

FACILITIES USE AGREEMENT

This **Facilities Use Agreement** (the “Agreement”) is dated this _____ day of _____, 2018 (the “Effective Date”), by and between the Waukesha County Technical College, a technical college organized and existing under Wis. Stat. chapter 38 (the “College”) and the City of Waukesha, a Wisconsin municipal corporation (the “User”).

1. Use of Facilities. Subject to the timely payment by the User of the fees required under Section 5 below, and to the observance by the User of the terms and conditions of this Agreement, the College hereby grants to the User the right to use the College’s fire training grounds, including the burn building and related facilities (the “Facilities”), at the times and in the manner set forth herein. The College shall allow the User to utilize the Facilities for the sole purpose of training fire fighters and emergency responders (the “Program”). The User shall not use the Facilities for any other purpose without the prior written consent of the College, which consent may be withheld in the College’s sole discretion.
 - a. The term of this Agreement shall be one year from the Effective Date (the “Term”). During the Term hereof, the User shall have the right to use the Facilities at the specific times agreed to by the College in its sole discretion (hereinafter referred to as an “Appointment”).
 - b. The Term shall renew automatically for successive one-year Renewal Terms unless either the College or the User notifies the other party in writing, no later than 90 days before the end of the then-current Term or Renewal Term, of its intent not to renew.
 - c. Parking facilities will be available for use by the employees, agents and visitors of the User during each Appointment, but such use shall not be exclusive and shall be jointly with the College, its agents, students, employees, members of the public, and other users and shall be subject to such fees, rules and regulations as the College may normally prescribe.
 - d. The User, its agents, employees and invitees shall have the right to use the buildings’ entrances and corridors on the College’s campus as is necessary to secure access to the Facilities provided that such access right shall be in common with the College, its agents, students, employees, members of the public and other users. The User shall repair, at its expense, any and all damage to such areas resulting from the acts of the User, its agents, employees or invitees.
 - e. The User shall make no alterations or additions to the Facilities, including any of its related equipment, without the prior written approval of the College.
 - f. The User shall surrender possession of the Facilities at the end of each Appointment in the same condition as the Facilities were in at the commencement of such Appointment, reasonable wear and tear excepted. The User shall remove any and all debris from the Facilities as well as any and all personal property owned by the User, its agents or invitees at the end of the Appointment. Any personal property owned by the User, its agents or invitees not removed at the end of an Appointment may be disposed of as the College shall see fit.
2. Manner of Use. The User may make reasonable use of the Facilities at the times described above for carrying out the Program in accordance with the following:
 - a. The User agrees to use the Facilities in a safe manner and shall at all times comply with any and all applicable local, state, and federal laws and regulations and specifically

including Wisconsin Statute Chapter SPS 330 (“SPS 330”) Fire Department Safety and Health Standards and the National Fire Prevention Association’s (the “NFPA”) Standards 1403 pertaining to live fire trainings. The User agrees that the Facilities shall not be used for any unlawful purpose or for any purpose that will damage the Facilities, and the User will not use or keep about the Facilities anything that would in any way affect the validity of the insurance carried pursuant to Section 6, or would cause an increase in any premium for insurance carried by the College.

- b. In the event of an emergency or event of force majeure, the College may cancel an Appointment.
 - c. The User shall report in writing to the College any breach of this Agreement, any injury occurring at the Facilities and any damage to the Facilities or its related equipment, within twenty-four (24) hours of an occurrence thereof.
 - d. The User shall follow the College’s Fire Training Ground rules and policies for the Facilities at all times, as same may be updated, amended, or modified. The User hereby acknowledges it has received and reviewed a copy of the College’s Fire Training Ground policies.
3. Staffing. The User shall provide all necessary staffing, materials, and management to safely and effectively operate the Program, including but not limited to: (1) requiring a WCTC training facilitator (WCTC employed Fire Instructor and/or a certified Emergency Services Instructor who has completed the WCTC Fire Training Grounds Orientation course, been monitored by WCTC staff and deemed competent to conduct trainings on the Fire Training Grounds), (2) requiring all trainings be performed in accordance with Wisconsin Statute Chapter SPS 330 and NFPA 1403. Furthermore, in the event of any live fire trainings, a safety officer shall be present (in addition to a WCTC Training Facilitator). As used herein, the term “Training Facilitator” shall mean an individual who has completed the College’s Fire Training Grounds orientation course within the previous twelve (12) months or, if applicable, a refresher course within the previous twelve (12) months. The College may make reasonable requests for changes in the Program’s operations or training. The User shall be responsible for the care, custody, control, supervision and security of its employees, agents, assigns, students, visitors and invitees. Should an emergency arise in which the User’s staff does not arrive timely or should the College be required to remove debris from the Facilities at the end of an Appointment, the User agrees to (in addition to the payment of the User Fee) reimburse the College for any time spent by the College’s staff addressing said items.
4. Relationship of the Parties. The User is an independent organization and is not an agent, servant, joint venturer or employee of the College. The User’s relationship with the College is limited solely to the use of the Facilities. Neither party has the authority to act on behalf of the other party in any capacity.
5. Compensation in Consideration of Use. In exchange for use of the Facilities during the Term, the User shall pay the College the “User Fee” as set forth herein. The User Fee shall be calculated based on the following:
 - a. \$1,000.00 per year for the right to use. Said fee shall be paid in advance, simultaneously with the execution of this Agreement.
 - b. Additional fees may apply if User is conducting extensive training and/or higher than average use of consumables.

- c. In addition, the User shall be responsible to pay all extraordinary costs incurred by the College as a result of the User's use of the Facilities, such costs to be paid within three (30) business days after receipt of an invoice therefor from the College.

6. Insurance and Indemnity.

- a. Throughout the Term and any extensions thereof, the User shall maintain the following insurance: (i) worker's compensation; and (ii) commercial general liability insurance, with a combined single limit of not less than \$1,000,000 per occurrence for bodily injury and property damage, and \$2,000,000 aggregate. The College shall be named as an additional insured under all policies taken out under this paragraph. The User's policy shall apply on a primary basis for losses arising out of the User's operations. The User shall, at all times during the Term and any extension thereof, have on file with the College's Risk Manager a certificate of insurance evidencing that the insurance satisfying the requirements of this Agreement is in effect. If College is not reasonably satisfied in any way with the insurance taken out by the User under this paragraph, the College may terminate this Agreement after providing the User with thirty (30) days' advance written notice and the opportunity to cure any specific defects within such timeframe.
- b. The insurance policies maintained hereunder shall, unless otherwise agreed to in writing by the User and the College, be placed with insurers who have a Best's Insurance Reports rating of no less than A- and a financial size of no less than Class VIII, and who are authorized to do business in the State of Wisconsin. Such policies shall further be endorsed (if such endorsement shall be available) to state that coverage shall not be suspended, voided, cancelled, or reduced, in coverage or limits, except after twenty (20) days prior written notice to both the College and the User.
- c. The User shall indemnify and save and hold the College and its employees, officers, directors, agents, authorized representatives, students, permitted sublessees, invitees, licensees, and frequenters harmless from and against any and all claims, demands, suits, losses, damages, costs, expenses, obligations, judgments, or other forms of liability, actual or claimed, and including reasonable attorneys' fees (altogether, "Liabilities"), for any injury to the Facilities, property or persons occurring or allegedly occurring in connection with User's, its agents', employees' or invitees' use or occupancy of the Facilities. In addition, the User shall indemnify and save and hold the College harmless from and against any and all Liabilities arising out of or in connection with any breach by the User of this Agreement. Furthermore, upon timely written notice from the College, the User shall defend the College in any such action or proceeding brought in connection with any Liabilities. The User hereby acknowledges that its obligations under this Section 6.c shall survive the expiration or earlier termination of this Agreement. Solely with respect to claims made by the College under or in connection with this Agreement, the User hereby waives any defense or immunity which the User, its officers, agents or employees may have under Wis. Stat. § 893.80(4), or related statutes, with respect to governmental immunity. The User hereby releases and waives all right of recovery against the College, its agents, employees, assignees and invitees for any Liabilities and agrees to cause its insurance company to contain a waiver of subrogation clause reflecting the provision of this Section 6.c.

7. Compliance with Laws. The User shall comply, at its sole cost and expense, with any and all laws, statutes, ordinances, and regulations (federal, state, county, or municipal), now or hereafter enforced, that are applicable to the Program or the use of the Facilities by the User, including the standards for licensed fire training program established by the NFPA. The User also covenants to comply, at its sole cost and expense, with all reasonable rules and regulations applicable to use of

the Facilities issued from time to time by insurance companies writing casualty or liability insurance policies covering the Facilities. The College shall have no responsibility for ensuring that the User complies with any applicable law, statute, ordinance, regulation or licensing or permit requirement.

8. Damage or Destruction. The User shall be responsible for all damage to the College's property, including but not limited to the Facilities and the personal property located therein, arising out of its use of the Facilities. In the event any of the Facilities shall be damaged or destroyed, in whole or in part, by fire or any other casualty, the College, in its sole discretion, may decide to terminate this Agreement and User shall not be entitled to any refunds.
9. Default and Remedies. Failing to perform any of the covenants, conditions or obligations of this Agreement shall be deemed a breach of this Agreement and a default of the same by the party so acting. In the event of any breach or default by either party hereto, the non-defaulting party may terminate this Agreement after providing the defaulting party with thirty (30) days' advance written notice and the opportunity to cure any such default within said time period.
10. Notices. All notices, demands, requests, consents, approvals, or other instruments required or permitted to be given by either party pursuant to this Agreement shall be in writing and shall be deemed to have been properly given if hand-delivered, sent via overnight delivery via a nationally recognized courier, or sent by certified mail, postage prepaid, with return receipt requested, to the other party at its address for notices. The College's address for notices is: 800 Main Street, Pewaukee, Wisconsin 53072; Attn: Bruce W. Neumann, MS, CSP, CHMM, RS, Director - Environmental, Health and Safety Department. The User's address for notices is Attn Steve Howard, Chief, Waukesha Fire Department, 130 W. St. Paul Ave., Waukesha, Wisconsin 53188. All notices shall be deemed received when delivered. The addresses for notices may be changed by the parties from time to time by delivery of written notice to the other party in the manner provided for above.
11. Waiver of Trial by Jury. The College and the User acknowledge they have received advice of counsel of their choice with respect to their rights to trial by jury under the Constitution of the United States and the State of Wisconsin. The College and the User hereby expressly waive any right to trial by jury with respect to any claim, demand, action or cause of action (i) arising under this Agreement and (ii) in any manner connected with or related or incidental to the dealings of the User and the College with respect to the Agreement or any other instrument, document or agreement executed or delivered in connection herewith, or the transactions related hereto or thereto, in each case whether now existing or hereinafter arising, whether sounding in contract or tort or otherwise. The User and the College hereby agree and consent that any such claim, demand, action or cause of action shall be decided by a court without a jury, and that either party may file a copy of this section with any court as conclusive evidence of the consent of each such party to the waiver of its right to trial by jury.
12. Prevailing Party. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by the User or the College against the other party arising out of or related to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party.
13. Miscellaneous.
 - a. If any of the terms or provisions contained herein shall be declared to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions and conditions of this Agreement, or the application of such to persons or circumstances other than those to which it is declared invalid and unenforceable, shall not be affected thereby,

shall remain in full force and effect, and shall be valid and enforceable to the fullest extent permitted by law.

- b. This Agreement involves property located within the State of Wisconsin and shall be construed according to the laws of the State of Wisconsin.
- c. This Agreement and the College's Fire Training Ground policies constitute the entire agreement between the parties with respect to the subject matter hereof and there are no other representations, warranties, or agreements except as herein provided.
- d. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.
- e. The terms and conditions of this Agreement shall be binding upon and benefit the parties hereto and their respective successors and assigns, if assigns are permitted.
- f. User shall not, directly or indirectly, assign or otherwise transfer all or any part of this Agreement or User's usage rights hereunder without the College's prior written consent in each instance, which consent may be withheld or granted in the College's sole discretion.
- g. Notwithstanding anything contained herein to the contrary, this Agreement may be terminated at any time by the College upon ten (10) days prior written notice to the User without cause.
- h. Time is of the essence with respect to the performance of every provision of this Agreement.

In witness whereof, the College and the User have entered into this Agreement on the Effective Date written above.

College:

User:

By: _____
Name Printed: _____
Title: _____

By: _____
Name Printed: _____
Title: _____