

FACILITY USE AGREEMENT

This Facility Use Agreement (hereinafter the "Agreement") is hereby made and entered into by and between the KILLEEN INDEPENDENT SCHOOL DISTRICT, hereinafter referred to as "the District", and CENTRAL TEXAS COLLEGE, hereinafter referred to as "CTC," collectively referred to as "the Parties," the above entities being organized and existing by virtue of the laws of the State of Texas, acting herein by and through their duly authorized officers and representatives.

Recitals

WHEREAS, the District and CTC have executed and delivered a Memorandum of Understanding between District and CTC (the "Memorandum of Understanding"), concurrent with the execution of this Agreement, providing in part for the provision of Facilities at CTC to the District to facilitate the District's continuation of an Early College High School program.

WHEREAS, this Agreement is entered into by the Parties pursuant to the terms of the Memorandum of Understanding;

NOW, THEREFORE, for and in consideration of the covenants, conditions and undertakings hereinafter described, and the benefits to accrue to the Parties, the Parties contract, covenant and agree as follows:

1. Subject to the terms of this Agreement, CTC grants to District the right to use the facilities listed on Exhibit A ("Facilities"), in connection with the District's establishment of a new Early College High School. The District may use the Facilities in accordance with the KISD Academic Calendar. An electronic copy of the KISD Academic Calendar will be provided to the Facilities Management Department.
2. The term of this Agreement will begin on August 1, 2023 and end on July 31, 2026. The Agreement shall automatically renew for annual terms unless either party notifies the other that it will not renew the Agreement not less than one hundred twenty (120) days before the end of the then-current term. This Agreement may be terminated by either party by upon ninety (90) days prior written notice to the other party.
3. The District is hereby given the first rights use of the Facilities and related appurtenances, including reserved parking spaces, during the term of this Agreement. This use is limited to the Facilities and related appurtenances as mutually agreed upon in writing by CTC and the District.
4. The District's use of the Facilities shall be consistent with this Agreement, and the purpose and use for which the individual amenities and improvements are designed and constructed. All requests for additional facility usage must be requested using the procedures and required timeline defined by CTC.
5. The District agrees to pay annually to CTC for District faculty and staff member parking permits at a cost of \$25.00 each. The District shall be responsible for providing CTC with a list containing the vehicle information for the District faculty and staff members who will be parking on CTC campuses. The District may update this information as necessary during a school year, but shall provide new lists to CTC fourteen (14) days prior to any new school year. CTC will issue District staff and faculty parking permits in accordance with CTC parking policies. District staff and faculty will follow CTC parking rules and regulations. The District is not responsible for any other amounts.

6. The District shall not suffer, allow or permit the Facilities to be damaged and shall at CTC's choice, repair, or compensate CTC for the reasonable cost of the repair of all damage to the Property directly resulting from the use of the Property by the District, but not for reasonable wear and tear. CTC shall invoice the District for the cost of repair within 30 days of the required repair. Invoices shall be sent to the Chief College, Career and Military Readiness Officer for payment. The District shall not repair such damages without prior signed written consent from CTC. Any facility repair made by the District shall be done under the supervision of CTC to ensure CTC standards are met.

7. The District shall not pay any expenses incurred for the Facilities e.g., construction, utilities, taxes, maintenance or any other costs of ownership and operation, other than as specifically provided herein.

- a. No repair, construction, electrical or other structural work, including the installation or removal of equipment affixed to the building, on CTC Facility or grounds will be performed by District without prior signed written approval from CTC Deputy Chancellor of Finance and Administration or designee.
- b. The District will be responsible for the cost of installation, maintenance, and repair of equipment, signage, or other material utilized within the District leased space at CTC. No CTC related data, electrical, equipment, signage, etc. will be removed or altered without prior signed written approval from the CTC Deputy Chancellor of Finance and Administration or designee.
- c. The District is responsible for the removal, or cost of removal of all District equipment, signage or other fixed material as well as the cost of repair of walls, ceiling, flooring, structures, etc. The District is responsible for the cost of reinstallation of any CTC removed equipment and/or infrastructure (i.e. electrical, data, etc.). Likewise the District is responsible for the cost of repair for all damage caused by the removal of the District's equipment, signage, and other fixed materials whether such removal is performed by the District, CTC, or third party vendor. Failure of the District to remove or replace such fixed material within fifteen (15) calendar days from vacating the premises shall result in CTC's removal or replacement of the fixed material at the District sole expense.
- d. Upon the District's relinquishment of the Facilities as defined in Exhibit A, All permanent infrastructure installations whether installed by the District or CTC, such as fiber, electrical, data, etc. shall remain in the facility and will become the property of CTC.
- e. All installation/removal requests must be pre-approved. Written requests are to be submitted to the CTC Deputy Chancellor of Finance and Administration or designee for written approval, along with a description of the work required (i.e. diagram, layout, picture, mock-up, etc.), for CTC Facilities Management review and signed approval. All requests must be preapproved in a signed writing by CTC no less than fifteen (15) calendar days before installation or removal.
- f. All materials utilized, including temporary installations, must meet current CTC specifications (i.e. approved tape, fasteners, etc.) design standards, be ADA compliant, and preapproved by a signed writing from CTC Deputy Chancellor of Finance and Administration or designee.
- g. All leased spaces are subject to periodic inspections by CTC Facilities and Construction Division.
- h. The District will reimburse CTC for all improvements conducted by CTC, including but not limited to, electrical, data, and minor construction in setting up any District required space including, but not limited to, science labs, office and clinic space, student dining, food services, and external spaces within thirty (30) days of receipt of invoice from CTC.
- i. In the event that CTC requires temporary use of the Facilities, in coordination with CTC, the District will be responsible for the breakdown and reset of the District's equipment. When the ECHS desires to hold events on CTC campus, the District will work with ECHS staff to ensure event and space requests are submitted as required by CTC.
- j. CTC's Facilities and Construction Division will provide the District with a list of approved products

- for affixing items to the walls, doors, or windows. All interior and exterior signage and placards, created by the District or CTC, will be installed by CTC's Facilities and Construction Division. Any damage, including cost of repair, resulting from the installation or removal of items to include the removal of unapproved items will be the sole responsibility of the District.
- k. The District will be responsible for trash pick-up and removal, food and trash disposal, furniture, table, and chair spot cleaning and realignment, within the District leased spaces as provided for in Exhibit A of this agreement.
 - l. CTC will allow the District to place their own network and telecommunications equipment in existing MDF/IDF facilities, and can provide a private VLAN if necessary to assist District in routing traffic from Building 262 Eagle Hall (formerly building 103) to a provider (BellNet, TimeWarner, CenturyLink, etc.) circuit termination point elsewhere on CTC's campus to support the District connectivity back to the District campus network. The District is responsible for the cost of additional Ethernet drops and associated cabling required by the District in Building 244 Shoemaker Center (formerly building 113).
 - m. On occasions where an event requires a police presence the District shall utilize the District's police department for campus events and pay the normal requisite fees that may be associated with use of the CTC police force.

8. Nothing in this Agreement shall be deemed to create, by implication or otherwise, any duty, responsibility or right as to either the District or CTC, except with respect to the Facilities as specifically set forth herein. This Agreement does not and shall not be interpreted to limit or extend any governmental authority or discretion except as specifically set forth therein.

9. Nothing in this Agreement shall be deemed to create or increase the jurisdiction or authority of either CTC or the District except as necessary to give effect to this Agreement. All the governmental functions and services of CTC shall be and remain the sole responsibility of the CTC. All governmental services and functions of the District shall be and remain the sole responsibility of the District.

10. To the extent permitted under Texas law and without waiving any defenses including governmental immunity, each party to this Agreement acknowledges to be responsible for each of its own acts and omissions including negligence, which may arise in connection with any and all claims for damages, costs, and expenses to person or persons and property that may arise out of or be occasioned by this Agreement or any of its activities or from any act or omission of any employee or invitee of the parties of this Agreement. The provisions in this paragraph are solely for the benefit of the parties to this Agreement and are not intended to create or grant any rights, contractually or otherwise to any third party.

11. Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to either CTC or the District nor to create any legal rights or claim on behalf of any third party. Neither the District nor CTC waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas.

12. This Agreement and the Memorandum of Understanding constitute the entire agreement between the Parties as to the subject matter thereof, and shall supersede any and all prior agreements and understandings of the Parties hereto with regard to said subject matter, whether oral or written. None of the foregoing documents may be amended or modified except in a duly authorized writing executed by CTC and the District.

13. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, then to the extent the unenforceability does not destroy the basis of the

bargain among the Parties, such holding shall not invalidate or render unenforceable any other provision thereof, but rather the affected document will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties hereto shall be construed and enforced in accordance therewith. The Parties hereto acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, be deemed to be valid and enforceable.

14. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

15. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall be considered fully executed when all parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.

16. It is not a waiver of or consent to default if the non-defaulting party fails to declare immediately a default or delays in taking any action as to such default or any subsequent default.

17. Each party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this Agreement and all transactions contemplated by this Agreement.

18. Throughout the term of this Agreement, CTC shall maintain, at its sole cost and expense, insurance coverage meeting, at a minimum, the following requirements:

- a. All risk Property Insurance covering the Building in the full replacement value of the Building.

19. Throughout the term of this Agreement, District shall maintain, at its sole cost and expense, insurance coverage meeting, at a minimum, the following requirements:

- a. General Liability Insurance with a combined personal injury and property damage limit of \$1,000,000 per occurrence and \$1,000,000 aggregate for which the District shall name CTC as an additional insured during the term of this Facilities Use Agreement; and
- b. Business Automobile Liability Insurance.
- c. Workers' Compensation and Employer's Liability Insurance with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act and minimum policy limits for employers liability of \$500,000.
- d. Commercial Property Contents Insurance Coverage sufficient to cover District's property.

20. Neither party shall be liable for or provide insurance coverage for the other party's employees or personal property located in the Facilities. Except as provided in paragraph 7 herein, CTC shall be responsible for the utilities, taxes, maintenance, replacement and repair of the Facilities, including the roof, as well as the HVAC equipment, and CTC shall be responsible for all costs associated with the Facilities.

21. CTC shall provide to the District the following, as part of the tuition paid by the District.

- a. All utilities;
- b. Unfiltered Internet/Wi-Fi/Wi-Fi access sufficient for the District's use, including adequate bandwidth for all students and faculty; and
- c. Classroom and office furniture in accordance with established CTC standards.

22. The provisions of this Agreement to the contrary notwithstanding, if any party through no fault or negligence on its part, is unable to perform an obligation due to a cause or condition beyond its control including, but not limited to Acts of God and/or any other cause beyond the reasonable control of the party whose performance is affected, then said party shall be entitled to a reasonable extension of time in which to perform its obligations, but unless otherwise agreed to in writing shall not exceed one (1) day for each day in which said party was unable to perform due to an event of force majeure.

23. In the event a dispute or claim of breach (collectively, "Claim") arises between the Parties with regard to the Facilities or use of the Facilities under this Agreement, the aggrieved party shall provide the other party with (i) written notice of the Claim with sufficient specificity to enable the recipient to understand the nature and specific details of the Claim, and (ii) a reasonable opportunity to cure. If the Parties are not able to resolve the Claim to their mutual satisfaction through negotiation within thirty (30) days after the expiration of the cure period, (or within such longer period of time as the Parties may agree in writing), then the Parties agree to mediate the matter in good faith prior to exercising any remedies. If mediation does not result in an agreement within forty-five (45) days of the expiration date of the negotiation period, the Parties may proceed to state District Court.

24. Any notice required or permitted under this Agreement must be in writing. Any notice required by this Agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. The address for notice for each party is set forth below. Any address for notice may be changed by written notice delivered as provided herein.

CTC: Attn: Michele J. Carter
 Deputy Chancellor, Finance & Administration
 Central Texas College
 P.O. Box 1800
 Killeen, TX 76540-1800

District: Attn: Superintendent of Schools
 Killeen Independent School District
 200 N. W.S. Young Drive
 Killeen, Texas 76543

25. CTC shall have exclusive control, supervision and policy making authority for and with respect to the Facilities, CTC equipment use, and required behavior of District employees, students and guests on campus. CTC shall provide the District with access to such policies, to which the District agrees to comply.

26. The District shall make all payments or expenditures related to this Agreement from current revenues available to the District.

IN WITNESS THEREOF, the Parties hereby execute and attest to this Agreement by their officers duly authorized.

KILLEEN INDEPENDENT SCHOOL DISTRICT

CENTRAL TEXAS COLLEGE

By: 
Dr. Jo Ann Fey
Superintendent

By: 
Dr. Michele J. Carter
Chancellor

7/11/2023
Date

9/7/2023
Date

EXHIBIT A

Facilities located on the CTC campus, being generally described as space located on Central Campus, 6200 W. Central Texas Expressway, Killeen TX 76549 ("Facilities"). Any additional request for classroom space will be provided, if available, in accordance with the cost per square foot in the applicable school year.

<p>For the 2023-2024, 2024-2025, and 2025-2026 school years</p>	<p><i>Building No. 244 – Shoemaker Center designated to accommodate all classroom, office, clinic space, and men’s and women’s restroom facilities as required by the District. Building No. 262 – Eagle Hall accommodating classrooms 105, 106, 107, 108, 109, 110, 117 and office space with the exception of offices 101, 102 and 103. Classroom space in Building No. 262 will be used during the fall and spring semesters between the hours of 7:30am-6:00pm. Classroom space in Building No. 244 - Shoemaker Center will be designated to support the ECHS Bridge Camp the two weeks immediately following the end of the Killeen ISD’s school year. Adequate space in Building No. 220 – Roy J. Smith Student Center is designated for kitchen use and student dining. Adequate parking spaces to accommodate all students, faculty and staff associated with the Early College High School program. Building 257 will be utilized to provide four offices for KISD Administration. Those offices designated for KISD Administration are rooms 1026, 1029, 1030, 1031, and shared reception area located in room 1009. Building No. 545 – Physical Education Center rooms 112, 152, 162, and adjacent exterior spaces may be utilized for ECHS PE classes, with prior approval and scheduling through Facilities and Construction and Kinesiology Department, and when not in use by CTC for college courses, related activities, or external scheduled use of facilities. KISD must provide all staffing and equipment to support the ECHS PE classes.</i></p>
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