar or dissimilar to the foregoing which is beyond the control of
11 that party and not due to that party's fault or neglect shall be excused and such failure to
12 perform or such delay in performance shall not be a default or breach hereunder.

13 19. Governing Law. This Agreement shall be governed by and construed in
14 accordance with the laws of the State of California.

15 20. Integration and Amendments. This Agreement represents and
16 constitutes the entire understanding between the parties and supersedes all other
17 agreements and communications between the parties, oral or written, concerning the
18 subject matter herein. This Agreement shall not be modified except in writing signed by
19 the parties and referring to this Agreement.

20 21. Relationship of Parties. The parties agree that nothing contained in this
21 Agreement shall be deemed or construed as creating a partnership, joint venture,
22 association, principal-agent or employer-employee relationship between them or between
23 City and/or District, on the one hand, and any third person or entity, on the other hand.

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IN WITNESS WHEREOF, the parties have executed this Agreement with all of the formalities required by law as of the date first above written.

"District"

Date: 8-23, 2023

LONG BEACH COMMUNITY COLLEGE DISTRICT

By: *Robert Raposa*

Name: ROBERT RAPOSA

Title: DIRECTOR BUSINESS SUPPORT SERVICES

"City"

CITY OF LONG BEACH, a municipal corporation

Date: 8-15, 2023

By: *Thomas B. Modica*

Thomas B. Modica
City Manager

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

APPROVED AS TO FORM

Dawn McIntosh
DAWN MCINTOSH, City Attorney

By: *Richard Anthony*
RICHARD ANTHONY
PRINCIPAL DEPUTY CITY ATTORNEY

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EXHIBIT "A"

PREMISES

635 SOUTH STREET

(LEGAL DESCRIPTION: LOT 30, IN BLOCK 16 OF TRACT 6521, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 69, PAGES 31 AND 32 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY. APN(s): 7124-032-030)

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