

FACILITIES USE AGREEMENT

This Facilities Use Agreement is made as of this ____day of _____, 2023, between _____, a _____ with an address of _____ (“Licensee”) and **THE TOWN OF COLCHESTER**, _____ (the “Town”).

In consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **License.** The Town hereby grants to Licensee a non-exclusive license to use [**describe the Facilities/areas of Facilities and exclude others**] located at _____ (the “Facilities”) for the purpose of _____ (the “Program”) [**Monday through Friday**] from _____, 2023 (“Start Date”) through _____, 2023 (“End Date”, and together with the Start Date, the “Event Date(s)”). Licensee’s use of the Facilities is subject to the terms and conditions of this Agreement. The Facilities are licensed for use in their “AS IS,” “WHERE IS” and “WITH ALL FAULTS” condition. This Agreement constitutes a license, not a lease, and the relationship of the parties hereunder is that of a licensor and licensee, and not that of a landlord and tenant.
2. **Program Description.** Use of the Facilities shall be limited to the Program Description (as defined on Schedule A), which such description shall not be amended by Licensee without the prior written consent of the Town, which shall be granted by the Town in its sole and absolute discretion. Any modifications to the Program Description which are permitted by the Town, including, but not limited to, a material change in the number of Participants, may require an adjustment to the Fee (as defined herein) if warranted, as determined by the Town in its sole and absolute discretion.
3. **Certain Licensee Responsibilities.** Licensee shall be solely responsible for the safe and lawful operation, management and supervision of its activities conducted at the Facilities, and for the safety, security and conduct of its agents, employees, invitees, participants and guests (collectively, the “Participants”). Licensee shall furnish all personnel, materials, equipment, supplies and incidentals required for the Program. Except as expressly set forth in this Agreement, the Participants shall not use any Town equipment or supplies, whether or not such equipment or supplies are accessible to Participants at the Facilities. [**Licensee fully understands that use of any picnic tables located at the Facilities is not guaranteed.**]
4. **Fees.** Licensee shall pay the Town a Fee as described on Schedule A (the “Fee”) for the use of the Facilities during the Event Date(s) in accordance with the terms set forth in this Agreement. To secure the Event Date(s) for the Program, this signed Agreement must be received by the Town no later than _____, 2023.

Failure to remit the Fee or other payments required under this Agreement in accordance with the terms of this Agreement shall, among other remedies of the Town for Licensee’s default, entitle the Town to cancel this Agreement immediately and/or to impose an interest fee on any due and unpaid amount at a rate of 1.5% per month until paid. It is further agreed, in the event of non-payment, that the Licensee will be responsible for the Town’s costs of collection, including attorneys’ fees.

5. **Insurance.** Licensee, and its subcontractors if applicable, shall maintain all insurance required by the Town, as shown on the attached Schedule B. Licensee shall provide a Certificate of Insurance evidencing such required coverage to the Town by _____ for review and approval by the Town.
6. **Police, Fire and Emergency Services Coverage.** Licensee shall secure police, fire and/or emergency services coverage for the Program in the manner described on Schedule A and as may be determined by the Town in its sole discretion at any time. The sole cost and expense of the police and/or emergency services coverage shall be paid by Licensee.
7. **Indemnity; Waiver; Assumption of Risk.** As consideration for use of the Facilities on the Event Date(s), Licensee agrees, without limitation, to indemnify the Town, its employees, directors, officers, agents, successors and assigns (the “Indemnified Parties”) and hold them harmless from and against any and all losses, damages, liability, claims, costs and expenses (including attorneys’ fee and court costs), arising out of or in any way connected with or resulting in any way from the Program or the use of the Facilities or any other Town property by Licensee, Participants, or any agents, employees, invitees or person(s) affiliated with Licensee. Licensee hereby waives any claims against the Indemnified Parties and releases the Indemnified Parties from any claims arising from this Agreement and/or the use of the Facilities, except, to the extent permitted by law, for such claims arising solely from the willful misconduct of the Indemnified Parties. Among other claims, Licensee hereby waives and releases the Indemnified Parties from any possible claim for negligence that arises from this Agreement and/or the use of the Facilities. Licensee assumes the risk of any loss or damage to its property or the property of any Participant or person or entity authorized by Licensee to be at the Facilities. The Town, its employees, directors, officers and agents shall not be responsible or liable for any loss of, or damage to, such property while at the Facilities regardless of how the loss or damage is sustained. This Section shall survive expiration or termination of this Agreement.
8. **Damage to Property or the Facilities.** Licensee assumes full responsibility for any and all damage to the Facilities and/or theft or loss of any Town property, Licensee property or Participant property associated with Licensee’s use of the Facilities and/or Town property on the Event Date(s). Licensee shall further assume full responsibility for any and all clean-up required at the Facilities following the Event Date(s). Licensee shall reimburse the Town for repairs of such damage or replacement of such loss and/or the clean-up of the Facilities within thirty (30) calendar days of receipt of the Town’s invoice for the same. It is further agreed, in the event of non-payment, that Licensee will be responsible for the Town’s costs of collection, including attorneys’ fees. This Section shall survive the expiration or termination of this Agreement.
9. **Compliance with Law.** Licensee shall, at its own expense, comply with all municipal, state and federal laws, permits, ordinances, rules, regulations, guidance, executive orders, best practices and Town policies, the Town Charter, regulations, the general Town rules described on Schedule C and any rules posted at the Facilities, and any other such rules applicable to the use of the Facilities, including any best practices, guidance and laws related to holding events, gatherings or other events in general, during the COVID-19 pandemic, as the same may be amended (collectively, the “Laws”). In case of inconsistencies within the Laws or this Agreement, the Licensee shall comply with the most conservative provisions. The Licensee acknowledges the changing nature of laws generally and agrees that it is solely responsible for consistently monitoring the Laws, including those related to COVID-19, and any changes thereto and to promptly develop and implement any

required changes to the Program in order to ensure compliance with the same. Licensee shall, at its own expense, obtain all permits, licenses and governmental approvals required to operate the Program and remit copies of the same to the Town at least **thirty (30)** calendar days prior to the Start Date. Licensee shall pay any fines or penalties assessed for failure to comply with any such Laws and the failure to obtain or comply with such required permits, licenses and approvals, and shall pay any expenses, legal or otherwise, incurred by the Town due to Licensee's failure to so comply. This Section shall survive the expiration or termination of this Agreement.

10. **Termination/Cancellation.** The Town and the Licensee may cancel or terminate this Agreement, in whole or in part, for any reason and at any time upon prior written notice to the other party. If the Town cancels or terminates this Agreement, the Town's liability to the Licensee shall be strictly limited to a refund of the Fee (if already paid). If the Licensee cancels or terminates this Agreement *after* it has paid the Fee to the Town, the Licensee agrees that the Town shall not refund the Fee, or any portion thereof, to the Licensee.
11. **Town Remedies.** Should the Town determine in its sole discretion that the Licensee has failed to comply with any term of this Agreement or that any Participant(s) is detrimental to the health, safety or well-being of any person or threatens to, or causes, damage to the Facilities, or other Town property, then such failure/conduct may result in any one or more of the following actions: the immediate termination of this Agreement, the immediate termination of the Licensee's use of the Facilities on the Event Date(s), the immediate removal of the individual and/or group of individuals responsible for the conduct, notification to the Colchester Police Department, loss of the Fee and any other payments made or due to the Town, denial of future use of Town property, including the Facilities, and a fee assessment to cover any damages. Nothing in this Section shall limit the Town's right to bring any action under law or equity, and the Town's remedies hereunder shall be cumulative. This obligation to pay shall survive the termination of this Agreement.
12. **Supervision and Conduct.** Licensee shall be responsible for full adult supervision by Licensee's staff member(s), volunteer(s), or designee(s) (collectively, the "Licensee's Representative") of all Participants attending the Program, and Licensee shall further be responsible for any damage caused by such Participants. Licensee shall, and shall cause all Participants to, comply with the terms of this Agreement, all rules, regulations and policies of the Town, and all directives of Town personnel. The Town reserves the right to eject or cause to be ejected from its property any Participant who does not so comply. All property and effects of Licensee or Participants which may be on the Facilities during the Event Date(s) shall be at the sole risk and hazard of Licensee. Licensee shall promptly remove such property and effects upon termination of the Program. At least **seven (7) business** days before the Start Date, the Licensee shall provide the Town with the name(s), email address(es) and cell phone number(s) of the Licensee's Representative(s) who will be present at the Facilities on the Event Date(s) and responsible for the supervision of the Program.
13. **Promotion of Program.** Licensee shall assume full responsibility for the organization and promotion of its Program. Licensee shall not in any way represent or imply in any communication, including its website, that it is affiliated in any way with the Town other than as a licensee for the limited use of the Facilities for the Program. Licensee shall not represent or imply that its activities, including the Program, are endorsed or approved by the Town. Licensee may not use the Town's name other than to indicate the address of the Facilities. Other than as permitted in the foregoing sentence, the Licensee may not use the Town's name or in any manner refer to the Town in any advertising, publicity, promotion, or otherwise without the Town's prior written consent,

which may be granted in the Town's sole and absolute discretion. Additionally, all such materials shall bear the legend in a conspicuous place that the Licensee is not affiliated with or operated or supervised by the Town, or some similar legend approved in writing by the Town. The Town shall have the right, but not the obligation, to review all promotional and advertising material before publication and to make any such changes therein as the Town deems desirable. Licensee shall not use the Town's name on any uniforms or other items created for the Participants. Licensee shall not sell or distribute any products on which are placed the Town name. The phrase "Town name" shall mean the "Town of Colchester", the "Town" or "Colchester". Notwithstanding anything contained in this Section to the contrary, Licensee may use the name "_____".

14. **Parking.** Licensee and the Participants shall be permitted to park in designated areas only. Such designated parking spaces shall be described on Schedule A, and subject to the limitations described on Schedule C attached hereto. Any driving or parking without a parking pass or in unapproved areas as required herein may result in ticketing, fines and/or denial of future use of the Facilities. The Licensee is solely responsible for overseeing and controlling the parking and driving at and around the Facilities.

15. **Town Rules/Participant Waivers.** Licensee is responsible for knowing and complying with all rules, regulations and policies in Schedule C, and shall ensure that each of the Participants are aware of, and will comply with, all such rules, regulations and policies, as the same may be changed from time to time. Licensee shall review and sign a Waiver in the form attached as Schedule D hereto and submit a copy of the same to the Town by _____. OR

Licensee is responsible for knowing and complying with all rules, regulations and policies in Schedule C, and shall ensure that each of the Participants are aware of, and will comply with, all such rules, regulations and policies, as the same may be changed from time to time. Licensee shall review and sign a Waiver in the form attached as Schedule D hereto and submit a copy of the same to the Town prior to _____. Licensee shall also obtain a fully-executed Waiver in the form attached as Schedule D from each Participant and retain a copy of the same for seven (7) years. Licensee agrees that upon the Town's request, Licensee shall promptly provide the Town with copies of any or all such executed Participant waivers. OR

Licensee is responsible for knowing and complying with all rules, regulations and policies in Schedule C, and shall ensure that each of the Participants are aware of, and will comply with, all such rules, regulations and policies, as the same may be changed from time to time. Licensee shall review and sign a Waiver in the form attached as Schedule D hereto and submit a copy of the same to the Town prior to the _____. Licensee shall also obtain a fully-executed Waiver in the form attached as Schedule D from each Participant and submit a copy of the same to the Town at least one (1) business day prior to the Start Date.

Failure to comply with this Section may result in the termination of this Agreement.

16. **Inspection.** Licensee shall cooperate with and shall permit any representative of the Town to be present at and inspect all activities and Facilities associated with the Program. Except in the case of emergency, such inspections shall be conducted in the company of a representative of the Licensee. Notwithstanding the foregoing, the Town may enter the Facilities at any time to make repairs and complete work orders so long as such repairs and work do not materially interfere with the Program.

17. **[If not applicable - delete and leave as intentionally blank]Background Checks.**

A. Background and Employment History Checks.

- (i) To the extent permitted by law, Licensee shall perform (or cause to be performed) as regards all of its staff members, volunteers or designees (each, a “Licensee Representative”) who will be physically present on the Facilities in connection with the Program, appropriate background checks within thirty (30) calendar days prior to the date such Licensee Representative begins performing services for Licensee pursuant to this Agreement. Such background checks shall include, at a minimum and without limitation, a national criminal background check and a search of both the Connecticut Department of Emergency Services and Public Protection’s sexual offender registry and the Abuse and Neglect Registry of the Connecticut Department of Children and Families. For those Licensee Representatives who are to be physically present on the Facilities in connection with the Program and whose current or most recent employment occurred out of state, the out-of-state equivalent of the Connecticut Department of Emergency Services and Public Protection’s sexual offender registry and the Abuse and Neglect Registry of the Connecticut Department of Children and Families shall be checked. Licensee shall complete (or cause to be completed) said background checks as to each Licensee Representative prior to such staff person being permitted to be physically present on the Facilities. If Licensee receives any information indicating that any Licensee Representative may be registered as a sexual offender, may have a record of abuse or neglect, or is, either due to a criminal history or in any other manner, unfit to perform services which could involve direct contact with minor children, or which may involve working in or near property on which minor children may be present, Licensee shall immediately forward such information to the Town, to the extent permitted by law, and shall immediately remove such Licensee Representative from the Facilities and from participation in the Program.
- (ii) Licensee represents and warrants that, in its best professional judgment, each Licensee Representative staff maintains the appropriate qualifications and is fit to perform services which could involve direct contact with minor children, or which may involve working in or near property on which minor children may be present. Licensee shall immediately remove any Licensee Representative from the Facilities and from the Program if requested to do so by the Town (which request shall be made in the Town’s sole discretion) or if it becomes known to Licensee that such Licensee Representative may be a danger to the health, safety or well-being of the Town community or any minor children.

B. Subcontractors. Licensee shall include, and shall require all subcontractors to include, this Section 17 in all subcontracts for the Program.

C. Compliance. By execution of this Agreement, Licensee represents and warrants that it has fully complied with the requirements of this Section. Licensee shall pay all fees and costs associated with the background and employment history checks required under this Section 17. To the extent permitted by law, Licensee agrees that upon the Town’s request, Licensee shall promptly provide the Town with any documentation related to such compliance. Failure by Licensee to comply with its obligations under this Section 17 shall constitute a material

breach of this Agreement. Notwithstanding any provisions herein to the contrary, failure to comply with this Section shall be grounds for immediate termination of this Agreement.

18. **Independent Contractor.** Licensee acknowledges that it is an independent contractor in connection with the use of the Facilities. In accordance with its status as an independent contractor, Licensee covenants and agrees that it will conduct itself consistent with such status, and that neither Licensee, nor its officers, employees or agents shall make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Town, including, but not limited to, Worker's Compensation coverage, Unemployment Compensation coverage, Unemployment Insurance Benefits, Disability Benefits, Social Security coverage or retirement membership credit.
19. **Force Majeure.** The Town shall not be liable or responsible for any act, occurrence or event outside of its reasonable control, including, but not limited to, any occurrence related to COVID-19 (each, a "Force Majeure Event"). If the Town suffers a Force Majeure Event that would require the suspension or cancellation of this Agreement, the parties will work together in good faith to resume performance hereunder on a mutually agreed upon date or period, or, failing that, either party may terminate this Agreement upon written notice to the other party.
20. **Taxes.** Licensee acknowledges that the Facilities are currently exempt from municipal taxes. In the event that all or any part of the Facilities become taxed as a result of this Agreement, Licensee shall pay such taxes to the taxing authority promptly upon demand by the Town. This Section shall survive the termination of this Agreement.
21. **Governing Law.** This Agreement shall be construed under and governed by the laws of the State of Connecticut. Any disputes under this Agreement shall be brought in a court of competent jurisdiction within the State of Connecticut.
22. **Counterparts.** This Agreement may be executed in counterparts, and electronic signatures, including PDFs, DocuSign or similar platforms (and counterparts delivered by electronic means) shall have the same force and effect as original signatures. All counterparts taken together shall constitute one and the same Agreement.
23. **No Assignment.** Licensee shall not assign this Agreement or any rights hereunder or delegate any obligation hereunder without the prior written consent of the Town, which consent shall be granted in the Town's sole and absolute discretion. Any attempted assignment or delegation without prior written consent shall be void and constitute a breach of this Agreement.
24. **Non-Discrimination.** The Town does not discriminate against any person or group on the basis of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status as a veteran, intellectual disability, mental disability or physical disability in the admission to or enjoyment of its Facilities. Licensee also shall not so discriminate while using the Facilities.
25. **Notices.** All notices or other communications provided for in this Agreement shall be in writing and delivered in person or by first class mail, overnight courier or electronic mail and shall be addressed to the applicable contact party below at the address in the first paragraph of this Agreement or the email address below. All such notices shall be deemed to have been given when actually received, except that if a notice or other document is refused delivery or cannot be

delivered because of a changed address of which no notice was given, such notice or other document shall be deemed to have been delivered on the date of such refusal or inability to deliver. Either party, by notice to the other party, may designate additional or different addresses for subsequent notices or communications.

Town contact: Recreation Department

Email: parksandrec@colchesterct.gov

Phone: (860) 537-7297

Licensee contact: _____

Email: _____

Phone: _____

This Agreement is executed as of the date first written above.

[LICENSEE]:

THE TOWN OF COLCHESTER, CONNECTICUT

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Schedule A

Program Requirements

1. Program Description:

Estimated number of Participants: _____

Program Description and Schedule: _____

2. Program Fee: _____ (Total fee listed here; if you want to include subcategories to show how the Town came up with the fee, say comprised of.. and then list the categories with the same working on the application)

3. Police, Fire and Emergency Services Coverage: _____

4. Parking: _____

Parking Map: See attached Schedule A-1 for parking map

Parking Passes: Licensee shall be provided with the following numbered parking passes, which shall be displayed at all times at the front of the vehicle: _____

Note: There is no parking or driving at any time on the Town property. The Licensee shall be solely responsible for oversight and control of the parking and driving of all Participants. Unless required by law or specifically permitted in this Schedule A, no motorized vehicles shall be permitted to drive or park on the Town Green.

Authorized Parking: [none or state which can drive on the Green]

Schedule B

Insurance Requirements

At all times during the term of this Agreement, the Licensee, at its own expense, shall have in force the coverage indicated below, and such coverage shall include a waiver of subrogation by the Licensee's insurer:

- (A) Commercial General Liability including Products/Completed Operations, contractual Liability, Sexual Abuse/Molestation and Broad Form Property Damage, at a minimum limit of \$1,000,000 C.S.L. for Bodily Injury and Property Damage.

Certificates of Insurance must satisfactorily evidence the required coverage and also provide that prior to policy cancellation or nonrenewal that the insurer will give the Town thirty (30) days advance written notice of any such cancellation or material change in coverage.

All Certificates of Insurance will list the Town of Colchester as additional insured.

When reserving the Town Green, all Certificates of Insurance will list the Town of Colchester and the Bacon Academy Board of Trustees as additional insured.

Schedule C

Rules and Regulations for the Facilities

1. Licensee must follow all posted signs at the Facility.
2. There shall be no smoking on Facilities.
3. Licensee shall not permit the use, possession, sale or storage of any alcohol or tobacco products or any illegal substances in the Facilities or elsewhere on the Facilities.
4. Licensee shall not permit livestock, food vendors, pools, sprinklers, open flames or inflatables unless specifically indicated on Schedule A.
5. Licensee must provide all trash bags and pick up and remove all trash from the Facilities at the end of each Event Date.
6. The Town's maintenance, security, and administrative personnel are charged with the responsibility of the Facilities and may terminate Licensee's use of the Facilities at any time if, in said individual's sole opinion, the conduct of the Participants threatens the safety or well-being of Town personnel, the Participants, and/or the community at large, or threatens to, or causes, damages of the Facilities.
7. Licensee agrees to abide by all staffing and/or security requirements (i.e., off-duty police, security guard, maintenance personnel) as determined by the Town for the Program.
8. Licensee is responsible for ensuring that all Participants and Licensee staff park in approved, designated parking spaces as indicated on Schedule A. Parking is subject to availability.
9. A duly designated representative from the Program shall be present one (1) hour prior to start time on the Start Date and shall remain with the Participants until they have left the Facilities.
10. Licensee shall comply with, and shall cause the Participants to comply with, all instructions of Town personnel regarding use of the Facilities or any property of the Town and compliance with the Town rules and regulations set forth or referenced in this Schedule D.

Schedule D

Participant Waiver (attached)

SAMPLE