

COLLEGE PARK CENTER
THE UNIVERSITY OF TEXAS AT ARLINGTON
600 S. CENTER STREET
P.O.BOX 19900
ARLINGTON, TEXAS 76019-0192
817-272-5584

FACILITY USE AGREEMENT
24-0522-9666

This Facility Use Agreement (the "Agreement") is made on **October 1, 2023** ("Effective Date"), by and between **DeSoto ISD** ("User") and The Board of Regents of the University of Texas System for the use and benefit of The University of Texas at Arlington ("UTA"), an agency and public institution of higher education organized under the laws of the State of Texas.

1. Use of College Park Center: UTA owns and operates a facility on its campus commonly known as the College Park Center ("CPC"), which is located at 600 S. Center Street, Arlington, Texas 76019-0192. UTA grants to User the right to use the following portions of the CPC and its associated parking areas and to receive services from UTA on the terms and conditions set out in this Agreement, solely for the purpose of Describe the Event (the "Event").

- | | | |
|---|---|---|
| <input checked="" type="checkbox"/> Stage | <input checked="" type="checkbox"/> Seating Area-Lower Bowl | <input checked="" type="checkbox"/> Seating Area – Upper Bowl |
| <input checked="" type="checkbox"/> Practice Court #1 | <input checked="" type="checkbox"/> Practice Court #2 | <input checked="" type="checkbox"/> Hospitality Suite |
| <input checked="" type="checkbox"/> Green Room | <input checked="" type="checkbox"/> Ticketing/Box Office | <input type="checkbox"/> Locker Rooms |
| <input type="checkbox"/> Athletic Floor | <input type="checkbox"/> Other: _____ | |

Parking: 20 VIP spaces for each school to use for administrators working the graduation Ten (10) dock passes/spaces in the dock area for School Board/District to use.
Patrons will pay upon entry.

Other: _____

The marked areas and parking facilities are hereafter collectively called the "Facility."

This Agreement does not entitle User or the User's servants, employees, agents, or invitees to occupy, enter, or use any land, improvements, fixtures, personal property, services or employees of UTA that are not specifically authorized for User's use under this Agreement.

This Agreement is not an offer and is only binding upon signature of an authorized representative of UTA.

2. Notice and User Address: Any notice given under the Agreement by either party to the other may be affected either by personal delivery in writing, by registered mail, or by certified mail with return receipt requested. Mailed notices to UTA shall be addressed to the address at the top of this Agreement. Mailed notice to User shall be addressed to the address listed in this Section 2. Notices delivered personally shall be deemed communicated at the time of actual receipt. Mailed notice as described above shall be deemed communicated three (3) days after mailing.

The User's address for notice and all other purposes under this Agreement is:

DeSoto High School
600 Eagle Drive
DeSoto, TX 75115

3. Facility Use Period, Limit and Requirements: User may use the Facility for the Event during the following periods and hours:

3.1 **Use Period.**

Move-In Date: No earlier than **5:00 PM** on **Wednesday, May 22, 2024.**

Performance/Event: Shall begin at **7:00 PM** on **Wednesday, May 22, 2024** and shall last **two** hour(s) with **no** intermission(s). The doors shall open at **6:00 PM** on **Wednesday, May 22, 2024** and shall close at **9:00 PM** on **Wednesday, May 22, 2024.**

Move-Out Date: No later than **10:00 PM** on **Wednesday, May 22, 2024.**

3.2 **Limit.** User must not admit to the Facility a larger number of persons than is permitted by applicable law, UTA rules or policies as of the date of the event, or that can safely and freely move about in the CPC and the Facility. For the Event, that number shall in no case exceed **5,850.**

3.3 **Requirements.** Not less than ten (10) business days before the Move-In Date, User shall provide UTA a fully detailed written description of all staffing, equipment and expendable requirements of User for the Event including stage, table, and chair requirements, a script including production cues, and all other information that may be required by UTA concerning the Event. UTA will give User reasonable notice if any such requested requirement cannot be provided by UTA.

4. **Fees:** The following fees are payable by User to UTA for applicable facilities, goods and services provided by UTA under this Agreement:

4.1 **Facility Use Fees:**

<input checked="" type="checkbox"/> Building Use Fee	\$ 25,500.00
<input type="checkbox"/> Facility Maintenance Fee	\$ NA per ticket
<input type="checkbox"/> Merchandise Sales Fee	enter percent % of gross sales
<input checked="" type="checkbox"/> Practice Court(s)	\$
<input checked="" type="checkbox"/> Hospitality Suite Fee	\$
<input checked="" type="checkbox"/> Marquee	\$
<input checked="" type="checkbox"/> North Exterior Plaza	\$
<input checked="" type="checkbox"/> Green Room/Officials Locker Rooms	\$
<input type="checkbox"/> Cleaning/Sanitizing Fee	\$
<input checked="" type="checkbox"/> Other: Ticket Sales / Box Office Fee	\$

Facility Use Fees Total: \$ 25,500.00

4.2 **Staffing Fees**

<input checked="" type="checkbox"/> Event Staff (Estimated)	Included
<input checked="" type="checkbox"/> Stagehands/Riggers	\$
<input checked="" type="checkbox"/> Building Ops Staff	\$
<input checked="" type="checkbox"/> Life Safety Officers	\$
<input type="checkbox"/> Electrician	\$
<input checked="" type="checkbox"/> Other: Housekeeping / Grounds	\$

Staffing Fees Total: Included

4.3 Equipment Fees:

<input checked="" type="checkbox"/> House Lighting System	Included
<input checked="" type="checkbox"/> House Sound System	\$
<input type="checkbox"/> Follow Spotlight (s)	\$
<input checked="" type="checkbox"/> Graduation Video Package	\$
<input checked="" type="checkbox"/> Broadcast Cameras/Broadcast Infrastructure	\$
<input checked="" type="checkbox"/> Digital Signage/Displays	\$
<input checked="" type="checkbox"/> Stage (up to 40' x 60')	\$
<input type="checkbox"/> Athletic Floor (Basketball/Volleyball)	\$
<input checked="" type="checkbox"/> Stackable/Folding Chairs (free up to 50 chairs)	\$
<input type="checkbox"/> Tables (5' Rounds/6' Rectangular – free up to 20 tables)	\$
<input type="checkbox"/> Merchandising Kiosks	\$
<input type="checkbox"/> Other: _____	\$

Equipment Fees Total: Included

4.4 Other Fees:

<input checked="" type="checkbox"/> Live Streaming	Included
<input type="checkbox"/> Parking	\$
<input type="checkbox"/> _____	\$
<input type="checkbox"/> _____	\$

Other Fees Total: Included

4.5 Estimated Total Fees:

Total Facilities Use Fees:	\$ 25,500.00
Total Staffing Fees:	Included
Total Equipment Fees:	Included
Grand Total Fees:	\$25,500.00

5. Staffing Fees: User will be billed for the actual personnel used by UTA to perform its obligations under this Agreement. UTA reserves the right to utilize outside vendors when needed for additional labor or services. This includes but is not limited to technical personnel and Event staff. Any charges exceeding the Estimated Total Fee shown above (“Estimated Total Fee”) will be billed upon conclusion of the Event and are due and payable within fourteen (14) calendar days after presentment of the billing statement.

6. Holdover Fees: If the User has not completely removed all its personal property and vacated the Facility prior to the specified time on the Move-Out Date, User agrees to pay UTA for each additional hour or portion thereof User holds over in the Facility, at the rate of \$800.00 per hour as a Holdover Fee. This Holdover Fee shall be over and above any and all fees and other charges payable by User under this Agreement. If User completes its use of the Facility prior to the end of the Facility Use Period, User is not entitled to a refund or reduction in the Facility Use Fees or the Equipment Fees but shall be liable only for the actual Staffing Fees UTA has incurred or contracted for with third-party vendors.

7. Payment:

7.1 Fee Terms. User agrees to pay to UTA the Facility Use Fees, the Staffing Fees, the Equipment Fees, the Other Fees, if any, and all other sums payable by User to UTA under the terms of this Agreement as consideration for User's use of the Facility for the Event, which fees and sums are

currently estimated to be the amount of the Estimated Total Fee shown above.

- 7.2 **Deposit.** User agrees to pay a deposit of **\$10,000.00** upon execution of this Agreement. The remaining balance will be due by **April 22, 2024**. Unless otherwise provided for in this Agreement, any additional charges incurred during the Event will be due no later than fourteen (14) calendar days following the Event.
- 7.3 **Estimate Adjustments.** User agrees that all fee quotations and estimates in this Agreement are subject to adjustment in accordance with User's actual usage and the provisions of this Agreement. Any changes in the hourly rates for Staff Fees or charges for Expendables between the execution of this Agreement and the Facility Use Period will be effective and payable by the User within fourteen (14) calendar days after written notification of those changes.
- 7.4 **Final Statement.** A final statement of all Fees, charges and other sums actually payable by User for use of the Facility under this Agreement will be presented to the User within fourteen (14) calendar days following the conclusion of the Facility Use Period. Any amounts owing by User in excess of the amounts previously paid to UTA hereunder are due and payable by User to UTA within fourteen (14) calendar days following presentation of such statement. All amounts not paid when due under this Agreement shall accrue interest at 18% per annum from the date due until paid to UTA. User agrees to pay UTA upon demand all reasonable collection costs (including without limitation attorney fees, costs of suit, court costs and other charges) reasonably incurred by UTA in the collection of any amount not paid by User when due.
- 7.5 **Event Profit.** If User's relationship with UTA is that of a Joint Sponsorship as authorized by Regent's Rule 80105 the User must make a complete accounting of all funds collected and of the actual cost of the Event and deliver said accounting to UTA within thirty (30) days of the Move Out Date.
- 7.6 **Records Retention.** User agrees to keep and maintain all of its financial records pertaining to the Event intact and in good order for a period of four (4) years following the expiration of this Agreement. User further agrees, upon reasonable prior notice, to make these records available for inspection by UTA and/or the Texas State Auditor in Tarrant County, Texas during such four year period. In the event that such inspection reveals a discrepancy in the amounts paid or payable hereunder, a final settlement will be made by User to UTA within ten (10) business days after UTA notifies User of such determination.
- 7.7 **Delivery of Payment.** Payment must be made by money order, check or cashier's check payable to CPC at The University of Texas at Arlington and mailed to College Park Center, Box 19900, Arlington, Texas 76019, or sent via UPS or FedEx to 601 Spaniolo Drive, Suite 1108, Arlington, TX 76019. No on-site payments or cash will be accepted. Credit card payments may be accepted for deposits at the sole discretion of UTA but in no event for an amount over \$2,500.00.

8. **Catering and Concessions:**

- 8.1 **Third Party Food Vendors.** SORRELS ENTERPRISES (dba Ted E' Kitchen) is UTA's exclusive in-house caterer and concessions provider for the CPC. User may not directly contract with third party food vendors to provide services in the CPC or Facility for the Event without the prior written consent of UTA's Executive Director of Special Event Facilities. In no event will UTA approve the use of a third party food vendor unless said vendor has successfully completed UTA's Approved Food Vendor Application and has been granted Approved Food Vendor status by UTA ("Approved Food Vendor"). If a third party food vendor is used to cater all or a portion of the Event, ten percent (10%) of the gross revenue realized by such third party vendor shall be payable to UTA as an additional charge for use of the CPC and Facility.
- 8.2 **Small Event Concessions.** Should any Event have an admittance of less than 1,000 people and User desires SORRELS ENTERPRISES (dba Ted E' Kitchen) make concessions available during the Event, User guarantees a minimum amount of \$1,500.00 in gross sales ("**Minimum Sales**

Guarantee”). User is responsible for the Minimum Sales Guarantee regardless of whether actual gross sales reach the Minimum Sales Guarantee. In such case, the difference between the actual gross sales and the Minimum Sales Guarantee will be charged to User as an additional event expense and payable per the terms of this Agreement.

8.3 **Alcohol Sales.** Regardless of whether User selection of a third-party food vendor is approved, all alcohol sales in the Facility must be catered and managed by SORRELLS ENTERPRISES.

8.4 **User Responsibility for Third Party Payment.** User acknowledges it is solely responsible for contracting with and paying SORRELLES ENTERPRISES and/or any third-party food vendor engaged by User in connection with this Agreement.

9. **Merchandising:** UTA reserves the sole and exclusive right to (i) sell on, in or about the CPC and the Facility any souvenirs or other merchandise of any sort, or (ii) lease all or part of the merchandising rights to any party or parties designated by UTA. No free samples of any merchandise whatsoever shall be given away by User at the CPC or Facility without the prior written consent of UTA. Twenty percent (20%) of all gross sales by User or its agents and permittees of promotional items (including, but not limited to, programs, flyers, posters, T-shirts and other clothing items, records, cassettes, video tapes, photographs etc.) will be payable by User to UTA as an additional charge for User’s use of the Facility under this Agreement. This includes any and all sales or distributions during the Facility Use Period. User and all other vendors must have all required local and state licenses/permits to conduct sales of goods or services in the CPC or Facility.

10. **Ticketing/Box Office:** UTA has the sole and exclusive right to handle and control the Event ticket sales through the operation of the CPC box office, for a Facility Maintenance Fee (see Section 4).

11. **Insurance:** User, consistent with its status as an independent contractor will carry and will cause its subcontractors to carry, at least the following insurance, with companies authorized to do insurance business in the State of Texas or eligible surplus lines insurers operating in accordance with the *Texas Insurance Code*, having an A.M. Best Rating of A-VII or better, in the following forms and with amounts not less than the following minimum limits of coverage:

11.1 Workers’ Compensation Insurance with statutory limits, and Employer’s Liability Insurance with limits of not less than \$1,000,000:

Employers Liability - Each Accident	\$1,000,000
Employers Liability - Each Employee	\$1,000,000
Employers Liability - Policy Limit	\$1,000,000

Workers’ Compensation policy must include under Item 3.A. on the information page of the Workers’ Compensation policy the State of Texas.

11.2 Commercial General Liability Insurance with limits of not less than:

Each Occurrence Limit	\$1,000,000
Damage to Rented Premises	\$ 300,000
Personal & Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000
Products - Completed Operations Aggregate	\$2,000,000

The required Commercial General Liability policy will be issued on a form that insures User’s and subcontractor’s liability for bodily injury (including death), property damage, personal, and advertising injury assumed under the terms of this Agreement.

11.3 Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 single limit of liability per accident for Bodily Injury and Property Damage.

- 11.4 Umbrella/Excess Liability Insurance with limits of not less than \$2,000,000 per occurrence and aggregate with a deductible of no more than \$10,000. The Umbrella/Excess Liability policy will be excess over and at least as broad as the underlying coverage as required under the Employer's Liability; Commercial General Liability; and Business Auto Liability policies. Inception and expiration dates will be the same as the underlying policies. Drop down coverage will be provided for reduction or exhaustion of underlying aggregate limits and will provide a duty to defend for any insured.
- 11.5 User will deliver to UTA after the execution and delivery of this Agreement and prior to entering UTA property, evidence of all required insurance on a Texas Department of Insurance (TDI) approved certificate form (the Acord form is a TDI-approved form) verifying the existence and actual limits of all required insurance policies; and, if the coverage period shown on the current certificate form ends during User's Facility Use Period, then no less than thirty (30) days prior to the end of the coverage period, a new certificate form verifying the continued existence of all required insurance policies.
- 11.6 **All insurance policies** (with the exception of workers' compensation and employer's liability) will be endorsed and name the Board of Regents of The University of Texas System, The University of Texas System and The University of Texas at Arlington as Additional Insureds for liability caused in whole or in part by User's acts or omissions with respect to its on-going and completed operations up to the actual liability limits of the required insurance policies maintained by User. Commercial General Liability Additional Insured endorsement including ongoing and completed operations coverage will be submitted with the Certificates of Insurance. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage.
- 11.7 User hereby waives all rights of subrogation against the Board of Regents of The University of Texas System, The University of Texas System and The University of Texas at Arlington. **All insurance policies** will be endorsed to provide a waiver of subrogation in favor of the Board of Regents of The University of Texas System, The University of Texas System and The University of Texas at Arlington. No policy will be canceled until after thirty (30) days' unconditional written notice to UTA. **All insurance policies** will be endorsed to require the insurance carrier providing coverage to send notice to UTA thirty (30) days prior to any cancellation, material change, or non-renewal relating to any insurance policy required in this Section 11.
- 11.8 User will pay any deductible or self-insured retention for any loss. Any self-insured retention must be declared to and approved by UTA prior to the Facility Use Period under this Agreement. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.
- 11.9 Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be returned with this executed Agreement or mailed, faxed, or emailed to the following UTA contact no later than fifteen (15) days prior to the start of the Facility User Period:
- Executive Director of Special Event Facilities
College Park Center
The University of Texas at Arlington
600 S. Center Street
P.O. Box 19900
Arlington, Texas 76019-0192
- 11.10 User's or subcontractor's insurance will be primary to any insurance carried or self-insurance program established by UTA or The University of Texas System. User's or subcontractor's insurance will be kept in force throughout the entire Facility Use Period.

11.11 The insurance requirements for User's subcontractors who are also UTA Approved Food Vendors are controlled by the UTA Approved Food Vendor Application and the UTA Catering Terms and Conditions. Any conflict in this Section 11 with the insurance requirements for UTA Approved Food Vendors will be controlled by the UTA Catering Terms and Conditions.

11.12 Property Insurance: The University of Texas at Arlington will not be liable or responsible for any equipment or other property that User brings onto The University of Texas at Arlington's premises.

12. Security Interest: User hereby grants to UTA a security interest under the Texas Uniform Commercial Code in (i) all gross sales receipts realized by User from the sales of tickets, goods and services in the CPC and the Facility in connection with the Event, and (ii) all personal property of User located in the CPC or the Facility, to secure payment of (i) all monetary obligations of User to UTA under this Agreement and (ii) taxes payable by User for the Event covered by this Agreement (collectively, the "Collateral"). UTA is granted all rights of a "Secured Party" under the Texas Uniform Commercial code. Without limitation of the foregoing, UTA is expressly empowered to hold from all gross receipts generated by Event ticket sales the reasonable estimated amount of all unpaid monetary obligations owing by User to UTA under this Agreement. Upon default by User under this Agreement, UTA may exercise all rights in the Collateral for such default provided by Texas law and the Texas Uniform Commercial Code.

13. Cancellation by User: Should User cancel the Event, all deposits previously tendered by User shall be forfeited to UTA and applied to the fees, charges and expenses payable to UTA under this Agreement. Without limitation of the foregoing, the full Facility Use Fee called for by this Agreement shall be payable by User to UTA.

14. Cancellation by UTA: UTA may in its sole discretion and without penalty, upon written notice to User, suspend or terminate User's right to use the Facility upon User's failure to (i) comply with the terms of this Agreement, (ii) following UTA's request, demonstrate in a manner acceptable to UTA that User possesses financial resources adequate for presentation of the Event, or (iii) demonstrate in a manner acceptable to UTA that User is willing and able to adequately perform all required duties and responsibilities related to the Event.

Additionally, UTA may, as determined by UTA in its reasonable judgment and without penalty, suspend or terminate User's rights to use the Facility for reason of (i) material casualty or threat thereof to the Facility or the CPC, (ii) the requirements of governmental law and regulation and/or judicial decree, (iii) the preservation of public safety, (iv) security concerns (v) events or circumstances beyond the reasonable control of UTA, (vi) Users failure to abide by any and all UTA rules, regulations or any other measures taken by UTA in response to COVID-19 or any other pandemic or public health concern, and/or (v) force majeure (as defined in Section 27 below).

15. Signs and Displays: User agrees no signs, messages, or other materials regarding User's use of the Facility will be posted, displayed, distributed, or announced in, or adjacent to, the CPC without the prior written approval of UTA. Such materials may not be fastened to any part of the Facility except in spaces provided for this purpose and may not be permitted to interfere with crowd movement and safety.

16. Tobacco Free: User acknowledges and agrees that Tobacco in any form is prohibited in the Facility, the CPC and on the UTA campus.

17. Broadcast and Recording Rights: UTA reserves all rights and privileges for radio and television broadcasts, whether live or transcribed for delayed transmission, and all visual or audio recordings originating from User's Event in the CPC and Facility. Should User require the operation and use of the CPC broadcast infrastructure/equipment it should submit its request in writing not less than sixty (60) days prior to the Event date to the Executive Director of Special Event Facilities. Use of the CPC broadcast infrastructure/equipment is at the sole discretion, and subject to the oversight and supervision, of the Executive Director of Special Event Facilities.

18. Intellectual Property Rights and Indemnification: User warrants that it has the right to present the

Event under the terms of this Agreement, that it has obtained any and all necessary consents and permissions from third parties, and that it has paid all costs (including without limitation, performing rights and fees) payable as a result of User's use, in conjunction with the Event, of music (including, without limitation, encores) and any other copyrighted or otherwise protected intellectual property whether performed by live artists or reproduced from recorded sources. USER WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UTA, AND HOLD HARMLESS UTA AND THE UNIVERSITY OF TEXAS SYSTEM, AND RESPECTIVE AFFILIATED ENTERPRISES, REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY, THE "UT PARTIES") FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY INTEREST ARISING BY OR OUT OF THE EVENT PROVIDED THAT, UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR INFRINGEMENT, UTA WILL PROMPTLY NOTIFY USER AND USER WILL BE GIVEN THE OPPORTUNITY TO NEGOTIATE A SETTLEMENT. IN THE EVENT OF LITIGATION, UTA AGREES TO REASONABLY COOPERATE WITH USER. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

19. Public Safety:

19.1 CPC and Facility. User agrees that at all times it will conduct its activities with regard for public safety and will observe and abide by all applicable regulations and requests by UTA, UTA's representatives and duly authorized governmental authorities. If UTA determines that any portion of the Event poses a potential hazard to public safety, the Event may be cancelled or suspended by UTA upon notice to User. All portions of the sidewalks, entries, doors, passages, vestibules, halls, corridors, stairways, passageways, and all ways of access in the CPC shall be kept unobstructed by the User and shall not be used for any purpose other than ingress to or egress from the Facility by the User. User must not block or interfere with access to all utilities in or serving the CPC or the Facility during User's use of the CPC or Facility. User agrees not to bring into the CPC or the Facility any material, substances, equipment, or object which is likely to endanger the life of, or to cause bodily injury to, any person in the CPC or the Facility which is likely to constitute a hazard to property thereon without the prior, written approval of UTA. UTA shall have the right to refuse to allow any such material, substances, equipment, or object to be brought into the CPC or the Facility and the further right to require its immediate removal. User may not install or operate any equipment, fixture, or device, nor operate or permit to be operated any engine, motor, or other machinery, or use gas, electricity, or flammable substances in the CPC or the Facility except with prior written approval of UTA. All electrical, water, and wastewater connections must be made by UTA's employees or agents. No equipment, device, or fixture may be used which in the opinion of UTA endangers the structural integrity of the CPC or the Facility or which might cause property damage to the CPC or the Facility.

19.2 Security Assessment and Reassessment. UTA will perform a security assessment of each event upon booking. If safety concerns arise after contracting and prior to the event, UTA reserves the right to reassess security requirements and at User's expense, implement additional security measures and staffing to maintain public safety at the Event.

19.3 UTAPD. UTA, through The University of Texas at Arlington's Campus Police Department ("UTAPD"), agrees to provide security service to the CPC and the Facility for the Event to the same extent and in the same manner as is provided by UTAPD to other similarly situated buildings or events on the UTA campus. User agrees to cooperate with the UTAPD in all matters including the reporting of suspected security violations. User will immediately report any evidence of security breaches or criminal activity to the UTAPD. NOTWITHSTANDING THE FOREGOING OR ANY SECURITY ASSESSMENT OR SECURITY COMMITMENT EXPRESS OR IMPLIED, THE UT PARTIES SHALL NOT BE LIABLE FOR, AND TO THE FULLEST EXTENT ALLOWED BY LAW USER RELEASES THE UT PARTIES FROM, ANY CLAIM, LIABILITY AND CAUSE OF ACTION FOR ANY INJURY, DAMAGE OR LOSS SUFFERED BY USER, AND/OR USER'S AGENTS, EMPLOYEES, AGENTS AND INVITEES ARISING OUT OF OR RELATED TO THE PROVISION OF SUCH SECURITY SERVICES.

20. ADDITIONAL TERMS RELATING TO COVID-19, OTHER PANDEMIC OR PUBLIC HEALTH CONCERN. User agrees to abide by any and all rules and regulations of UTA regarding COVID-19 or other public health concern. These include but are not limited to: (i) requiring an Event be held in a larger part of the CPC or Facility to accommodate social distancing, (ii) leaving seats or spaces unsold and empty to accommodate social

distancing, (iii) abiding by and requiring all subcontractors, guests and invitees to abide by all signs, guides, and physical barriers in place to reduce person to person contact, (iv) abiding by and requiring all guests and invitees to abide by designated entry and exit points both inside and outside of the CPC or Facility, and (v) adhering to and requiring all subcontractors, guests and invitees to adhere to UTA guidelines requiring face-masks or other face coverings to be worn in all public areas. User agrees to abide by any decision made by UTA and UTA's Executive Director of Special Event Facilities to enforce social distancing or other measures required for the preservation of public health. UTA strictly abides by all laws and ordinances of the State of Texas, City of Arlington, and Tarrant County and requires User to do the same. UTA will make every effort to communicate any COVID-19 or other pandemic, or public health required changes in advance of the Event, however even without such notice any decision made UTA's Executive Director of Special Events is final. User shall encourage all guests, invitees and subcontractors to follow all CDC COVID-19 guidelines, or other public health concern guidelines as applicable. User is encouraged to have multiple contingency plans, especially in regard to set up and staging to allow for changes in signs, spacing and physical barriers within the CPC and Facility.

21. Lasers and Pyrotechnics: User agrees that any use of laser lighting equipment contemplated to be used before, during, or after the Event in the Facility must be first approved as to the equipment and use in writing by UTA, the State Health Department, Occupational Safety and Radiation Division, and the State Fire Marshal's Office and/or UTA's Fire Marshal. This condition applies not only to the type of equipment utilized but also to the manner in which it is used. The usages of devices which are of an explosive or flammable nature are not permitted in the CPC or the Facility.

22. Evacuation of Facilities: UTA is primarily responsible for determining whether public safety requires the cessation of the Event and/or the evacuation of the CPC and the Facility; provided that any such evacuation will be accomplished under the control of UTA. User may, following evacuation and with the consent of UTA, resume use of the Facility for sufficient time to complete the presentation of its activity without additional Facility Use Fees provided such time does not interfere with use of the CPC by another User or UTA. If it is not possible to complete presentation of the Event, the fees and charges payable by User hereunder shall be adjusted as deemed equitable by UTA in its sole discretion. User waives any claim for damages or compensation from UTA in connection with this Section 21.

23. Removal of Property: User agrees that any and all User owned property must be removed from the CPC and the Facility before the specified time on the Move-Out Date unless otherwise agreed to in a writing signed by both parties. UTA is authorized, at the expense of User, to remove and store off-site (either elsewhere on UTA's property or with a commercial third party storage facility) at User's expense all User owned property remaining in the CPC or the Facility after the Move-Out Date. Should User fail to reclaim said property within thirty (30) days of UTA's written notice under this Agreement, UTA in its sole discretion has the right to dispose of said property, including but not limited to destroying the property. User agrees that the UT Parties shall in no way be responsible for loss, damage, or claims against property removed, stored, destroyed, or otherwise disposed of in any manner, under this provision. User agrees that UTA will have a first lien and security interest in such material for payment of costs accrued for costs of removal and storage.

24. General User Compliance:

24.1 **Laws, Rules, Regulations and Policies.** User shall comply with all laws of the United States and of the State of Texas, all ordinances of the City of Arlington the applicable Board of Regents of The University of Texas System *Rules and Regulations* (<http://www.utsystem.edu/offices/board-regents/regents-rules-and-regulations>), the applicable policies of The University of Texas System (<http://www.utsystem.edu/board-of-regents/policy-library>); the applicable institutional rules, regulations and policies of UTA (<https://www.uta.edu/policy/hop>), and all rules and regulations of the CPC and Facility; and User will require that User's agents, servants, employees, or invitees comply with the same.

24.2 **User Licenses, etc.** User is solely responsible for payment of all licenses, permits, fees, registration, taxes, assessments and charges of every kind and character levied or required by federal, state or local law, ordinance or regulation in connection with or because of any act or activity engaged in by User or User's agents, servants, employees or invitees within the CPC or the Facility.

24.3 **ADA Compliance.** User must present the Event in a manner that achieves full compliance with all applicable provisions of the Americans with Disabilities Act (“ADA”). User shall be responsible for the cost of any personnel, equipment, or services required for compliance with ADA because of the disability of any of User's guests, invitees, officers, agents, employees, or others who are associated with the Event. User's obligations for the cost of personnel, equipment, or services required to comply fully with the ADA includes but is not limited to: (1) the cost for providing signers to communicate verbal content to hearing impaired patrons; (2) the cost for providing assistive devices to mobility impaired persons; (3) the cost for providing print materials in a form accessible to visually impaired persons. UTA will be responsible for providing all ADA-compliant physical facilities within the CPC or Facility that are required under the ADA because of User's particular use under this Agreement.

25. **Control of Facility and Right to Enter:** In granting User the use of the Facility, UTA does not relinquish custody and control thereof and specifically retains the right to enforce any and all appropriate laws, rules, policies, procedures and regulations applicable to the CPC and the Facility, and representatives of UTA may enter the Facility at any time and on any occasion without any restrictions whatsoever. The CPC and the Facility shall at all times remain subject to the control of UTA and its employees and agents.

26. **Occupancy Interruptions:** In case the CPC or the Facility are destroyed or damaged by fire or any other cause, or if any other casualty or unforeseen occurrence or other causes herein specified shall render the fulfillment of this Agreement by UTA impossible, then UTA may cancel performance of the event upon written notice to User and User shall be liable to pay only the Facility Use Fees, the Staffing Fees, the Equipment Fees, and the Other Fees, if any, accrued to the time of such termination and User hereby waives and releases any claim against the UT Parties for damages or compensation on account of such termination.

27. **Non-Waiver:** The failure of UTA to insist upon strict and prompt performance of any of the covenants and agreements hereunder and the acceptance of such performance thereafter shall not constitute or be construed as a waiver or relinquishment of UTA's right thereafter to enforce the same strictly according to the tenor thereof in the event of a continuous or subsequent default on the part of User.

28. **Force Majeure:** Neither party hereto shall be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes attributable to acts of God, strikes, epidemics, war, riot, flood, fire, sabotage, a terrorist event, or any other circumstances of like character; provided, however, that force majeure shall not be applicable to the payment obligations of a party under this Agreement.

29. **Indemnity:** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, USER WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UTA, AND HOLD HARMLESS THE UT PARTIES FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING BY ANY PERSON OR ENTITY, ARISING OUT OF, CAUSED BY, OR RESULTING FROM USER'S PERFORMANCE UNDER OR BREACH OF THIS AGREEMENT AND THAT ARE CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT, NEGLIGENT OMISSION OR WILLFUL MISCONDUCT OF USER, ANYONE DIRECTLY EMPLOYED BY USER OR ANYONE FOR WHOSE ACTS USER MAY BE LIABLE. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT WHICH ANY INDEMNITEE HAS BY LAW OR EQUITY. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

30. **Authorized Representatives:** The representative of User signing this Agreement warrants that he/she signs as a properly authorized representative of User and has the authority to execute this Agreement on behalf of User.

31. **Weapons Prohibited:** User expressly acknowledges that the use and possession of weapons and firearms are forbidden on the CPC premises. Pursuant to Texas Gov't Code §411.2031 UTA prohibits the carrying of concealed handguns in the CPC.

32. **Venue; Governing Law:** Tarrant County Texas, will be the proper place of venue for suit on or in respect of this Agreement. This Agreement, all of its terms and conditions, all rights and obligations of the parties, and all

claims arising out of or relating to this Agreement, will be construed, interpreted and applied in accordance with, governed by and enforced under, the laws of the State of Texas.

33. Survival of Provisions: No expiration or termination of this Agreement will relieve either party of any obligations under this Agreement that by their nature survive expiration or termination, including but not limited to **Sections 7, 12, 18, 19, 23, 27, 29 and 32.**

34. Dispute Resolution: The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used by UTA and User to attempt to resolve any claim for breach of contract made by User, to the extent it is applicable to the Agreement and not preempted by other law. Except as otherwise provided by law, nothing herein is a waiver by UTA of the right to seek redress in a court of law.

35. Additional Provisions: The following provisions are part of this Agreement, if checked:

- Advertising:** User agrees that all news releases, handbills, advertisements, television and radio announcements, or other media utilized to inform the public of the Event must be preapproved in writing by UTA's Executive Director of Special Event Facilities prior to release and carry the following disclaimer: "The use of the College Park Center on The University of Texas at Arlington campus does not imply endorsement of the Event or the sponsoring organization by The University of Texas at Arlington." User further agrees advertisement and promotion of the Event is prohibited prior to the full execution of this Agreement.
- Complimentary Tickets:** User shall provide UTA with _____ complimentary tickets to the Event whether or not admission is charged. Tickets provided shall be Section 102, Row 3, Seats 1 – 10, and Section 209, Row 3, Seats 1 - 10.
- Ticketing:** Guest ticketing is required. We no longer accept tickets from the school. Tickets will be provided to the school by April 2024. Schools are responsible for distributing tickets to graduates/families. Onsite distribution of extra tickets is not permitted."

Executed to be effective as of the Effective Date.

The University of Texas at Arlington

**DeSoto ISD
Federal ID # 75-6001316**

SIGNED: _____
BY: John Hall, Vice President
Administration & Economic Development

SIGNED: _____
BY: Jasen Campbell
Principal

DATE: _____

DATE: _____

APPROVED AS TO FORM:

Jeff Davis, Executive Director Special Event Facilities

Date: _____

Please remember: User agrees to pay a deposit of \$10,000.00 with the return of this signed Agreement. The unpaid balance will be due by April 22, 2024. Any additional charges incurred during the Event will be due no later than 14 calendar days following the Event.

ISD ADDENDUM

This Contract Addendum (“Addendum”) between the University of Texas at Arlington (“UTA”) and the Independent School District identified in the attached Facility Use Agreement (“User”) is incorporated by reference into the attached Facility Use Agreement (“Agreement”) between UTA and User. UTA and User may be referred to singularly as a “Party” and collectively as the “Parties.” Notwithstanding anything in the Agreement to the contrary, if there is any conflict or contradiction between the provisions of the Agreement and those in this Addendum, this Addendum will control.

1. INDEMNIFICATION. Any and all indemnification and/or hold harmless obligations set forth in the Agreement, including but not limited to, Sections 8, 18, 23, 28, and 29, shall be limited to the extent permitted under the laws and Constitution of the State of Texas and without either parties’ waiver of sovereign immunity.

2. INSURANCE. Section 11 of the Agreement shall be deleted in its entirety and replaced with the following language:

User, as a Texas political subdivision, is insured for general liability insurance through membership, by inter-local agreement, in a self-insurance risk retention fund as allowed under the laws of the State of Texas covering political subdivision. The Parties agree that such insurance by User shall, without further requirement, satisfy all general liability insurance obligations of User under this Agreement. User agrees to provide a Certificate of Coverage evidencing such insurance upon request by UTA.

In addition, User shall maintain Workers Compensation and Automobile Liability insurance coverages, or an equivalent self-insurance policy, with policy limits equal to any statutory requirements.

3. Cancellation by User. Section 13 of the Agreement shall be deleted in its entirety and replaced with the following language:

Should User cancel or postpone the Event due to a force majeure event, User’s deposits and tendered amounts will be applied to a new, rescheduled date on which the Event will be held (subject to the mutual agreement of the parties) or refunded.

4. BROADCAST AND RECORDING RIGHTS. Section 17 of the agreement is deleted in its entirety and replaced with the following language:

“User may not operate or use the CPC broadcast infrastructure/equipment without the prior written consent of the Director of Special Event Facilities. Any request for such consent must be submitted in writing not less than 60 days prior to the Event date.”

5. PUBLIC SAFETY. Section 19 of the Agreement shall be amended by deleting its third (3rd) paragraph and replacing it with the following language:

UTA, through The University of Texas at Arlington’s Campus Police Department, agrees to provide security service to the CPC and the Facility for the Event to the same extent and in the same manner as is provided by such Campus Police Department to other similarly situated buildings on The University of Texas at Arlington’s campus. User agrees to cooperate with The University of Texas at Arlington’s Campus Police Department in all matters including the reporting of suspected security violations. User will immediately report any evidence of security breaches or criminal activity to The University of Texas

at Arlington's Police Department. **NOTWITHSTANDING THE FOREGOING, THE UT PARTIES, JOINTLY AND SEVERALLY, SHALL NOT BE LIABLE FOR, AND TO THE FULLEST EXTENT ALLOWED BY LAW, USER RELEASES THE UT PARTIES, JOINTLY AND SEVERALLY, FROM ANY CLAIM, LIABILITY AND CAUSE OF ACTION FOR ANY INJURY, DAMAGE OR LOSS SUFFERED BY USER, AND/OR USER'S AGENTS, EMPLOYEES, AGENTS AND INVITEES ARISING OUT OF OR RELATED TO THE PROVISION OF SUCH SECURITY SERVICES SAVE AND EXCEPT TO THE EXTENT SUCH CLAIM, LIABILITY AND/OR CAUSE OF ACTION IS CAUSED BY THE WILFUL MISCONDUCT OR GROSS NEGLIGENCE (BUT NOT THE ORDINARY NEGLIGENCE) OF THE UT PARTIES, WHETHER JOINTLY OR SEVERALLY. IT BEING THE EXPRESS INTENT OF THIS PARAGRAPH THAT THE FOREGOING RELEASE BY USER OF THE UT PARTIES PERTAIN TO ALL CLAIMS, LIABILITIES AND CAUSES OF ACTIONS OF USER AGAINST THE UT PARTIES ARISING FROM THE ORDINARY NEGLIGENCE (WHETHER SOLE OR CONCURRENT) OF THE UT PARTIES BUT NOT TO CLAIMS, LIABILITIES AND CAUSES OF ACTION OF USER AGAINST THE UT PARTIES TO THE EXTENT THE SAME ARISE FROM THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE (WHETHER SOLE OR CONCURRENT) OF THE UT PARTIES.**

So agreed and executed by the parties' duly authorized representatives effective as of the ____ day of _____, 2023.

**UNIVERSITY OF TEXAS
AT ARLINGTON**

ISD

Signature

Date

Signature

Date

Printed Name

Printed Name

Title

Title