

**INTERLOCAL AGREEMENT BETWEEN LEE COLLEGE DISTRICT AND
BARBERS HILL INDEPENDENT SCHOOL DISTRICT FOR
LEE COLLEGE BARBERS HILL CAMPUS**

This Interlocal Agreement (“Agreement”) is entered into pursuant to Chapter 130, Texas Education Code (particularly Subchapter K thereof) and Chapter 791, Texas Government Code, by and between Lee College District (the “Lee College”), a public junior college district and political subdivision of the State of Texas, and the Barbers Hill Independent School District (“BHISD”), a public independent school district and political subdivision of the State of Texas. Lee College and BHISD are each individually referred to herein as a “Party” and collectively referred to herein as the “Parties”. Both Parties are governmental entities created under the laws of the State of Texas and this Agreement is effective upon full and complete execution by both Parties.

RECITALS

WHEREAS, BHISD is located within the service area of Lee College, and Lee College’s Board of Regents (the “Lee College Board”) and BHISD’s Board of Trustees (the “BHISD Board”) have each determined that the establishment, operation and funding of a branch campus of Lee College within the boundaries of BHISD would be in the best interests of each respective Party;

WHEREAS, Subchapter K of Chapter 130, Texas Education Code (the “Education Code”) sets forth procedures under which: (a) Lee College may establish and operate a branch campus in BHISD (the “Branch Campus”), and (b) the BHISD Board may levy a junior college district branch campus maintenance tax for such Branch Campus (the “Branch Campus Tax”);

WHEREAS, Section 130.253(b), Education Code provides that on presentation of a petition for an election to authorize a junior college district branch campus maintenance tax signed by not fewer than five percent of the qualified voters of BHISD, the BHISD Board shall determine the legality and the genuineness of the petition and, if it is determined to be legal and genuine, forward the petition to the Texas Higher Education Coordinating Board (the “THECB”);

WHEREAS, in compliance with Section 130.253(b), Education Code, the BHISD Board has determined, and does hereby ratify and confirm such determination, that it previously received a legally sufficient and genuine petition for an election to authorize the Branch Campus Tax signed by not fewer than five percent of the qualified voters of BHISD, which petition was forwarded to the THECB;

WHEREAS, on January 25, 2024, the THECB adopted a written resolution that: (a) determined that the requirements set forth in Section 130.253, Education Code have been met, (b) determined that the Branch Campus Tax is feasible and desirable under THECB rules, (c) authorized BHISD to hold an election to authorize the Branch Campus Tax at a rate not to exceed five cents on each \$100 valuation of taxable property within BHISD (the “Election”), and (d) authorized Lee College’s formation of the Branch Campus within BHISD’s boundaries contingent upon passage of the Election;

WHEREAS, at the Election held on May 4, 2024, the qualified voters of BHISD authorized the BHISD Board to levy the Branch Campus Tax in an amount not to exceed five (5) cents on each \$100 valuation of all taxable property in BHISD;

WHEREAS, Section 130.251(e), Education Code authorizes the Parties to enter into a cooperative agreement for the purposes of performing the services necessary for the Branch Campus;

WHEREAS, the Parties to this Agreement seek to describe the relationship between the Parties, and the Parties' respective governing boards find that it is within their mission and purpose to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lee College and BHISD agree as follows:

SECTION 1: SCOPE OF AGREEMENT

1.1 The purpose of this Agreement is to establish a Lee College Branch Campus within BHISD, increase the enrollment, persistence, and degree completion of BHISD graduates at Lee College and to expand the educational opportunities for all residents of BHISD. The construction and operation of the Facility is expected to allow BHISD students access to college courses and degree programs while they are completing their high school course of study, as well as expand Lee College's ability to serve the area within BHISD and throughout the Lee College service area. To successfully achieve their shared objectives, the Parties enter this Agreement to memorialize the terms and conditions with respect to the construction of the Facility and operation of the Branch Campus. The Parties have memorialized the general obligations and responsibilities of each Party with respect to curriculum and instruction under one or more separate articulation agreements, the terms of which are intended to be superseded only to the extent that such agreements directly conflict with the terms hereof.

1.2 The Parties agree that the Branch Campus may be used for dual credit courses as determined by Lee College in cooperation with BHISD, provided that all such courses shall include both high school students and regular non-high school students.

1.3 The Parties incorporate herein for all purposes the following documents, which shall become part of this Agreement:

- Exhibit A: Legal Description of the Premises**
- Exhibit B: Facility Plan**
- Exhibit C: Budgeted Operations Payment Schedule**
- Exhibit D: Form of Lease**

1.4 It is understood and agreed that Lee College and BHISD are separate legal entities and neither Party's employees, volunteers, or agents shall be deemed for any purposes to be employees, volunteers, or agents of the other Party merely due to the Parties entering into this Agreement.

1.5 Each Party and its contractors assume full responsibility for the actions of their personnel, agents and volunteers while performing any services incident to this Agreement, and shall remain solely responsible for their supervision, daily direction and control, payment of salary (including withholding of income taxes and social security), provision of benefits, workers' compensation coverage, disability benefits and like requirements and obligations. Nothing in this

Agreement shall be deemed or construed to create any third-party beneficiaries or otherwise give any third-party any claim or right of action against any Party to this Agreement.

1.6 Nothing in this Agreement may be construed as creating any personal liability on the part of any officer, director, employee, or agent of Lee College or BHISD, and the Parties expressly agree that the execution of this Agreement does not create any personal liability on the part of any officer, director, employee, or agent of Lee College or BHISD. The Parties shall each be responsible for their own acts of negligence. These provisions are solely for the benefit of the Parties hereto and not for the benefit of any person or entity not a Party to this Agreement. No provisions shall be deemed a waiver of any defenses available by law, including, but not limited to, governmental or sovereign immunity.

1.7 Any notice required to be given under the provisions of this Agreement shall be made in writing and shall be duly served when it shall be hand-delivered to the addresses set out below, or shall have been deposited, duly registered or certified, return receipt requested, in a US Post Office box, or shall have been deposited with a common carrier and addressed to the other Party at the following addresses:

- To: Lee College District:
Dr. Lynda Villanueva (or successor)
President
Physical: 200 Lee Drive, Baytown, TX 77520
Mailing: P.O. Box 818, Baytown, TX 77522-0818
Common Carrier: 511 S. Whiting Street, Baytown, TX 77520

- To: Barbers Hill Independent School District:
Dr. Greg Poole (or successor)
Superintendent of Schools
Physical: 9600 Eagle Drive, Mont Belvieu, TX 77523
Common Carrier: 9600 Eagle Drive, Mont Belvieu, TX 77523
U.S. Mail: P.O. Box 1108, Mont Belvieu, TX 77580

Any Party may designate a different address or authorized agent by giving the other Party ten (10) days' prior written notice in the manner provided above.

SECTION 2: DEFINITIONS

- 2.1 "Agreement" shall have the meaning set forth in the first paragraph above.

- 2.2 "BHISD" shall have the meaning set forth in the first paragraph above.

- 2.3 "BHISD Board" shall have the meaning set forth in the Recitals above.

- 2.4 "Branch Campus" shall have the meaning set forth in the Recitals above.

- 2.5 "Branch Campus Tax" shall have the meaning set forth in the Recitals above.

2.6 “Branch Campus Requirements” shall mean the applicable requirements for such campuses under the standards set forth by SASCCOC and all laws, rules, regulations (including, but not limited to, the regulations and requirements of THECB) and ordinances applicable to operating the Branch Campus, including, but not limited to, the applicable provisions of the Education Code and 19 Texas Administrative Code § 8.74. Notwithstanding any other provision herein to the contrary, the Parties agree that the Branch Campus is not considered a “branch campus” under standards set forth by SASCCOC, but rather for such standards is considered an off-campus instructional site, and, as such these Branch Campus Requirements include those SASCCOC standards applicable to off-campus instructional site.

2.7 “Budgeted Operations Payment” shall mean an annual payment as described within the Budgeted Operations Payment Schedule, which payments are to be made to Lee College from the Branch Campus Tax proceeds and used to operate and maintain the Branch Campus.

2.8 “Budgeted Operations Payment Schedule” shall mean the schedule of annual payments described within **Exhibit C** attached hereto, which payments are to be made to Lee College from the Branch Campus Tax proceeds and used to operate and maintain the Branch Campus.

2.9 “Construction Period” shall mean that period of time beginning with BHISD’s issuance of a Notice to Proceed to the construction contractor for the Facility and ending on the date that a certificate of occupancy is issued for the Facility.

2.10 “Education Code” shall have the meaning set forth in the Recitals above.

2.11 “Election” shall have the meaning set forth in the Recitals above.

2.12 “Extension Period” shall mean any additional term of time during which this Agreement automatically extends or during which the Parties to this Agreement mutually agree to extend or continue this Agreement beyond the Initial Period.

2.13 “Facility” shall mean the Lee College Barbers Hill Campus, which shall be constructed at the Premises.

2.14 “Facility Plan” shall mean the plans and specifications for the Facility attached hereto as **Exhibit B**.

2.15 “Governmental Unit” means any state of the United States, or political subdivision of thereof, but excludes the United States and its agencies or instrumentalities.

2.16 “Initial Period” shall mean the initial term of this Agreement, beginning on the date that this Agreement is executed by both Parties and ending on August 31, 2049.

2.17 “Lee College” shall have the meaning set forth in the first paragraph above.

2.18 “Lee College Board” shall have the meaning set forth in the Recitals above.

2.19 “Maximum Rate” shall mean the maximum rate that may be set for the Branch Campus Tax in a particular year without requiring voters of the District to approve of such rate.

2.20 “Nongovernmental Person” shall mean any person or entity other than a Governmental Unit.

2.21 “Operation Period” shall mean that period commencing upon substantial completion of construction of the Facility and continuing through the termination date of this Agreement.

2.22 “Party” or “Parties” shall have the meaning set forth in the first paragraph above.

2.23 “Premises” shall refer to the school site as described more fully in **Exhibit A** to this Agreement.

2.24 “SASCCOC” shall mean the entity or entities that now or hereafter accredit(s) Lee College, which is currently the Southern Association of Schools and Colleges Commission on Colleges.

2.25 “Term” shall mean the Initial Period and each Extension Period, provided that the Term shall end in the event that this Agreement is terminated earlier in accordance with the provisions of this Agreement.

2.26 “THECB” shall have the meaning set forth in the Recitals above.

SECTION 3: TERM AND TERMINATION

3.1 The Parties to this Agreement seek to memorialize a long-term agreement for the construction, use and operation of the Facility, which Facility will serve as the location of the Lee College Branch Campus to support the shared educational purposes of the Parties stated herein.

3.2 Except as otherwise provided by Sections 3.4, 8.1 and 11.1 hereof, during the Initial Period, this Agreement may only be amended or terminated by mutual agreement of the Parties. This Agreement shall be automatically renewed for successive one (1) year periods, unless a Party provides the other Party with written notice of its desire not to renew this Agreement at least ninety (90) days prior to the commencement of the end of the then-current Term of the Agreement.

3.3 Either Party to this Agreement may terminate this Agreement at the conclusion of the Initial Period or at any time during the Extension Period under the following terms:

- a. Subject to Section 3.5 below, with a 90-day prior written notice by one Party to the other Party; or
- b. As mutually agreed by the Parties.

3.4 If at any time during the Term of this Agreement, Lee College determines that the Budgeted Operations Payment is insufficient to cover the costs of operating the Branch Campus under the terms of this Agreement, Lee College may give detailed written notice to BHISD identifying the operations costs and anticipated shortfall, and requesting an increase of same beginning the next

budget cycle that begins at least six (6) months after the date of such notice. Upon receipt of such notice, BHISD shall negotiate in good faith with Lee College to address the shortfall in a reasonable manner. Notwithstanding any other provision herein to the contrary, Lee College reserves the right to adjust and reduce the scope of the educational services provided under this Agreement as Lee College, in its sole discretion, determines necessary to align with the Budgeted Operations Payment, provided such services shall meet the Branch Campus Requirements as set forth herein.

3.5 In the event this Agreement terminates for any reason while academic programs are operating in the Facility, the date of termination shall be the last day of the then-current academic year unless the Parties mutually agree otherwise, including, without limitation, that all payment obligations of BHISD under Section 7 shall continue until the effective date of termination. Students then enrolled in Lee College courses at the Facility shall be allowed to complete the academic year, and the Parties further shall collaborate to complete any applicable completion of the program (“teach out”) required by SASCCOC.

3.6 The Parties agree that in the event there is a change in state or federal law that materially impairs the ability of one or both Parties from carrying out their responsibilities under this Agreement, the Parties agree to meet in good faith to renegotiate the terms of this Agreement consistent with the intent of the Parties. In the event no such agreement can be reached, the Parties may terminate this Agreement by a) mutual agreement; or b) by giving the other Party one year’s advance written notice, provided that any termination is subject to Section 3.5 above.

SECTION 4: BRANCH CAMPUS TAX

4.1 In accordance with Section 130.253(l), Education Code, the BHISD Board shall, in its discretion, set an annual tax levy for the Branch Campus Tax for each tax year during the Term hereof. Such tax levy shall occur on or before the applicable deadline for tax rate setting provided by Section 26.05, Texas Tax Code and all other applicable statutes. In setting the annual tax levy for the Branch Campus Tax, the BHISD Board shall consider the necessary and reasonable anticipated operations budget of the Branch Campus and shall levy a tax sufficient to pay such necessary and reasonable operations cost.

4.2 The Parties acknowledge that the BHISD Board levied a tax rate for tax year 2024 for the Branch Campus Tax of five (5) cents on each \$100 valuation of taxable property. For each year following tax year 2024, the BHISD Board expects to levy (but shall not be required to levy) the Branch Campus Tax at the Maximum Rate. In the event that BHISD proposes to levy a tax rate for the Branch Campus Tax for any tax year that is less than the Maximum Rate, BHISD shall provide notice of such proposed tax rate to Lee College at least forty-five (45) days prior to the date such tax rate is adopted by the BHISD Board and shall consider, in good faith, any objections that Lee College provides concerning such proposed tax rate prior to the time that the BHISD Board sets the tax rate for the Branch Campus Tax for the applicable tax year.

4.3 In the BHISD Board’s sole discretion and subject to voter approval, the BHISD Board may set a tax rate that exceeds the Maximum Rate. In the event that the BHISD Board sets such a tax rate, BHISD shall be entitled to reimbursement from the proceeds of the Branch Campus Tax for all costs related to the election to approve of such tax rate regardless of the outcome of such election.

Such reimbursement will be in the form of a reduction in the amount of the next Annual Lease Payment (defined below) made to BHISD.

4.4 BHISD shall be responsible for billing and collecting the Branch Campus Tax in accordance with applicable law. BHISD shall be permitted to transfer all or any portion of such responsibility to another entity but only to the extent authorized by applicable law.

4.5 All proceeds of the Branch Campus Tax shall either be placed into a separate fund that is not comingled with any other moneys or BHISD shall maintain accounting entries sufficient to track all collections and disbursements of the Branch Campus Tax proceeds. Until disbursement thereof, BHISD shall ensure that the proceeds of the Branch Campus Tax are invested and secured in accordance with Chapters 2256-2257, Texas Government Code and other applicable law. Regardless of where the funds are deposited, the proceeds from the Branch Campus Tax shall be allocated to Lee College on the books and records of both BHISD and Lee College. Lee College shall be entitled to receive such allocated funds only as set forth in this Agreement.

SECTION 5: CONSTRUCTION OF THE FACILITY

5.1 BHISD shall be solely responsible for the costs of designing and constructing the Facility with lawfully available funds. BHISD shall, with commercially reasonable diligence, cause the Facility to be constructed substantially in accordance with the Facility Plan. The Parties anticipate that such construction will be completed not later than August 2027. However, subject to the above requirement regarding commercially reasonable diligence, failure of BHISD to complete construction by such time shall not be considered a default under this Agreement or entitle Lee College to any remedies hereunder.

5.2 In accordance with applicable law, BHISD shall cause the Facility to be designed and constructed in accordance with sound engineering principles, and the standards and specifications of each city, county or other governmental entity having or hereafter acquiring jurisdiction over the Facility. BHISD may, in its discretion, engage such architects, engineers, construction managers and other consultants as BHISD may determine to be necessary or appropriate for the design and construction of the Facility.

5.3 BHISD shall ensure that the Facility, at the time of the completion of construction thereof and, as necessary, by causing the performance of renovations throughout the Term of the Agreement, meets the Facility Plan and that it is reasonably appropriate for college-level instruction, including, without limitation, as follows:

- a. BHISD shall be responsible for providing all necessary infrastructure to the Premises as may be required for the Facility to receive potable water, wastewater, natural gas and electrical utilities. BHISD shall retain sole ownership of the Premises, Facility and such infrastructure at all times during and after the Term hereof.
- b. BHISD shall be responsible for providing all necessary data and communication infrastructure, and BHISD shall retain sole ownership over such infrastructure during and after the Term hereof. In the event of termination of this Agreement, Lee College agrees that all data and communication infrastructure will remain with the Premises and Facility as the property of BHISD. To the extent feasible, Lee

College shall cause any student data or information transmitted or stored through the data and communication infrastructure to be destroyed or returned to Lee College, and, to the extent any such student data or information is found to remain after termination, both Parties shall cooperate to return same to Lee College.

- c. BHISD will ensure that the Facility meets safety standards provided by the Branch Campus Requirements and shall be responsible, at its cost for ensuring that the Facility has any equipment and infrastructure necessary to continue meeting such standards during its operation.

5.4 BHISD shall have final approval authority over the exterior design, selection of building materials, exterior detailing and all other matters related to the design and construction of the Facility, provided that the Parties agree that the building shall have marquis street signage identifying the campus as the “Lee College Barbers Hill Campus”, and similar signage shall be posted on the interior and exterior of the building as appropriate. Upon mutual written agreement, the Parties may change the signage during the term of the Agreement.

SECTION 6: OPERATION OF THE FACILITY

6.1 Simultaneous with the execution of this Agreement, the Parties shall enter into a lease substantially in the form attached hereto as **Exhibit D** and incorporated herein for all purposes under which Lee College will lease the Premises from BHISD for the sole purpose of operating and maintaining the Branch Campus. The lease term will be coterminous with the Term of this Agreement and will otherwise comply with the terms of this Agreement.

- 6.2 During the Operation Period, Lee College shall have the following responsibilities:
- a. Lee College shall operate the Facility as a branch campus consistent with the Branch Campus Requirements.
 - b. Without limiting the generality of the preceding subsection, Lee College shall ensure that: (i) the Facility provides all program offerings required by the Branch Campus Requirements, and (ii) the Facility will be operated pursuant to the policies, procedures and directives of Lee College and its Board of Regents. BHISD shall have no responsibility for the day-to-day operation of the Facility.
 - c. BHISD shall have the right to request usage of portions of the Facility when Lee College, in its discretion, does not require such portions for courses or its other operations at the Facility. BHISD shall provide advanced written notice of not less than 7 days detailing the requested use of the Facility to Lee College. Lee College may refuse to permit usage of the Facility by providing a written notice at least 2 days prior to the beginning of BHISD’s requested usage of the Facility if Lee College determines, in its discretion, that such requested usage would conflict with Lee College’s usage of the Facility.
 - d. Lee College, as it reasonably determines to be sufficient, shall, at its cost from the Budgeted Operations Payments, provide interior surveillance and security at the Facility, including, but not limited to, the monitoring of an electronic exterior door access system, interior security camera system, routine monitoring for suspicious activity, supervision of the Facility during regular business hours by one or more persons with reasonably appropriate experience and meeting all required licensing/certifications and other applicable legal requirements for such position.

- e. Subject to BHISD meeting its obligations under Section 5.3(b), Lee College will ensure that faculty and students have appropriate access to all instructional and technology equipment and infrastructure necessary to meet the Branch Campus Requirements.

6.3 During the Operation Period, Lee College shall pay all of the costs of operating and maintaining the Facility and operating the Branch Campus from the Budgeted Operations Payments, including but not limited to the costs of the following:

- a. Salaries and other compensation of faculty, staff and educational program contractors;
- b. Benefits of faculty, staff and educational program contractors;
- c. Classroom non-fixture supplies and equipment;
- d. Routine maintenance and upkeep of the Facility;
- e. Science lab non-fixture equipment maintenance and replacement;
- f. and
- g. IT service, as deemed sufficient by Lee College.

6.4 BHISD shall be responsible for maintaining, repairing and replacing major building systems, such as HVAC equipment.

6.5 Both Parties understand the safety and security risks inherent with students and agree that certain risks may be unforeseeable. Further, the Parties agree that the public safety or security departments from both Lee College and BHISD will collaborate to develop and/or review safety and security standards and/or guidelines, including emergency response, no less than ninety (90) days prior to in-person courses being offered at the Facility.

6.6 Lee College shall obtain and maintain, from the Budgeted Operations Payments, General Liability Insurance and any insurance required by state or federal law, provided that BHISD shall be solely responsible for obtaining all property insurance for the campus. With respect to each of the forgoing policies, the parties will supply evidence of such insurance to each other within thirty (30) days of both Parties executing this Agreement. Said policies will name the other party as an Additional Insured. A waiver of Subrogation in favor of the other party and notice of cancellation will be provided in writing in accordance with policy provisions. If a policy contains deductible provisions, the procuring party will be responsible for payment of the deductible amount, from the Budgeted Operations Payments or Annual Lease Payment respectively, for any claim(s) or the pursuit of any claim(s) or asserted claim(s). Each Party shall forward the original Verification of Insurance Coverage to the other Party at its address for notice provided hereunder.

SECTION 7: FINANCIAL MATTERS

7.1 For the entirety of the Term of this Agreement, Lee College shall be entitled to retain 100% of the tuition and fees it collects from students in attendance at the Branch Campus. BHISD shall not be entitled to any such tuition or fee revenues. BHISD also shall have no obligation under this Agreement for the payment of tuition or fees for any BHISD students attending the Branch Campus other than as may be provided in any separate articulation agreement that may be entered by the Parties.

7.2 In consideration of BHISD’s investment in the Facility and the funding of the Branch Campus by BHISD’s taxpayers, BHISD residents and taxpayers shall receive a reduced tuition rate that is equal to the average of Lee College’s in-district and out-of-district tuition rates. In the event that any other fees or charges of Lee College differ for in-district and out-of-district students, such fees for BHISD residents and taxpayers shall be equal to the average of the in-district and out-of-district fees. Notwithstanding the foregoing paragraph, any such discounts shall not be applied in the case of dual-enrollment students.

7.3 For the entirety of the Term, Lee College shall pay to BHISD an annual lease payment as outlined in Sections 7.3 and 7.4, herein (“Annual Lease Payment(s)”). For tax years 2024 and 2025, Lee College shall pay to BHISD an Annual Lease Payment equal to 100% of the Branch Campus Tax proceeds (“Annual Lease Payment”). Beginning with the 2026 tax year, operational payments shall be paid pursuant to Schedule C.

7.4 For each tax year beginning with the 2024 tax year, the Branch Campus Tax proceeds shall be allocated as follows:

- a. BHISD shall levy and collect the Branch Campus Tax, and the total sum of such tax collections shall be allocated on the accounts and records of both Lee College and BHISD as Lee College Branch Campus Tax proceeds.
- b. BHISD shall transfer to Lee College the lesser of the actual Branch Campus Tax proceeds received and the amount listed within the Budgeted Operations Payment Schedule for the applicable tax year (the “Budgeted Operations Payment”), which amount shall be used to fund the costs of operating and maintaining the Facility and operating the Branch Campus.
- c. The difference between the amount described in Section 7.4(a) and the total sum of Branch Campus Tax proceeds received, shall, in accordance with the terms of the Lease, represent the Annual Lease Payment to BHISD by Lee College for its use of the Facility in the applicable year.

7.5 For each tax year during the Term, BHISD shall pay Lee College the Budgeted Operations Payment on or before the last day of February. In the event that such payment does not equal the applicable annual amount listed in the Budgeted Operations Payment Schedule, BHISD shall make subsequent monthly payments from the Branch Campus Tax proceeds on or before the last day of each month until such time as Lee College has received all of such amount. In the event that the last day of any given month is not a business day for BHISD or its depository bank, the deadline to make payment shall be extended to the next day that is a business day for both BHISD and such bank.

7.6 BHISD shall prepare and maintain detailed records regarding the collection and disbursement of the Branch Campus Tax proceeds. Such records shall, at a minimum, be sufficient to evidence the proper disbursement of such proceeds in accordance with this Section 7. During the Term hereof, Lee College shall have access at all reasonable times to inspect such records.

7.7 Lee College shall create and maintain detailed records regarding its use of Branch Campus Tax proceeds and the maintenance and operation of the Branch Campus. Such records shall, at a minimum, be sufficient to evidence that such amounts have been used solely for the maintenance and operation of the Branch Campus. On or before the 270th day following the end of each fiscal year in which Lee College receives any Branch Campus Tax proceeds, Lee College shall provide to

BHISD the portion of its audited financial statements detailing its receipts and disbursements of the Branch Campus Tax proceeds. During the Term hereof, BHISD shall also have access at all reasonable times to inspect such records.

SECTION 8: LIMITATIONS ON PRIVATE USE OF THE FACILITY

8.1 Lee College warrants, represents and covenants that it will not execute any agreement permitting the use of the Facility by a Nongovernmental Person without the prior written consent of BHISD. Lee College shall give sixty (60) days' written notice to BHISD in advance of executing any such agreement. BHISD may object in writing to any such agreement prior to its execution. In such event, Lee College shall not execute such agreement unless and until approved by BHISD in writing. Should Lee College execute any agreement in contravention of this Section, BHISD shall have the right to terminate this Agreement with 30 days' written notice to Lee College; provided, however, that any such termination under this Section shall not be effective until the last day of the then-current academic year unless the Parties mutually agree otherwise. Further, students then enrolled in Lee College courses at the Facility shall be allowed to complete the academic year, and the Parties shall collaborate to complete any applicable completion of the program ("teach out") required by SASCCOC.

8.2 TO THE EXTENT PERMITTED BY LAW, LEE COLLEGE AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS BHISD FROM AND AGAINST ANY LOSS, COST, OR DAMAGE OF ANY KIND (INCLUDING REASONABLE OUTSIDE ATTORNEYS' FEES AND EXPENSES) TO THE EXTENT ARISING OUT OF OR RELATED TO THE BREACH OF THE REPRESENTATIONS, WARRANTIES AND COVENANTS IN THIS SECTION 8. THIS SECTION SURVIVES THE TERMINATION OF THIS AGREEMENT.

SECTION 9: RESERVED

SECTION 10: DISPUTE RESOLUTION

10.1 The Parties share a long-term commitment to improved educational outcomes for students under this Agreement. In order to achieve this shared objective, collaboration between the Parties is critical. Accordingly, when consensus cannot be reached on any matter that may arise under this Agreement, the Parties agree to undertake the following process for dispute resolution:

- a. The matter will first be referred to the President of Lee College and the Superintendent of BHISD, who will confer and seek to reach consensus.
- c. If consensus cannot be reached between the chief executive officers of the Parties within ten (10) business days of the date of referral to them, the matter in dispute will be submitted by both Parties to non-binding mediation before an independent third-party mediator in either Chambers County or Harris County. The Parties shall mutually agree on the selection of the mediator and, if the Parties are unable to agree, then the mediator shall be selected by the most senior full-time sitting judge of the Chambers County District Court. Both Parties will equally share the cost of mediation. Mediation shall be a condition precedent to either Party pursuing the dispute in court.

- d. If mediation is unsuccessful in arriving at a consensus resolution to the matter in dispute or if the Parties fail to mediate within thirty (30) days after mediation becomes available to the parties under subsection c. above, the Parties may submit the dispute to a Texas district court of competent jurisdiction.

SECTION 11: BREACH AND TERMINATION

11.1 Any material failure by any Party to perform any term or provision of this Agreement, which breach continues uncured for a period of ninety (90) days following written notice of such failure from the non-defaulting Party, unless such period is extended by written mutual consent, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged breach and, where appropriate, the manner in which said breach satisfactorily may be cured. If the nature of the alleged breach is such that it cannot reasonably be cured within such 90-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 90-day period. Upon the occurrence and during the continuance of an uncured breach or default under this Agreement as described above, the non-defaulting party may terminate this Agreement and the Lease by written notice to the breaching party, and the non-defaulting Party may pursue any and all available legal or equitable remedies; provided, however, that any such termination under this Section shall not be effective until the last day of the then-current academic year unless the Parties mutually agree otherwise. Further, students then enrolled in Lee College courses at the Facility shall be allowed to complete the academic year, and the Parties shall collaborate to complete any applicable completion of the program (“teach out”) required by SASCCOC.

SECTION 12: MISCELLANEOUS

11.2 If changed conditions are encountered during the term of this Agreement, the Agreement may be supplemented or amended under terms and conditions mutually agreeable to the Parties, provided that all such changes, amendments, supplements, or modifications shall be in writing and approved by each Party’s respective governing bodies.

11.3 Throughout the term of this Agreement, the Parties agree to establish and maintain detailed records regarding the construction and operation of the Facility including information regarding the costs of construction and maintenance of the Facility.

11.4 Each Party will comply with all state and federal laws applicable to this Agreement, including but not limited to the Family Educational Rights and Privacy Act (FERPA), Title VI of the Civil Rights Act of 1964, as amended; Title VII of the Civil Rights Act; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; the Americans with Disabilities Act of 1990 (ADA), as amended; applicable provisions of the Education Code and the Texas Government Code; and applicable BHISD and Lee College policies and procedures. This Agreement is subject to all applicable present and future valid laws governing the operation of the Branch Campus.

11.5 Nothing in this Agreement is to be construed as transferring responsibility from one Party to the other.

11.6 This Agreement, including attachments, contains the entire agreement of the Parties hereto with respect to the matters covered by its terms, and it may not be modified in any manner

without the express written consent of the Parties. No other agreement, statement, or promise made by or to any party, or made by or to any officer, director, employee, or agent of any party, that is not contained in this Agreement shall be of any force or effect.

11.7 If any term(s) or provision(s) of this Agreement are held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated, unless such holding causes the obligations of the Parties hereto to be impossible to perform or shall render the terms of this Agreement to be inconsistent with the intent of the Parties hereto.

11.8 No assignment of this Agreement or of any duty or obligation of performance hereunder, shall be made in whole or in part by any Party hereto without the prior written consent of the other Parties hereto. Any attempt to assign any portion of this Agreement without the prior written consent of the other Party shall be void *ab initio*.

11.9 No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision. No delay in acting with regard to any breach of any provision shall be construed to be a waiver of such breach.

11.10 TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, EACH PARTY AGREES TO INDEMNIFY, RELEASE, AND HOLD THE OTHER PARTY AND THEIR RESPECTIVE TRUSTEES, OFFICERS, EMPLOYEES, AND AGENTS HARMLESS FROM ANY TYPE OR ANY NATURE WHATSOEVER (INCLUDING COSTS AND REASONABLE LEGAL AND EXPERT FEES) FOR DAMAGE TO, LOSS OF, OR DESTRUCTION OF ANY TANGIBLE PROPERTY OR BODILY INJURY OR DEATH TO ANY PERSON, ARISING FROM, IN CONNECTION WITH, OR ANY WAY INCIDENT TO THIS AGREEMENT, TO THE EXTENT FINALLY DETERMINED TO HAVE BEEN CAUSED BY EITHER PARTY AND ITS PERSONNEL IN PERFORMANCE OF THE SERVICES.

11.11 Neither of the Parties waive or relinquish any immunity or defense on behalf of themselves, their trustees, officers, employees, or agents as a result of its execution of this Agreement and performance of the functions and obligations described herein.

11.12 The Parties shall comply with all applicable laws regarding records and record retention including but not limited to the Texas Public Information Act and the Local Government Records Act, and any other applicable Texas records retention laws.

11.13 All records and reports generated, prepared, assembled, or maintained by BHISD in relation to this Agreement shall be available for review, inspection, and audit by Lee College and its auditors. Copies will be made available upon request.

11.14 The Parties to this Agreement expressly acknowledge and agree that all monies paid pursuant to this Agreement shall be paid from budgeted available funds for the current fiscal year of each such entity.

11.15 The meetings at which this Agreement was approved by the Parties' governing boards

were posted and held in accordance with the Texas Open Meetings Act, Texas Government Code Chapter 551.

[Signature page follows]

This Agreement is executed in counterparts, each of which shall have the full force and effect of an original Agreement, and each of which shall constitute but one and the same instrument.

IN WITNESS THEREOF, the undersigned Parties acting under the authority of their respective governing boards have caused this Agreement to be duly executed in multiple counterparts, each of which shall constitute an original, all as of the day and year above first written, which is the date of this Agreement.

LEE COLLEGE DISTRICT

BARBERS HILL INDEPENDENT SCHOOL DISTRICT

By: _____
Gilbert Santana, Chair
Date: _____

By: _____
Benny May, Board President
Date: _____

Attest: _____
Mark Himsel, Secretary
Date: _____

Attest: _____
Becky Tice, Board Secretary
Date: _____

Exhibit A

Legal Description of the Premises

[Note: To be provided by BHISD]

Exhibit B
Facility Plan

[Note: Intended to be pulled from BHISD bid documentation]

Exhibit C
Budgeted Operations Payment Schedule

[Note: To be provided by BHISD (BHISD has previously circulated rough drafts of this to LC)]