

## **FACILITY USE AGREEMENT**

This Facility Use Agreement (Agreement) is made by and between the Junior College District of Metropolitan Kansas City, Missouri aka 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 on behalf of its Parks & Recreation (Lessee), whose principal office is located at 901 Blue Stem Drive, Lee's Summit, MO 64086.

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 swimming pool, pool deck space, classroom space, and locker rooms, but not use of the lockers, in the Recreation Center, at MCC-Longview, located at 500 SW Longview Road, Lee's Summit, MO, 64081-2105 (Premises), for the express purpose of lifeguard training (Event). Use of the pool is limited to the use of 1-2 lanes of the Premises pool. 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 shall not permit alcoholic drinks to be sold or provided on the Premises under any circumstances.

**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. Any equipment or services requested upon arrival may be invoiced after the conclusion of the Event.

**2. MCC Responsibilities.** MCC shall provide staffing for the Recreation Center so that Lessee may have access to the facility for training and testing purposes. The foregoing notwithstanding, MCC shall not provide lifeguards or staff to supervise participants within the pool deck area.

### **3. Lessee's Responsibilities.**

**3.1.** Lessee accepts full and total responsibility for supervision and safety of Participants including in the locker room. Use of the locker room is available only if adult supervision is provided by Lessee. Lessee will ensure adequate and reasonable adult supervision is provided, and the level of supervision is within Lessee's sole discretion. Lessee accepts all responsibility for supervision and safety of Participants.

**3.2.** Lessee will ensure that Participants do not enter locations not covered by this Agreement.

**3.3.** Lessee shall cleanup the Premises at the end of the Event to include without limitation the removal of trash.

**4. Termination.** If the Premises shall be destroyed or so damaged by fire or other unavoidable casualty whereby the use of the Premises is impracticable, this Agreement shall automatically terminate and fees are payable only for actual use and/or supplies or services purchased prior to such casualty. Otherwise, the parties shall have no liability related to such termination.

**5. Schedule.** MCC shall grant Lessee use of the Premises on the dates and times, excluding inclement weather closings, as detailed on "Exhibit A – Facility Use Schedule", attached hereto and incorporated herein.

**6. 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.

**7. Fees.** For and in consideration of the Use of the Premises and Equipment, Lessee shall pay MCC based on a daily rate of \$25 per hour for up to (20) participants with an additional \$1 per person per hour for more than (20) participants, upon receipt of MCC's monthly invoice. Lessee shall pay MCC a not-to-exceed total of \$1725 for the term of this Agreement. Lessee shall remit payment to MCC within (20) days of receipt of MCC's invoice. Payments shall be sent to MCC in the care of Viki Clark, at MCC-Longview address listed in §1.1, herein. If an invoice payment has not been received within (30) days from the date of such invoice, MCC reserves the right to suspend Lessee's use of the Premises until such time as MCC receives payment.

**8. Liability Requirements.**

**8.1. 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 \$2,000,000 in the aggregate; and c) general liability in the amounts of \$1,000,000 per occurrence and \$2,000,000 in the aggregate, which shall include students, participants, volunteers, property damage, and contractually assumed liability and name MCC 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.

**8.2. Indemnification.** To the extent permitted by law, Lessee 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 caused by the negligence or willful misconduct of Lessee or by its officers, directors, employees, students, volunteers, agents, or representatives during the term of this Agreement.

**8.3. 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.

**9. Notices.** All communications relating to this Agreement shall be in writing and may be hand delivered, sent by overnight courier, or shall be deemed received within five (5) business days after mailing if sent by registered or certified mail, return receipt requested to the parties at the addresses first written above. If to MCC regarding legal matters, notice shall be sent to the attention of Kathy Walter-Mack, Chief of Staff to the Chancellor.

**10. 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.**

**11. 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.

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

**13. 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.

**14. Compliance with Laws.** During the performance of its obligations under this Agreement, Lessee agrees to conduct its activities hereunder in strict compliance with all applicable federal, state, and local laws, as well as the policies and procedures of MCC.

**15. Governing Law.** This Agreement is governed by and constructed in accordance with the laws of the state of Missouri.

**16. 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.

**17. 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.

**18. 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.

**19. 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.

**20. Force Majeure.** Neither party shall be liable for damages or have the right to terminate the Agreement for any delay or default in performance if the delay or default is due to conditions or circumstances beyond its control; such conditions include, but are not limited to, acts of God, acts of nature, acts of government, national emergencies, acts of terrorism, transportation delays, labor disturbances, work stoppages, or material shortages, or any other cause beyond the reasonable control of the party obligated to perform and which cannot be overcome by reasonable diligence and without unusual expense.

**21. 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.

**22. 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, Missouri**

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

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

Name: Shelley Kneuvean

Name: \_\_\_\_\_

Title: Vice-Chancellor  
Financial and Administrative Services

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

### **Exhibit A – Facility Use Schedule**

#### **LEE'S SUMMIT PARKS & RECREATION – LIFEGUARD TRAINING**

With the exceptions of inclement weather the Facility Use Schedule is as follows:

Tuesdays, April 11, 18, 25, May 2, 9, 16, 2017

Classroom and pool use: 5pm-9pm

Thursdays, April 13, 20, 27, May 4, 11, 18, 2017

Classroom and pool use: 5pm-9pm

Friday, April 7, 2017

Classroom and pool use: 5pm-8pm

Saturday, April 8, 2017:

Classroom use: 8am – 6pm / Pool use: 10:30am – 6pm

Sunday, April 9, 2017:

Classroom and pool use: 10am-6pm

Fee will be charge at \$25 per hour for up to 20 participants, and an additional \$1 per hour for each participant exceeding the 20 participant base charge. Fee may be paid at the time the class attendance is finalized, no later than May 31, 2017.