|  |  |
| --- | --- |
|  | **FACILITY USE AGREEMENT**  **(RECURRING INTERMITTENT USE)**  **(AS NEEDED)** |

This Agreement is entered into by and between Alamo Community College District (“Alamo Colleges District”), a public junior college district and a political subdivision of the State of Texas, and the “Organization”, the exact legal name of which is:  \_.

**WITNESSETH**

WHEREAS, Alamo Colleges District is a public junior college district comprised of district services offices (“DSO”) and five colleges, San Antonio College, St. Philip’s College, Palo Alto College, Northwest Vista College, and Northeast Lakeview College; and

WHEREAS, Alamo Colleges District owns and operates the Facility described at **Exhibit A** hereto, which is hereby incorporated for all purposes; and;

WHEREAS, Organization desires to utilize the Facility on a recurring basis (“Use”), upon the terms and conditions herein set forth; and

WHEREAS, Alamo Colleges District shall grant the Organization the Use of the Facility, without guaranteeing Use availability beyond the Uses specified in **Exhibit A**, upon the terms and conditions herein set forth;

NOW THEREFORE, in consideration of the mutual covenants herein set forth, and other good and valuable considerations, the parties hereto agree to the TERMS AND CONDITIONS stated herein.

**TERMS AND CONDITIONS**

1. **PAYMENT.** Organization agrees to pay Alamo Colleges District the amount set forth in **ExhibitA.** Alamo Colleges District will invoice organization after each scheduled use. Payment shall be made and payable to “Alamo Colleges District.”
2. **RENTED FACILITY.** Alamo Colleges District agrees to rent the Alamo Colleges District-owned Facility specified at Exhibit A to the Organization under the Terms and Conditions of this Agreement. A description of the Facility authorized utilization, dates, times, and other information relating to utilization is set forth in detail in **Exhibit A**.
3. **PARKING FACILITIES.** Alamo Colleges District shall make the existing parking facilities at the rented Facility available for the vehicular traffic and parking necessitated by the Organization’s Use of the rented Facility, on a non-exclusive basis, as specified at **Exhibit A**.
4. **MAXIMUM CAPACITY.** Organization anticipates approximately the number of participants stated at **Exhibit A** and agrees to inform Alamo Colleges District of any significant changes five (5) business days in advance of a Use. Organization shall not admit a larger number of persons than can safely and freely move about the Facility. Alamo Colleges District shall notify Organization of the recommended capacity of the Facility and all decisions of Alamo Colleges District concerning questions arising under this Paragraph shall be final.
5. **TERM AND TERMINATION.** The Term of this Agreement isas stated in **Exhibit A**, unless earlier terminated. This Agreement may be terminated by either party hereto upon thirty (30) days written notice to the other party. **The dates of scheduled Use within the Term shall be set forth at Exhibit A.** Alamo Colleges District reserves the right to cancel scheduled Uses for educational necessity or force majeure without liability by notice to Organization, in which case all amounts prepaid for cancelled Uses will be refunded. Any Alamo Colleges District facility use by Organization after the expiration of the Term of this Agreement without execution of a new facility use agreement shall be subject to the terms and conditions of this Agreement and the standard facility use fees for the facility used then in effect.
6. **WARRANTY AND REPRESENTATION.** The Facility provided to Organization under the terms and conditions of this Agreement is provided “as is” without any warranty and/or representation whatsoever. Organization agrees to return the Facility to Alamo Colleges District in substantially the same condition, normal wear and tear excepted, as it was at the beginning of the Term of this Agreement. Organization will be responsible for all damages to any Alamo Colleges District property caused by Organization or caused by, relating to, or arising from Organization’s utilization of the Facility.

**VII**. **PARTIAL RELEASE OF LIABILITY OF ALAMO COLLEGES DISTRICT**. ORGANIZATION HEREBY RELEASES ALAMO COLLEGES DISTRICT FROM ALL LIABILITY RELATED TO OR RESULTING FROM THIS AGREEMENT, WHETHER ARISING IN THE PAST, NOW OR IN THE FUTURE, INCLUDING, WITHOUT LIMITATION, FROM ITS USE OF ANY ALAMO COLLEGES DISTRICT PROPERTIES PURSUANT HERETO, INCLUDING, WITHOUT LIMITATION, LIABILITY RESULTING FROM ALAMO COLLEGES DISTRICT’S NEGLIGENCE, GROSS NEGLIGENCE OR STRICT LIABILITY**, with the sole exception of direct but not consequential contractual damages resulting from breach of this Agreement by Alamo Colleges District**.

1. **INDEMNIFICATION OF ALAMO COLLEGES DISTRICT AND AFFILIATES AND RELEASE OF AFFILIATES.** ORGANIZATION AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS Alamo Colleges District, its Board of Trustees, officers, employees, contractors, agents and assigns (“Protected Parties”) from and against, and to pay to Protected Parties on demand, the amount of, any and all costs resulting from any complaints, claims, liabilities suits, damages, judgments, penalties, fines, settlements, losses and expenses (including legal fees, expert witness fees and other legal expenses and court costs), of whatsoever kind and nature, imposed upon, incurred by, or asserted against Protected Parties in any way related to or resulting from the execution, enforcement, or performance of this Agreement, or from Organization’s use of Alamo Colleges District’s facilities (“Claims”). Organization’s duty to indemnify, defend, and hold harmless Protected Parties includes, but is not limited to, Claims resulting from bodily injury or death of persons, or from damage to property and the resulting loss of its use, regardless of the ownership of such property and the identity of such persons, EVEN IF CAUSED IN PART BY THE NEGLIGENCE OF THE PROTECTED PARTY CLAIMING INDEMNITY, EXCEPT TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF THAT PROTECTED PARTY.

ORGANIZATION HEREBY RELEASES all Protected Parties other than Alamo Colleges District FROM ANY AND ALL CLAIMS RELATED TO OR RESULTING FROM THIS AGREEMENT, WHETHER ARISING IN THE PAST, NOW OR IN THE FUTURE, EVEN IF CAUSED, IN WHOLE OR IN PART, BY ANY ACT OR OMISSION, INCLUDING, WITHOUT LIMITATION, THE NEGLIGENCE, GROSS NEGLIGENCE OR STRICT LIABILITY, OF ANY PROTECTED PARTY.

Alamo Colleges District is a state governmental unit that is prohibited by law from indemnifying other parties pursuant to applicable Texas Attorney-General opinions. Notwithstanding anything appearing elsewhere to the contrary, there shall be no special assumption of liability, and no indemnification or “holding harmless” of Contractor, or any other party, by Alamo Colleges District, regardless of how characterized.

1. **INSURANCE.** Organization shall obtain at its own cost insurance to cover Organization’s use of the Facility for its scheduled function at the following minimum levels of coverage:

WORKERS’ COMPENSATION STATUTORY

Must include coverage for alternate employers and borrowed servants

EMPLOYER’S LIABILITY

Each Accident (bodily injury) $500,000.00

Policy Limit (bodily injury by disease) $500,000.00

Each Employee (bodily injury by disease) $500,000.00

GENERAL COMMERCIAL LIABILITY

General Aggregate $2,000,000.00

Each Occurrence (bodily injury/property damage) $1,000,000.00

Each Occurrence (personal injury/advertising injury) $1,000,000.00

Each Occurrence (Damage to Premises Rented To You) $1,000,000.00

All coverage must be primary and non-contributory

UMBRELLA/EXCESS LIABILITY

Each Occurrence $1,000,000.00

POLLUTION ON-SITE LIABILITY (required if Use presents risk)

Each Occurrence $1,000,000.00

**Organization shall, at the time of execution of this agreement, provide Alamo Colleges District with a copy of a certificate of insurance evidencing all applicable required policies which must list “Alamo Community College District” as a NAMED ADDITIONAL INSURED and beneficiary of contractual indemnification coverage and waiver of subrogation.**

1. **NO ASSIGNMENT.**  Organization shall not assign or transfer any of its rights under this Agreement without the prior written consent of Alamo Colleges District. Organization herein is an independent contractor and not the agent or employee of Alamo Colleges District.
2. **SMOKING AND ALCOHOL RESTRICTIONS.** By this Agreement, Alamo Colleges District denies any rights other than expressly stated herein and specifically denies any right to Organization of possession or occupancy which would be in violation of Texas State Law, or the rules and/or policies of Alamo Colleges District. Smoking, including vapor or e-cigarettes, is **prohibited** in all classrooms, laboratories, offices, conference rooms, hallways, and all other rooms in all buildings of the Alamo Colleges District, and on all property which is owned, leased, rented, or otherwise under the control of Alamo Colleges District. Dispensing and consumption of alcoholic beverages is **prohibited** on Alamo Colleges District owned property.
3. **RIGHT TO ENTER.** In permitting the use of the Facility described herein, Alamo Colleges District does not relinquish control or custody thereof and does hereby specifically retain the right to enforce any and all laws, rules and/or policies and procedures of Alamo Colleges District applicable thereto. All portions of the Facility will at all times be under the charge and control of Alamo Colleges District. Alamo Colleges District’s agent or other authorized representative of Alamo Colleges District may enter upon the Facility at all times to make inspections to ensure compliance with this Agreement.
4. **FORCE MAJEURE.** If performance of any obligation of either party hereunder is prevented or rendered infeasible by act of God, regulation of any public authority, civil disturbance, strike, epidemic, interruption of transportation services, war conditions or emergencies, or other similar event beyond the control of the obligated party, it is understood and agreed that there shall be no claim for damages against the obligated party for failure to perform the obligations that were so prevented or infeasible.
5. **NOTICE.**  All notices given pursuant to this Agreement shall be in writing, with delivery receipted, effective on receipt. Notice mailed through the US Postal Service shall be by first class mail, postage prepaid, registered or certified with return receipt requested. Notice may also be delivered in person to the intended addressee with receipt, or sent by receipted email or receipted overnight delivery service. Email notice shall always be a permitted option, and shall be mandatory during the pendency of any epidemic or pandemic affecting the city or county of the notice address of either party, or during any period during which either party has implemented limited office staffing or a temporary work-from-home program by reason of an emergency declared by authorities with jurisdiction over that area. All email notices given pursuant to this Agreement shall be effective upon receipt, rebuttably presumed received with evidence of sending, and irrebuttably presumed received with evidence of email confirmation of receipt. The notice addresses of the Parties are stated in **Exhibit A** and maybe changed by giving 5 business days of notice.
6. **ENTIRE AGREEMENT.**  This Agreement represents the entire agreement between the parties with respect to the Facility. No representations, warranties, promises, guarantees, undertakings, or agreements, oral or written, express or implied, have been made by Alamo Colleges District with respect to the Facility except as expressly stated herein.
7. **AMENDMENTS.**  This Agreement can only be changed by an agreement in writing signed by both Alamo Colleges District and Organization, except that Alamo Colleges District may, by its own action, modify the rules for usage at any time with thirty (30) days prior written notice to Organization.
8. **COMPLIANCE WITH LAWS.** Organization shall comply with all laws, ordinances, regulations, rules and/or policies and procedures of Alamo Colleges District, the county and municipality within which the Facility is located, the State of Texas and the United States, that are applicable to the use of the Facility. Organization shall pay all taxes and/or fees, if any, imposed by laws in connection with its use and occupancy of the Facility.
9. **VIOLATIONS.** If at any time the utilization of the Facility by Organization violates any applicable ordinances, regulations, laws, rules and/or policies of Alamo Colleges District, the county and municipality within which the Facility is located, the State of Texas or the United States of America, Organization shall either cease and desist from continuing such Use or shall surrender the Facility forthwith upon written demand by Alamo Colleges District and served upon Organization pursuant to Paragraph XIV herein.
10. **ADVERTISING AND SELLING.** No advertising or other items shall be placed or posted on walls or doors in or about the Facility without prior written permission of Alamo Colleges District. Alamo Colleges District’s name shall not be used to suggest co-sponsorship or endorsement of any activity, except with the prior written approval by Alamo Colleges District. Solicitation of donations is prohibited. Organization shall not make audio or video recordings or televise or broadcast an event or any portion thereof without Alamo Colleges District’s written permission provided at least three (3) days in advance.
11. **DEFACEMENT AND DAMAGE.** Organization shall not injure, mar or in any way deface the Facility and shall not cause or permit anything to be done whereby the Facility shall be in any manner injured, marred, or defaced. Organization will not drive or permit to be driven, nails, hooks, tacks, or screws into any part of the Facility and will not make or allow to be made any alterations of any kind therein. Organization is responsible for any costs related to repair of damages caused by or resulting from its usage.
12. **ALAMO COLLEGES DISTRICT’S EQUIPMENT.** Organization shall not use Alamo Colleges District’s equipment, tools or furnishings, located in or about the Facility, without the prior written approval of Alamo Colleges District.
13. **ADDITIONAL USERS OR ALAMO COLLEGES DISTRICT’S STAFF AND STUDENTS.** Organization acknowledges and agrees that, during the term of this Agreement, other events may take place at the Facility and/or Alamo Colleges District’s staff and/or students may be present during the course of normal business hours in and/or around the Facility, including parking lots. Organization’s rights hereunder do not exclude such uses, and Organization shall conduct its activities so as not to interfere with same.
14. **SECURITY.** Organization shall be responsible for all costs associated with providing required security for periods of authorized Use as determined by Alamo Colleges District, as follows:
15. All requests for security coverage for any use of the premises of any Alamo Colleges District owned property, including, without limitation, Organization’s Use of the Facility, must be communicated to the office of the Chief of Police of the Alamo Colleges District Police Department at (210) 485-0088.
16. The Alamo Colleges District Police Department shall be the sole source for additional police/security coverage at all Alamo Colleges District owned properties, other than as specified in subsection C, below.
17. If Alamo Colleges District Police Department is unable to provide the necessary security, Organization shall secure security from another source. **In no event** shall a peace officer or security officer not employed by the Alamo Colleges District Police Department be permitted to work any event at any Alamo Colleges District owned property **without the prior approval of the Alamo Colleges District Police Department, Chief of Police.**
18. **INDEPENDENT CONTRACTORS.** Organization and Alamo Colleges District understand and agree that each performs tasks, the details of which the other does not have legal right to control and no such control is assumed by this Agreement. This Agreement does **not** create an employment relationship, partnership, or joint venture between Organization, its employees, and Alamo Colleges District. Neither party nor its employees shall be deemed employees of the other for any purpose whatsoever, and neither shall be eligible to participate in any benefit program provided by the other. Nothing in this Agreement shall be construed to create any borrowed servant, joint employment or leased employee status.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have set their signatures as shown below.

**ORGANIZATION**

By: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Print Name**:**

Title:

**ALAMO COMMUNITY COLLEGE DISTRICT**

By: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Print Name:

Title:

**Attachments: EXHIBIT A – Use Details**

**EXHIBIT A TO**

**RECURRING INTERMITTENT (AS NEEDED) FACILITY USE AGREEMENT**

**Between**

**ALAMO COMMUNITY COLLEGE DISTRICT**

**And**

**\_ (“Organization”)**

1. DESCRIPTION OF RENTAL FACILITY:

College: \_

Address: \_

Building Name: \_

Room Number(s): \_

Parking Lot Number/Name: \_

2. Fee: \_

3. TERM: \_

Describe any limitations or restrictions (such as specific days of the week, excluding holidays, etc.):

\_

4. DESCRIPTION OF USE: \_

5. ATTENDANCE: Organization anticipates approximately \_ participants.

6. NOTICES:

Notices to Alamo Colleges District:

\_

\_

\_

\_

Tel: \_

Email: \_

Notices to Organization:

\_

\_

\_

\_

Tel: \_

Email: \_

7. INVOICES TO ORGANIZATION: Organizationwill receive any invoicesat the following address:

Organization: \_

Att’n: \_

Street Address: \_

City/State Zip: \_

Email:  **\_**

8. SET UP:

Tables and Chairs: Yes or No Number of Tables: \_ Number of Chairs: \_

Technical Support: Yes or No; if yes, describe: \_

9. Other Requests/Requirements/Conditions/Exclusions: \_