

FACILITY USE AGREEMENT

This Facility Use Agreement (Agreement) is made by and between the Junior College District of Metropolitan Kansas City, Missouri a/k/a Metropolitan Community College (MCC), a public community college district and political subdivision of the State of Missouri, whose principal office is located at 3200 Broadway, Kansas City, Missouri 64111, and **City of Lee's Summit, Missouri** (Lessee), whose principal office is located at **220 S.E. Green Street Lee's Summit, MO 64063**.

For good and valuable consideration as described herein, the parties hereto agree as follows:

1. Use and Condition of Premises and Equipment

1.1. Use and Condition of Premises. MCC agrees to grant to Lessee the use of **Precision Driving Track/Course (PDC) at Blue River East, located at 21227 E. 78 Highway, Independence, MO 64057** (Premises), for the express purpose of **EVOC Training for the members of the Lee's Summit Police Department** (Event). Lessee shall not use the Premises for any other purpose nor shall it use any other part of the Premises other than as stated hereunder. Lessee accepts the Premises in present condition and agrees to keep and maintain the same in as good condition as at present, free from debris, danger of fire or any nuisance, to commit no acts of destruction or other acts tending to injure or deface the property, or which may invalidate the insurance or increase the rates thereon, and at the expiration of this Agreement will deliver the same without notice to MCC in as good condition as when it received the same, ordinary wear and tear excepted. MCC does not permit alcoholic drinks to be sold or provided on the Premises under any circumstance.

1.2. Use and Condition of Equipment. MCC agrees to grant to Lessee the use of the equipment as standard to the Premises, and additional equipment that may be mutually agreed upon by the parties as described herein. Lessee understands and agrees that during the term of this Agreement, it shall be solely responsible for all equipment used or present in the Premises. **Lessee further agrees to these additional terms of use:**

- Only one vehicle is permitted on the active track at a time unless vehicles are spaced a safe distance apart as to avoid any chance of a collision;
- Reckless activity is not allowed;
- The "Track Safety Officer" with MCC's Public Safety Institute in coordination with the MCC Police Department is ultimately responsible for safety at the PDC and can determine if an activity needs to be stopped or modified for the safety of participants;
- Spectators are not allowed in close proximity to the track when vehicles are at heightened speeds;
- All traffic must be fully stopped before pedestrians are allowed on the track area; and
- No third-parties to this Agreement, e.g., other organizations, vendors, (including food trucks) or other types of subcontractors of Lessee, will be allowed on MCC property during this event without prior approval of MCC and a separate facility use agreement between MCC and the third party.

2. Term and Termination.

2.1. Term. The term of this Agreement shall be from **June 14, 2023** through **September 27, 2023**, unless terminated earlier in accordance with the terms and conditions set forth herein. The term may be extended upon the mutual written agreement of the parties.

2.2. Termination. Each party reserves the right to terminate this Agreement with or without cause upon five (5) days' written notice to the other party. Each party reserves the right to terminate this Agreement immediately if the other party fails to comply with any of the terms and conditions herein. **In the event that MCC is made aware that the proposed use of the PDC may potentially violate MCC's safety guidelines, MCC reserves the right, at its sole discretion, to immediately cancel the event, with or without cause, in accordance with the Agreement and local, state and federal laws and ordinances.**

3. Schedule. MCC shall grant Lessee use of the Premises on the dates and times as follows:

June 14, 2023	8:00am – 5:00pm
July 24, 2023	8:00am – 5:00pm
August 14, 2023	8:00am – 5:00pm
August 21, 2023	8:00am – 5:00pm
September 6, 2023	8:00am – 5:00pm
September 18, 2023	8:00am – 5:00pm
September 27, 2023	8:00am – 5:00pm

Such use of Premises excludes holidays, inclement weather closings, closures due to emergencies, or for any reason that use of the Premises is impracticable.

4. Minors. Each party acknowledges that if the Event activities involve minors, each party agrees to inform the other party if they have any knowledge of any injuries, or suspected abuse, or neglect of any minor Participant. Lessee will bear responsibility for reporting the same to the appropriate authorities, advise MCC that such a report was made, and provide verification of the same.

5. Fees. For and in consideration of the Use of the Premises and Equipment, Lessee shall pay MCC a total sum of **eight thousand six hundred eighty dollars and zero cents (\$8,680.00)**, payable no later than **June 7, 2023**. Payments shall be made payable to Metropolitan Community College in the care of Auxiliary and Contract Services at MCC's address in section 8 herein.

6. Liability Requirements.

6.1. Insurance. Lessee agrees to maintain the following insurance throughout the term of this Agreement: a) workers' compensation and employer's liability for its employees in amounts as required by Missouri law; b) automobile insurance, to include uninsured and underinsured motorists, in the minimum amounts of \$1,000,000 per occurrence and \$3,000,000 in the aggregate; and c) general liability in the amounts of \$1,000,000 per occurrence and \$3,000,000 in the aggregate, which shall cover employees, students, participants, volunteers, property damage, and contractually assumed liability and name MCC, its trustees, officers, directors, employees, volunteers, agents, and representatives as an additional insured. Upon the execution of this Agreement, Lessee agrees to provide MCC proof of insurance which shall include the stipulations hereunder and state that such coverage will not be cancelled without thirty (30) days written notice. Failure to so provide or maintain any insurance as requested hereunder will not relieve it of any contractual obligation or responsibility herein.

6.2. INDEMNIFICATION. THE PARTIES SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS MCC, ITS TRUSTEES, OFFICERS, EMPLOYEES, AGENTS, AND REPRESENTATIVES AGAINST ANY AND ALL CLAIMS, DEMANDS, SUITS, COSTS, JUDGMENTS, OR OTHER FORMS OF LIABILITY, ACTUAL OR CLAIMED, INCLUDING REASONABLE ATTORNEYS' FEES, FOR INJURY OR DAMAGE TO PERSONS OR LOSS OR DAMAGE TO PROPERTY OCCURRING OR ALLEGEDLY OCCURRING IN CONNECTION WITH ANY ACTION, INACTION, OR CONDUCT COMMITTED BY LESSEE OR BY ITS OFFICERS, DIRECTORS, EMPLOYEES, STUDENTS, VOLUNTEERS, AGENTS, OR REPRESENTATIVES DURING THE TERM OF THIS AGREEMENT TO THE EXTENT PERMITTED BY LAW.

6.3. No Waiver. The foregoing provisions shall not be deemed a relinquishment or waiver of any kind of applicable limitations of liability provided or available to MCC under applicable Missouri governmental immunities law.

7. Order of Precedence. In the event of a conflict or inconsistency between the terms and conditions of this Agreement and the terms and conditions of any exhibit, invoice, purchase order, website or other document attached hereto or incorporated herein by reference, the terms and conditions of this Agreement shall govern.

8. Notices. All communications relating to this Agreement shall be in writing and may be (i) hand delivered, (ii) sent by overnight courier, (iii) shall be deemed received within five (5) business days after mailing if sent by registered or certified mail, return receipt requested, or (iv) upon confirmation of receipt when sent by electronic mail to the parties at the addresses written below.

Notices to MCC shall be sent to:

Attn: Auxiliary and Contract Services
Metropolitan Community College
3200 Broadway
Kansas City, MO 64111
Email address for notices: Auxiliary.Services@mcckc.edu

Notices sent to Lessee shall be sent to:

Attn: Matt Stubbs
Lee's Summit Police Department
10 NE Tudor
Lee's Summit, MO 64086
Email address for notices: matthew.stubbs@cityofls.net

9. No Solicitation. MCC does not permit on MCC's Premises the solicitation of products and/or services. Lessee acknowledges and agrees that solicitation is prohibited and warrants that Lessee shall not do any Solicitation.

10. Compliance with Law. The Parties will comply with all statutes, rules, regulations, and codes of the governmental agencies having jurisdiction over the property, project, and/or the Services; in addition, each Party represents and warrants they will comply with all applicable local, state, and federal laws, rules, regulations, directives, and orders pertaining to the operations and activities undertaken by perspective Party, including but not limited to those pertaining to public health, safety, and welfare.

11. Non-Discrimination. Lessee agrees not to discriminate against any employee or applicant for employment because of race, color, religion, age, sex, sexual orientation, gender

identity, disability, national origin, veteran status or any other status protected by applicable law.

Lessee shall also abide by the requirements of 41 CFR § 60-300.5(a), and 41 CFR § 60-741.5(a). These regulations prohibit discrimination against qualified protected veterans and qualified individuals on the basis of disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

12. Anti-Discrimination Against Israel. In accordance with Missouri Revised Statute Section 34.600, titled the “Anti-Discrimination Against Israel Act,” each party certifies it is not currently actively or indirectly engaged in and shall not, for the duration of this agreement, actively or indirectly engage in a boycott of goods or services from the State of Israel and shall otherwise comply with the provisions of RSMo. § 34.600.

13. No Debarment. Lessee represents that it is not debarred or suspended from doing business with the federal government and/or any state government, and shall notify MCC if it becomes debarred or suspended during the Term of this Agreement.

14. Powers and Authority. Neither party may sign any document, perform any act, or make any commitment nor undertaking on behalf of the other party without such other party's express written consent.

15. No Agency. Nothing in this Agreement shall create an agency, partnership, or joint venture between MCC and Lessee.

16. Tobacco-Free Policy. Lessee agrees to strictly abide by MCC's tobacco-free policy, meaning all types of smoking and smokeless tobacco products are prohibited. At all times, MCC shall have the right to enforce such policy pursuant to the terms of this Agreement and under law.

17. Governing Law. This Agreement is governed by and constructed in accordance with the substantive laws of the State of Missouri, without regard to choice of law principals. The forum for all disputes, claims, causes, and actions arising under this Agreement shall be Kansas City, Jackson County, Missouri.

18. Severability. If, for any reason, any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

19. Waiver. Failure of either party to insist upon strict performance of the terms of this Agreement shall not be construed as a waiver of such party's rights to later enforce any provision thereof.

20. Remedies. All rights and remedies of the parties, in law or equity, are cumulative and may be exercised concurrently or separately. The exercise of one remedy will not be an election of that remedy to the exclusion of other remedies.

21. Successors and Assignments. This Agreement shall not be assigned by either party without the prior written consent of the other party and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

22. Force Majeure.

(a) If a Force Majeure Event occurs, the party that is prevented by that Force Majeure Event from performing any one or more obligations under this Agreement (the "Nonperforming Party") will be excused from performing those obligations, on condition that: (1) the Nonperforming Party used reasonable efforts to perform its obligations; (2) the Nonperforming Party's inability to perform its obligations is not due to its failure to take reasonable measures to protect itself against the event or circumstances giving rise to the Force Majeure Event, and (3) the Nonperforming Party complies with its obligations under Subsection (c).

(b) "Force Majeure Event" means, with respect to a party, any event or circumstance, regardless of whether it was foreseeable, that was not caused by that party and that prevents a party from complying with any of its obligations under this Agreement.

(c) Upon occurrence of a Force Majeure Event, the Nonperforming Party shall promptly notify the other party of occurrence of the Force Majeure Event, its effect on performance, and how long that party expects it to last. Thereafter the Nonperforming Party shall update that information as reasonably necessary. During a Force Majeure Event, the Nonperforming Party shall use reasonable efforts to limit damages to the other party and to resume its performance under this Agreement.

23. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereto and supersedes all offers, negotiations, discussions, and other agreements that occurred prior to the date of the execution of this written Agreement. Any amendments to this Agreement must be in writing and executed by both parties.

24. Execution. This Agreement may be executed in counterparts, which together constitute one and the same Agreement. If a party sends a signed copy of this Agreement via digital transmission, such party will, upon request by the other party, provide an originally signed copy of this Agreement. No member or officer of MCC incurs personal liability by the execution or default of this Agreement. All such liability is released by Lessee as a condition of and consideration of the execution of this Agreement.

The parties have caused this Agreement to be executed by their authorized representatives on the day and year written below.

**Junior College District of Metropolitan
Kansas City, Missouri**

City of Lee's Summit

Signature: _____

Signature: _____

Name: Donald Chrusciel

Name: William A. Baird

Title: Vice Chancellor of Admin Services

Title: Mayor

Date: _____

Date: _____

Approved as to Form:

/s/ Beth Murano

Chief Counsel of Public Safety