

LEASE AGREEMENT

This Lease Agreement (this “**Agreement**”) is entered into effect as of _____, 2013 (“**Effective Date**”) by and between the City of San Leandro, a municipal corporation (the “**City**”) and the Alameda County Fire Department, a dependent fire district formed under the Fire Protection District Law of 1961 (Health and Safety Code Sections 13801 *et seq.*) and governed by the Alameda County Board of Directors (the “**Lessee**”). The City and the Lessee are hereinafter collectively referred to as the “**Parties.**”

RECITALS

A. The City is the owner of the real property located at two parcels on Lola Street (APNs 075-0209-001 and 075-0155-008), together (the “**Property**”) as more particularly described in Exhibit A attached hereto and incorporated herein by this reference. The Property is improved with a number of structures, including a classroom and fire tower (City structures) and a portable trailer, a carport, an external restroom, a structure made of storage containers, and various other containers, trailers, and other structures used for training purposes (Lessee structures). All of the structures located on the Property, together with all improvements located thereon (the “**Improvements**”) are hereinafter referred to as the “**Premises,**” as depicted in Exhibit B attached hereto and incorporated herein by this reference. The City owned structures are described in Exhibit C attached hereto and incorporated herein by this reference.

B. The Premises, also known as the Fire Training Center, or 890 Lola Street, has been used as a training ground for firefighters from both Alameda County and the surrounding area since as early as 1968. The Lessee has been using the Premises since approximately 1995.

C. Pursuant to a 2005 agreement between the City and Lessee regarding fire and emergency response services (the “2005 Agreement”), Lessee has been permitted to use the “Training Tower facility” on the Property at any time and free of charge, and has been responsible for routine maintenance, repair and upkeep.

D. The City and Lessee now wish to memorialize a more detailed agreement as to the access, use, rent, and maintenance of the Premises in this Lease Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. RECITALS. The Parties hereby acknowledge the truth of the Recitals set forth above, and such Recitals are hereby incorporated into this Agreement.

2. LEASEHOLD. The City leases to the Lessee, and the Lessee agrees to lease from the City the Premises. The City leases the Premises in “as-is” condition existing on the Effective Date, and the Lessee acknowledges that, except as otherwise expressly set forth in this Agreement, the City makes no representations or warranties to the Lessee with regard to the condition of the Premises or the fitness or suitability thereof for the Lessee’s purposes.

3. TERM. The term of this Agreement (the “**Term**”) shall commence on the Effective Date, and unless sooner terminated pursuant to the provisions hereof, shall expire on the tenth (10th) anniversary of the Effective Date. There may be three (3) additional five (5) year term extensions (“**Extension**”). Six (6) months prior to the end of any Term, the Lessee must give the City written notice of the intent to exercise an Extension.

4. RENT. Notwithstanding anything to the contrary in the 2005 agreement, the Lessee shall pay to the City rent for the Premises (“**Rent**”) in the amount of ten thousand seven hundred eighty two dollars (\$10,782) per month. Each July 1, the Rent shall automatically increase by 3.5%.

5. USE. It is agreed that the Premises shall be used primarily as a training center for area firefighters and law enforcement personnel. The Premises shall be used in compliance with relevant local, state, and federal laws and regulations and for no other purpose without the prior written consent of the City. The Lessee shall not encroach on the public right of way adjacent to the Premises or on any portions of the property that are not part of the Premises.

6. TAXES. Both Parties are governmental entities and exempt from payment of most taxes. However, the Lessee agrees to pay all lawful real and personal property taxes and assessments levied by the State, County, the City or other tax or assessment levying bodies, upon the Property, the Premises, and any goods, wares, merchandise, equipment and other materials stored or kept therein, should any be assessed.

7. MAINTENANCE, REPAIRS AND CAPITAL IMPROVEMENTS. The Lessee shall, at its sole cost and expense, and without any liability to the City, operate and maintain the Premises and Improvements in good order, in compliance with applicable laws, and in safe, sanitary and clean condition, reasonable wear and tear excluded, and in compliance with all local, state and federal laws relating to the use, occupancy or operation of the Premises. The Lessee shall keep and maintain all portions of the Premises free of accumulation of dirt, rubbish, and graffiti. The Lessee is required to maintain, repair and/or replace (at its sole expense) including, but not limited to: interior and exterior paint and carpet, all electrical conduit, wiring, etc., smoke alarms, restrooms, roofs, gutters, HVAC, plumbing, foundations, flood damage, water heaters, appliances, stairs and entryways, gas lines, seismic upgrades, ADA upgrades, doors, windows and window coverings, flooring, and asbestos removal/management. Without limiting the generality of the foregoing, the Lessee shall also be responsible for maintaining landscaping on the Premises, as well as any security features installed by Lessee. The Lessee expressly acknowledges and agrees that the City has no obligation to maintain the Premises.

Costs for capital improvements, including repair or construction of fencing, any necessary repair or resurfacing of paved surfaces on the Premises and structural repairs not including the maintenance items listed above will be apportioned to the City based on its membership in the Alameda County Fire Department. Such repairs shall be at least equal in quality to the original work, reasonable wear and tear accepted. The City’s prior approval shall be required for any repairs or improvements estimated to cost in excess of five thousand dollars (\$5,000). In addition, the Lessee shall provide prior notice to the City of any and all improvements to be made to the Property or Premises. The Lessee shall take reasonable steps to ensure that access to the Premises is limited to the Lessee and the Lessee’s agents, employees,

contractors and subcontractors. The failure of the Lessee to maintain the Premises in accordance with this Agreement shall, in the City's discretion, be grounds for termination of this Agreement pursuant to Section 17.

8. UTILITIES. The Lessee shall pay for all utilities furnished to the Premises.

9. LIENS. The Lessee agrees to pay for all labor done or materials furnished in maintenance of the Premises by the Lessee, and to keep the Premises, Improvements and the Lessee's possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever created by the Lessee's act or omission.

10. ASSIGNMENT OR SUBLETTING. This Agreement shall not be assigned or transferred, nor shall the Lessee have the right to sublet the Premises or any part thereof without the written consent of the City of San Leandro City Council evidenced by a resolution thereof duly adopted for said purpose.

11. INDEMNITY. To the fullest extent permitted by law, Lessee shall defend (with counsel reasonably acceptable to City), indemnify and hold City and City's elected and appointed officers, officials, employees, agents and representatives (collectively, "Indemnitees") harmless from and against any and all Claims arising out of or relating directly or indirectly to this Agreement or the Premises (including without limitation, Claims for or relating to loss of or damage to property, injury or death of any person, and economic losses and consequential or resulting damage of any kind), including any Claim arising from or in connection with or in any way attributable to: (i) the use or occupancy, or manner of use or occupancy of the Premises, the Improvements or the Property by Lessee or the Lessee or its agents, employees, contractors, subtenants or invitees ("Lessee Parties"), (ii) any act, error, omission or negligence of Lessee Parties or any invitee, guest or licensee of Lessee in, on or about the Property, (iii) any Alterations, activity, work, or thing done, omitted, permitted, allowed or suffered by Lessee or Lessee Parties in, at, or about the Premises, the Improvements or the Property, or (iv) any breach or default in performance of any obligation on Lessee's part in the performance of any covenant or agreement to be performed under this Agreement, except to the extent caused by the sole gross negligence or willful conduct of City. The provisions of this Section shall not be construed or interpreted as in any way restricting, limiting or modifying Lessee's insurance obligations under this Agreement and are independent of such obligations. Lessee's compliance with the insurance requirements set forth in this Agreement shall not in any way restrict, limit or modify Lessee's indemnification obligations hereunder. The provisions of this Section shall survive the expiration or earlier termination of this Agreement. The indemnity obligations of the Lessee under this shall not extend to Claims to the extent they arise as a result of the Indemnitees' gross negligence or willful misconduct. The Lessee likewise agrees to keep all Improvements upon the Premises insured against loss by fire in an amount to be designated by the City from time to time and in companies to be approved by the City. The Lessee assumes all risk of damage or destruction to the Premises, except acts of God.

12. INSURANCE.

12.1. Type and Amounts Required. Lessee shall, at its sole expense, procure and maintain throughout the Term (plus such earlier and later periods as Lessee may be in occupancy of the Premises) all of the following:

(a) Commercial general liability insurance including contractual liability coverage, written on an “occurrence” policy form, covering bodily injury, property damage and personal injury arising out of or relating (directly or indirectly) to Lessee’s operations, conduct, assumed liabilities, or use or occupancy of the Property and the Premises naming the Indemnitees as additional insureds, with minimum coverage in the amount of Two Million Dollars (\$2,000,000) per occurrence combined single limit for bodily injury and property damage and Four Million Dollars (\$4,000,000) in the aggregate;

(b) Evidence of Property insurance protecting Lessee against loss or damage by fire and such other risks as are insurable under then available standard forms of “all risk” insurance policies, covering Lessee’s personal property and trade fixtures in or about the Premises or the Property, and any improvements and/or alterations in the Premises, in an amount not less than one hundred percent (100%) of their actual replacement cost or highest insurable value, stipulating the City as loss payee, as applicable;

(c) Workers’ compensation insurance in the statutory amounts shall be provided with limits of not less than one million (\$1,000,000) per accident. In the alternative, Lessee may rely on a self-insurance program to meet these requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code; and

(d) Comprehensive automobile liability insurance with a minimum coverage of one million dollars (\$1,000,000) per occurrence, combined single limit.

The foregoing policies shall protect Lessee as named insured, and City and the other Indemnitees as additional insureds, and if subject to deductibles shall provide for deductible amounts not in excess of those approved in advance in writing by City in its reasonable discretion. City reserves the right to increase the foregoing amount of required liability coverage from time to time (but not more often than once each calendar year) to adequately protect Indemnitees and to require that Lessee cause any of its contractors, vendors or other parties conducting activities in or about or occupying the Premises to obtain and maintain insurance as determined by City and as to which the Indemnitees shall be additional insureds.

12.2 Excess Coverage Liability Policy. Nothing in this Article shall prevent Lessee from obtaining insurance of the kind and in the amounts provided for under this Section under an excess coverage liability insurance policy covering other properties as well as the Premises; provided, however, that any such policy of excess coverage liability insurance (i) shall specify those amounts of the total insurance allocated to the Premises, which amounts shall not be less than the amounts required by Section 12.1, (ii) such amounts so specified shall be sufficient to prevent any one of the insureds from becoming a co-insurer within the terms of the applicable policy, and (iii) shall, as to the Premises, otherwise comply with the requirements of this Article as to endorsements and coverage.

12.3. Policy Form. Lessee maintains its insurance through the County of Alameda, which is self-insured. Other than LESSEE's workers' compensation insurance, all coverage shall (i) provide that no act or omission of LESSEE shall affect or limit the obligations of the insurer with respect to any other insured; (ii) include all waiver of subrogation rights endorsements necessary; and (iii) provide that the coverage shall be primary, and that City, although an additional insured, shall nevertheless be entitled to recovery for any damage to City or the other Indemnitees by reason of acts or omission of Lessee, and that any coverage carried by City shall be noncontributory with respect to coverage carried by Lessee. If requested, proof of coverage shall be delivered to City by Lessee on or before the Commencement Date. City may at any time, and from time to time, inspect and /or copy any and all insurance coverage required by this Agreement.

12.4 Insurance of Lessee's Contractors and Agents. In addition to any other insurance requirements, Lessee expressly agrees that none of its agents, contractors, workmen, mechanics, suppliers or invitees performing construction or repair work in the Premises shall commence such work unless and until each of them shall furnish Lessee (and City if requested) with satisfactory evidence of insurance coverage, financial responsibility and appropriate written releases of mechanic's or materialmen's lien, or stop notice claims, as necessary.

12.5 Waiver of Subrogation. Lessee and City each agree to waive, and as applicable shall cause the insurance companies issuing their respective property (first party) insurance, to waive any subrogation rights that each Party and such companies may have against Lessee or City, respectively, as long as the insurance is not invalidated by the waiver. If the waivers of subrogation are contained in their respective insurance policies, City and Lessee waive any right that either may have against the other on account of any loss or damage to their respective property to the extent that the loss or damage is insured under their respective insurance policies.

13. LESSEE COVENANTS REGARDING ENVIRONMENTAL MATTERS. The Lessee hereby covenants and agrees that throughout the Term:

(a) The Premises, and the use and operation thereof, shall be in compliance with all Hazardous Materials Laws, and the Lessee shall not cause or permit the Premises or any portion thereof to be in violation of any Hazardous Materials Laws (as defined in Exhibit D).

(b) The Lessee shall not permit the Premises or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials nor shall Lessee permit the presence or release of Hazardous Materials in, on, under, about or from the Premises.

(c) Upon receiving knowledge of the same, the Lessee shall immediately advise the City in writing of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Lessee pursuant to any applicable Hazardous Materials Laws; (ii) any and all complaints, claims, citations, demands, inquiries, reports, or notices made or threatened by any third party against the Lessee, the Premises relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials; (iii) the presence or release of any Hazardous Materials in, on, under, about or from the Premises; or (iv) the discovery of any occurrence or

condition, by the Lessee, on any real property adjoining or in the vicinity of the Premises classified as “Border Zone Property” under the provisions of California Health and Safety Code section 25220 *et seq.*, or any regulation adopted in connection therewith, that may in any way affect the Premises pursuant to any Hazardous Materials Laws or cause it or any part thereof to be designated as Border Zone Property. The matters set forth in the foregoing clauses (i) through (iv) are hereinafter referred to as “**Hazardous Materials Claims.**”

(d) Without the City’s prior written consent, which shall not be unreasonably withheld, the Lessee shall not take any remedial action in response to the presence of any Hazardous Materials in, on, under, or about the Premises (other than in emergency situations or as required by governmental agencies having jurisdiction in which case the City agrees to provide its consent), nor enter into any settlement agreement, consent decree, or other compromise with respect to any Hazardous Materials Claim.

(e) If the presence of any Hazardous Material on the Premises results in any contamination of the Premises in violation of Hazardous Materials Laws, except to the extent such contamination is caused by the City, the Lessee shall promptly take all actions at its sole expense as are necessary to remediate the Premises as required by law; provided that the Lessee first obtains the City’s approval of such actions, which approval may be withheld in the City’s reasonable discretion. All costs and expenses of any Remedial Work shall be paid by the Lessee, it being understood that the City shall incur no cost, expense or liability in connection with any Remedial Work. The City shall have the right, but not the obligation, to join and participate in, as a party if it so elects at the City’s cost, any legal proceedings or actions initiated in connection with any Hazardous Material Claims.

14. RIGHT TO ENTER UPON PREMISES. The City, by and through its proper officers, employees, and agents reserves and shall always have the right to enter upon the Premises for the purpose of viewing and ascertaining the condition of same and the operation and maintenance thereof.

15. CITY’S RIGHT TO PERFORM LESSEE OBLIGATIONS. If following notice and the expiration of any applicable cure period as set forth in this Agreement, the Lessee fails to perform its obligations to maintain the Premises in accordance with the standards set forth in this Agreement, the City shall have the right, but not the obligation, to perform such work upon delivery of written notice to the Lessee, and the Lessee shall reimburse the City for all expenditures the City incurs in connection with such work. The City’s election to undertake such obligation shall not operate as a waiver of any other right or remedy the City may have pursuant to this Agreement. Notwithstanding any contrary provision herein, the City shall not be obligated to make any repairs, alterations, additions, improvements or betterments to the Premises during the term of this Agreement nor shall the City be obligated to maintain or operate the Premises.

16. NOTICE. Until further notice in writing, any demand or notice which either Party shall be required or may desire to make upon or give to the other, shall be in writing. Such demand or notice shall be delivered personally or sent by registered or certified mail, addressed to the respective Parties as follows:

City: Tara Peterson
City of San Leandro
835 East 14th Street
San Leandro, CA 94577

Lessee: Alameda County Fire Department
834 E. 14th Street
San Leandro, CA 94577

17. TERMINATION. In the event the Lessee shall fail to fulfill the conditions and covenants contained in this Agreement, the City, in addition to any other rights or remedies it may have at law or in equity, shall have the option of immediately terminating this Agreement and declaring said Agreement forfeited and the Term (or Extension) ended. In such event, the City may re-enter the Premises and remove all persons and property therefrom and repossess itself of the Premises.

Either party may terminate this agreement upon two year's notice. The Lessee is required to remove all of the structures from the Premises, with the exception of the structures identified as City structures, as depicted in Exhibit C, and its debris at its sole cost by the termination of this Agreement.

18. NOTICE OF DEFAULT. Notwithstanding anything to the contrary, no forfeiture shall be declared by the City unless and until not less than thirty (30) days have elapsed after written notice of failure of the Lessee to perform the terms, agreements, conditions, or covenants herein to be performed by the Lessee, shall have been given to the Lessee by the City, and for forfeiture of said agreement for any default by the Lessee of the performance of any such term, agreement, condition or covenant shall be declared by the City, if such default shall have been cured, or obviated, prior to the expiration of such notice.

19. TIME IS OF ESSENCE. Time is of essence in the performance of this Agreement.

20. GOVERNING LAW. The laws of the State of California shall govern this Agreement.

21. SUCCESSORS AND ASSIGNS. Subject to the restrictions on transfer set forth in Section 10, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. Any reference in this Lease to a specifically named Party shall be deemed to apply to any permitted successor and assign of such Party who has acquired an interest in compliance with this Agreement as if in every case so expressed.

22. SEVERABILITY. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid

or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

23. NO THIRD-PARTY BENEFICIARIES; DISCLAIMER OF PARTNERSHIP, LENDER/BORROWER RELATIONSHIP. Nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties any rights or remedies hereunder. The relationship of the Parties under this Agreement is solely that of landlord and tenant, and it is expressly understood and agreed that the City does not as a result of this Agreement in any way nor for any purpose become a partner of the Lessee or a joint venturer with the Lessee in the conduct of business or otherwise by the Lessee. This Agreement is not intended to, and shall not be construed to, create the relationship of principal and agent, partnership, joint venture, or association as between the City and the Lessee. It is further expressly understood and agreed that this Agreement is not intended to, and shall not be construed to create the relationship of lender and borrower, and the City does not, solely as a result of this Agreement, become a lender to the Lessee.

24. ENTIRE AGREEMENT. This Agreement, together with Exhibits A through D which by this reference are hereby incorporated herein, contains the entire agreement between the Parties relative to the transactions covered hereby. All previous correspondence, communications, discussions, agreements, understandings or proposals and acceptances thereof between the Parties or their representatives, whether oral or written, are deemed to have been integrated into and superseded by this Agreement and are of no further force and effect except as expressly provided in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized representatives in the City of San Leandro, State of California, as of the date first written above.

LESSEE:

ALAMEDA COUNTY FIRE DEPARTMENT

BY: _____

PRINT NAME: _____

TITLE: _____

CITY:

CITY OF SAN LEANDRO

BY:

Chris Zapata, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

Richard D. Pio Roda, City Attorney

Exhibit A

Legal Description

Real property in the City of San Leandro, County of Alameda, State of California, described as follows:

Parcel One: Beginning at the intersection of the Northeastern line of the Central Pacific Railway Company right of way, 100 feet wide, with the centerline of San Leandro Creek; thence in a general Southeasterly direction along the said centerline of San Leandro Creek to its intersection with the Northwesterly prolongation of the Southwestern line of Block 55, as said block is shown on the "Map of the Town of San Leandro, County Seat of Alameda County", filed February 27, 1855 and recorded June 14, 1870 in [Book 1 of Maps, Page 19](#), a certified copy thereof appearing also in [Book 2 of Maps, Page 43](#), in the Office of the County Recorder of Alameda County; thence along the said Northwesterly prolongation, along the said Southwestern line of Block 55, and along the Southeasterly prolongation of the said Southwestern line of Block 55, South 28° 00' East 110.00 feet, more or less, to the Southeastern line of Lola Street, as said street is shown on said certified copy of said Map; thence along the Southwesterly prolongation of the said Southeastern line of Lola Street, Southwesterly to the intersection with the aforementioned Northeastern line of the Central Pacific Railway Company right of way; thence along the last mentioned line North 42° 42' West to the point of beginning.

APN: 075-209-001

Parcel Two: The Southwestern 75.00 feet, right angle measurement of Lot B, in Block 55, as shown on the "Map of the Town of San Leandro, County Seat of Alameda County", filed February 27, 1855, and recorded June 14, 1870 in [Book 1 of Maps, Page 19](#), a certified copy thereof appearing also in [Book 2 of Maps, Page 43](#), in the Office of the County Recorder of Alameda County.

APN: 075-155-008

Exhibit B

Aerial Photo of Fire Training Center – Property Lines

Exhibit C

Aerial Photo Depicting City Structures

Exhibit D

DEFINITION OF HAZARDOUS MATERIAL, ENVIRONMENTAL LAWS

As used in this Agreement, the term “**Hazardous Material**” means any chemical, compound, material, mixture, or substance that is now or may in the future be defined or listed in, or otherwise classified pursuant to any Environmental Laws (defined below) as a “hazardous substance”, “hazardous material”, “hazardous waste”, “extremely hazardous waste”, “infectious waste”, “toxic substance”, “toxic pollutant”, or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity. The term “hazardous material” shall also include asbestos or asbestos-containing materials, radon, chrome and/or chromium, polychlorinated biphenyls, petroleum, petroleum products or by-products, petroleum components, oil, mineral spirits, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable as fuel, perchlorate, and methy tert butyl ether, whether or not defined as a hazardous waste or hazardous substance in the Environmental Laws.

As used in this Agreement, the term “**Environmental Laws**” means any and all federal, state and local statutes, ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations or directives, or any other requirements of governmental authorities, as may presently exist, or as may be amended or supplemented, or hereafter enacted, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Materials, or the protection of the environment or human, plant or animal health, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Oil Pollution Act (33 U.S.C. § 2701 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 et seq.), the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 et seq.), the Toxic Mold Protection Act (Cal. Health & Safety Code § 26100, et seq.), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 et seq.), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 et seq.), the Hazardous Materials Release Response Plans & Inventory Act (Cal. Health & Safety Code § 25500 et seq.), and the Carpenter-Presley-Tanner Hazardous Substances Account Act (Cal. Health and Safety Code, Section 25300 et seq.).

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