

DEVELOPMENT AGREEMENT BETWEEN CITY OF AUSTIN AND THE AUSTIN COMMUNITY COLLEGE DISTRICT

This Agreement is made by and between the Austin Community College District, ("ACC"), a junior college district and political subdivision of the State of Texas and the City of Austin, Texas ("City") a home rule municipality and political subdivision of the State of Texas, as of the Effective Date set forth below.

RECITALS

WHEREAS, the City is authorized by law to regulate land use and development within the corporate limits of Austin in the manner provided by law; and

WHEREAS, ACC, as a junior college district and political subdivision of the State of Texas, has a governmental obligation to provide educational instruction within ACC's service area and is authorized by law to purchase necessary sites and to construct and equip facilities in which to provide instruction for college credit, instruction for dual high school and college credit, and vocational training and instruction for professional degree programs; and

WHEREAS, in May of 2003, voters in the ACC taxing district approved a bond package authorizing ACC's "purchase and/or renovations and improvements of the Rio Grande Campus," "including student parking"; and

WHEREAS, Rio Grande Campus consists of land, buildings and other improvements owned by ACC in the downtown area of the City bounded by Shoal Creek Boulevard, 12th Street, Rio Grande, 13 1/2 Street, and a line extending from 13 1/2 Street to Shoal Creek Boulevard, subject to expansion by the acquisition of neighboring properties ("Rio Grande Campus"), and

WHEREAS, ACC is in the process of constructing a parking garage and other improvements and renovations, and negotiating for the acquisition of additional property for expansion of the campus; and

WHEREAS, the parties recognize that the citizens of Austin derive a benefit from having a community college system within the City that provides educational instruction to residents, including vocational training for a skilled workforce which meets the needs of local businesses and which will attract new businesses to the City; and

WHEREAS, the City and ACC wish to establish a cooperative method to addresses land use, development and building construction issues which arise in connection with ACC's construction activities within the Rio Grande campus in order to facilitate the timely completion of the construction activities,

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and ACC agree as follows

ARTICLE 1 GENERAL MATTERS

Section 1.1 Application. All current and future activities by ACC in connection with the construction or the expansion of the gymnasium building and parking garage described in Article 3 hereof, shall be subject to the terms of this Agreement, unless the parties expressly agree otherwise in a separate written agreement, or unless otherwise elected by ACC pursuant to the terms of Section 5.2 below. For the parking garage and gymnasium, ACC shall be subject to other City of Austin ordinances and regulations regarding planning, building code, and land use regulation, which have not been modified directly, indirectly or by implication by the terms of this Agreement. Nothing in this Agreement is intended to diminish, reduce, or waive any rights or immunities to which ACC is entitled under applicable law, regarding development not addressed by this agreement.

Section 1.2 Development Team.

- a. The City will establish and maintain throughout the term of this Agreement a dedicated planning and building application review team in the Watershed Protection and Development Review Department, Neighborhood Planning and Zoning Department, and Water and Wastewater Department, or their successor departments, who will be responsible for the review, processing and approval of all subdivision plats, site development permits and all other permits for development of the Project which are normally processed by such departments, or their successor departments (the "Dedicated Review Team"). All development review, although conducted by Dedicated Review Team, will be subject to the then current City development review processes and procedures.
- b. The City will provide ACC with the name and contact information for the planner that is assigned to the Dedicated Review Team. The City may substitute or replace the planner from time to time by giving ACC written notice of the change and new contact information.

Section 1.3 ACC and City Liaisons. The City shall designate one upper-level, full-time employee to act as City Liaison with ACC, and who will establish and maintain communication with ACC, and review and, if possible, resolve all issues and disputes relating to this Agreement. ACC shall designate one upper-level, full-time employee to act as ACC Liaison with the City, who will establish and maintain communication with the City and who will review and, if possible, resolve all issues and disputes relating to this Agreement. Either party may change its designated liaison by providing the other party with the name and contact information of the new liaison.

Section 1.4 Coordinated use of Parking Garage. ACC and the City will endeavour to establish an agreement between ACC, the City, and the Austin Independent School District that will allow for the greatest practical use of the parking garage described in Article 3 of this Development Agreement. The agreement for parking garage use may include allowing reasonable use of the parking garage by the City and the Austin Independent School District at designated times.

ARTICLE 2 DEVELOPMENT AND BUILDING APPLICATION PROCESS

Section 2.1 City Review and Comment on Site Development Plan

- a. ACC will submit directly or through its consultant(s) Development, Land Use and Building Applications with regard to the buildings described in Article 3 to the appropriate member of the Designated Review Team; and will provide notice by telephone or facsimile of the submittal to the City Liaison.
- b. The City Liaison shall notify the ACC Liaison by telephone or facsimile transmission within five (5) working days of submittal if the submitted plan and reports do not meet the minimum submittal requirements of this Agreement and applicable City ordinances and rules. If a Site Development Plan is insufficient for review, then the City Liaison shall provide written explanation of the application's deficiencies. After the submittal of a sufficient and complete application, the City shall have twenty-eight (28) days, to review a site development plan, each subsequent phase of an approved phase site development plan, and accompanying reports, if any, and respond with complete comments from all reviewing City departments to the ACC Liaison regarding the site development plans' compliance with this Agreement. Should complete comments not be returned within said 28-day period, then the City Liaison shall give a written response to ACC with a copy to the City Manager. Said response shall contain a detailed explanation of the reasons for the delay and an accurate and reasonable timetable for when complete comments regarding the Site Development Plan will be issued.
- c. After submittal of a sufficient and complete application, the City shall have nine (9) days to review a small project site development plan and respond to the ACC Liaison with written comments from all reviewing City departments regarding compliance with this Agreement and applicable City ordinances and rules.
- d. The City shall have fourteen (14) days to review submitted updates to a site development plan.

- e. The ACC Liaison shall give the City Liaison at least two (2) working days prior notice of ACC's intent to submit a site development plan for initial review or a site development plan update based on prior City review.
- f. ACC shall include with update submittals a summary sheet listing each comment issued by the City and a brief description of how the comment was addressed.
- g. If, after the City has issued comments to the second update to the site development plan the City has not approved the site development plan, the ACC Liaison shall meet to resolve the remaining issues preventing site development plan approval. Unless otherwise agreed on by the Liaisons, the above-described meeting shall occur within ten (10) days after the City has issued comments to the second site development plan update.
- h. The site development plans for educational facilities shall have priority review by the City.

Section 2.2 Final Approval of Site Development Plan. The site development plan shall be approved if the site development plan complies with this Agreement and all applicable City ordinances and rules.

Section 2.3 Effect of Approved Site Development Plan.

- a. A site development plan approved pursuant to this Agreement shall satisfy all City requirements necessary for ACC to begin site construction of all development features shown on the site development plan.
- b. If required, a building permit shall be issued by the City, in accordance with Section 2.5, to ACC when the building construction plans are approved as complying with the applicable building code and the approved site development plans.
- c. ACC may begin site construction and utility construction in accordance with the site development plan after:
 - (i) the approval of the site development plan;
 - (ii) a preconstruction conference; and
 - (iii) installation of required environmental controls; and
 - (iv) securing a building permit, if required.
- d. If applicable, water and wastewater tap(s) from the City may be purchased after approval of the Site Development Plan.

Section 2.4 Minor Revision to Approved Site Development Plan prior to or During Construction.

- a. ACC shall transmit to the City Liaison copies of proposed minor revisions to an approved site development plan.
- b. Within fourteen (14) working days after ACC's request for a minor revision, or within such other period of time as ACC and the City may agree upon, the City shall approve the request, if, subject to modifications required by the City, the minor revision is consistent with this Agreement and applicable City ordinances and rules
- c. Minor field revisions involving temporary erosion controls may be approved by City environmental field inspectors.

Section 2.5 Building Construction Plan Review and Building Permit Issuance.

- a. For new construction, the review of building construction plans and the issuance of building permits will proceed as follows:
 - i. After the City building official has received a complete building permit application, all applicable City building permit review fees, and adequate evidence of the future availability of water and wastewater service, the City shall have twenty-one (21) days to review a building permit application for a new building and issue to ACC either a Building Permit or a complete written list of changes needed to bring the building construction plans into compliance with the Building Code and this Agreement.
 - ii. After making the changes necessary to bring the building construction plans into compliance with the Building Code and this Agreement, as noted in the written list of changes provided by the City, ACC may resubmit the building construction plans to the City.
 - iii. The City shall have ten (10) days to review the resubmitted building construction plans and issue to ACC either a building permit or a second written list of changes needed to bring the building construction plans into compliance with the Building Code and this Agreement. The ten (10) day review period by the City shall apply to each additional resubmittal of the building construction plans.
 - iv.. If the City fails to provide written comments to ACC Building Official within the required ten (10) days, or if more than two resubmittals have been required without a permit being issued, then the City and ACC Liaison shall meet or communicate as quickly as

possible to resolve outstanding issues. The City and ACC Building Official may mutually agree to extend any of the required ten (10) day review periods.

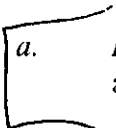

- b. For remodeling and finish-outs, the review of building construction plans and the issuance of building permits will proceed as follows:
 - i. After the City building official has received a complete building permit application, all applicable City building permit review fees, and adequate evidence of the future availability of water and wastewater service, the City shall have seven (7) days to review a building permit application for a new building and issue to ACC either a Building Permit or a complete written list of changes needed to bring the building construction plans into compliance with the Building Code and this Agreement.
 - ii. After making the changes necessary to bring the building construction plans into compliance with the Building Code and this Agreement, as noted in the written list of changes provided by the City, ACC may resubmit the building construction plans to the City.
 - iii. The City shall have seven (7) days to review the resubmitted building construction plans and issue to ACC either a building permit or a second written list of changes needed to bring the building construction plans into compliance with the Building Code and this Agreement. The seven (7) day review period by the City shall apply to each additional resubmittal of the building construction plans.
 - iv. If the City fails to provide written comments to ACC Building Official within the required seven (7) days, or if more than two resubmittals have been required without a permit being issued, then the City and ACC Liaison shall meet or communicate as quickly as possible to resolve outstanding issues. The City and ACC Building Official may mutually agree to extend any of the required seven (7) day review periods.

ARTICLE 3 SITE SPECIFIC REGULATIONS

Section 3.1 The provisions set forth in this Article 3 shall apply to only the construction of the parking garage at the ACC Rio Grande Campus and to the renovation of the gymnasium at the ACC Rio Grande Campus, and ACC and the City agree to be bound by these terms. In the event any of the provisions of this Agreement are in conflict

with zoning, compatibility or other development or land use regulations, such regulations and ordinances are modified to the extent they would otherwise apply.

Section 3.2 Parking Garage

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- a. *Building Set Back.* The minimum street sideyard set back requirement applicable to the Parking Garage structure is 6 feet.
 - b. *Height Limitation.* The height limitation applicable to the Parking Garage under zoning and compatibility standards is seventy-five (75) feet measured from the highest level of the ground to the floor level of the top floor of the garage. Parapet walls and shade structures on the top floor are permitted and will not be taken into account in measuring the height of the Parking Garage

Section 3.3 Gymnasium Building

- a. *Change in use.* The change in use of the gymnasium building from a high school gymnasium and band hall to a college classroom building and office building is approved.
- b. *Floor -to-Area Ratio* If an internal level is added to the gymnasium building, such level will not be counted toward any floor-to-area ratio for the building
- c. *Impervious cover.* The maximum impervious cover for this site is 70% and the maximum building coverage is 45%.
- d. *Building Set back requirements.* The actual existing set backs of the building shall conclusively be deemed the minimum set back requirements applicable to the building, except where existing setbacks from the property line exceed the minimum setback requirements allowed by applicable City ordinance.
- e. *Parking* ACC may use the parking garage being constructed on the Rio Grande campus to satisfy all or any portion of the parking requirement for the gymnasium building.
- f. *Height.* The maximum building height applicable to the building under zoning and compatibility standards is the current building height.
- g. *Mechanical Equipment Screening.* Mechanical equipment on the exterior of the building will be screened so that it is not visible from public streets. The parties shall agree on reasonable screening methods and materials.

ARTICLE 4 DISPUTE RESOLUTION

Section 4.1. Dispute Resolution. In the event an issue arises that ACC and the City, acting through the ACC and City Liaisons, are not able to resolve to their mutual satisfaction within thirty (30) days after the issue is first raised in writing, or in the event ACC takes issue with a final determination by a Team member or the City Liaison on an application or other matter, then ACC will have the right to submit the issue and a request for resolution to the Director of the Planning Department. In the event the matter is not resolved within 15 days after written notice of the issue has been submitted to the Director, then ACC shall have the right to submit the matter to the City Manager. The City Manager may propose to resolve the matter through an amendment to this Agreement or other appropriate action, in which event the matter will be promptly submitted to the Austin City Council and the ACC Board of Trustees for consideration of a mutually-acceptable amendment or other action. If the matter is not resolved to the mutual satisfaction of the City and ACC within thirty (30) days after the matter has been submitted to the City Manager, or within sixty (60) days after the matter has been submitted to the City Manager, if the City Manager has proposed an amendment to this Agreement or other action be proposed to the parties' governing bodies, then the parties will be deemed to have exhausted all administrative remedies, and each party may pursue the rights and remedies available to it at law or equity.

ARTICLE 5 MISCELLANEOUS PROVISIONS

Section 5.1 Other Ordinances. In the event that the provisions of this Agreement are in conflict with the provisions of any other ordinance, rule or regulation adopted by the City of Austin, the provisions of this Agreement shall control, and such other ordinance(s) shall be deemed amended, except where ACC elects to be subject to the terms of another ordinance as provided in Section 5.2 below.

Section 5.2 Modification Procedure. Any modification, amendment or alteration of this Agreement shall only be effective and binding if the modification, amendment, or alteration is in writing and signed by both parties. Any provision in this Agreement to the contrary notwithstanding, if the City Council amends City ordinances regarding development standards and processes addressed by this Agreement, and ACC determines that the amendment is advantageous to ACC, then the ACC President and the City Manager are authorized to, and shall, modify this Agreement to be consistent with the amendment.

Section 5.3 Entire Agreement. This Agreement contains the complete and entire agreement between the parties respecting the matters addressed herein, and supersedes all

prior negotiations, agreements, representations and understandings, if any, between the parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations and understandings, if any, between the parties respecting such matters. No oral statement or prior written material not specifically incorporated in this Agreement shall be of any force or effect. The parties agree that in entering into this Agreement they have relied solely upon the representations and agreements contained in this Agreement and no others. Any consent, waiver, approval, or authorization under this Agreement shall be effective if signed by the party granting or making such consent, waiver, approval, or authorization.

Section 5.4 Interpretation. The signature form of any word used in this Agreement includes the plural, and vice-versa, unless the context requires otherwise. The use of a word of any gender in this Agreement includes the other gender, unless the context requires otherwise. This Agreement and all of the terms and provisions hereof shall be construed to effectuate the purposes contemplated hereby and to sustain the validity hereof.

Section 5.5 Invalid Provisions. In any clause, sentence, provision, paragraph, section, or article of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, or ineffective, that invalidity, illegality, or ineffectiveness shall not impair, invalidate, or nullify the remainder of this Agreement; and its effect shall be confined to the clause, sentence provisions, paragraph, section, or article held to be invalid, illegal, or ineffective.

Section 5.6 Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any benefits, rights, or remedies under or by reason of this Agreement upon any person other than the parties to this Agreement and their respective successor governmental entities. No assignment of this Agreement or of any right, duty, or obligation of performance under this Agreement, in whole or in part, shall be effective unless such assignment⁶ is approved in writing by both ACC and the City.

Section 5.7 No Joint Venture, partnership, agency, Etc. This Agreement shall not be construed as in any way establishing a partnership or joint venture, express or implied agency, or employer-employee relationship between the parties hereto.

Section 5.8 Other Instruments. The parties hereto covenant and agree that they will execute such other and further instruments and documents and take such further action as are or may become necessary or convenient to effectuate and carry out this Agreement.

Section 5.9 No Waiver. No consent or waiver, express or implied, by a party to or of any default of any covenant or provision of this Agreement by the other party shall be construed as a consent to or a waiver of any other default of the same or any other covenant or provision of this Agreement.

Section 5.10 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

Section 5.11 Headings. The headings used in this Agreement are used for reference and shall not be used to interpret or limit the meaning of any provision of this Agreement.

Section 5.12 Parties Bound. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective administrators, legal representatives and successor governmental entities.

Section 5.13 Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original and all of which shall together constitute one and the same instrument.

Section 5.14 Successor Entities. Any reference to any governmental entity, governmental department or governmental official or employee shall include any succeeding governmental entity, governmental department, or governmental official or employee assuming the responsibility or function described by this Agreement.

Section 5.15 Effective Date. This Agreement shall be binding on a party as of the date this Agreement has been duly authorized and executed by both parties.

This Agreement has been signed on the dates set forth below to be effective as the Effective Date.

CITY OF AUSTIN, TEXAS

By: _____
Name: _____
Title: _____
Date: _____

Approved as to form:

Deborah Thomas, Assistant City Attorney

AUSTIN COMMUNITY COLLEGE
DISTRICT

By: _____
Stephen D. Kinslow, President
Date: _____