

Attachment B

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**FACILITY USE AGREEMENT
BETWEEN
COUNTY OF MONTEREY
and
MONTEREY COUNTY REGIONAL FIRE DISTRICT**

This Facility Use Agreement ("Agreement") by and between the County of Monterey, a political subdivision of the State of California, ("COUNTY"), and Monterey County Regional Fire District ("MCRFD"),

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1.0 GENERAL DESCRIPTION

1.1 MCRFD desires to secure from the COUNTY certain rights and privileges and to conduct training event(s) ("Event") in Toro Park and County-owned properties on the former Fort Ord (the "Facility"), in Monterey County, California.

1.2 COUNTY hereby grants to the MCRFD the right to occupy the Facility for the purposes hereinafter set forth, subject to the terms and conditions of this Agreement:

1.2.1 MCRFD training may include (1) connection into a fire hydrant, lay supply line and flow water with one or two engine companies, utilizing 700-1,000 gallons of water; and (2) utilize back roads for bi-annual 4x4 training and area familiarization; water discharge will take place on turf areas whenever possible.

1.2.2 The parties will agree in writing via email prior to each Event, the date of each Event and what area will be used within the Facility. MCRFD will schedule all Event dates with the Administrative Operations Manager for the Facility. The County retains sole discretion to decline MCRFD's request to use the Facility for a specific date and/or Event.

1.2.3 The Facility is provided on an "as is" basis. It is the responsibility of MCRFD to inspect the Facility prior to its use, and such use shall confirm that MCRFD has determined that the Facility is appropriate and safe for its purposes.

1.2.4 MCRFD agrees that the Facility will be open to the public during the Event, but the specific area will be closed.

2.0 TERM OF AGREEMENT

2.1 The term of this Agreement is from November 2, 2021 to November 1, 2024, unless sooner terminated pursuant to this Agreement. This Agreement may be extended for two additional one (1) year terms.

2.2 The County reserves the right to cancel this Agreement, or any extension of this Agreement, without cause, with a thirty (30) day written notice, or with cause, immediately.

3.0 PAYMENT PROVISIONS

3.1 In the furtherance of emergency services and fire prevention and suppression provided by MCRFD for County residents, the parties agree no fees will be due and payable for the rights and privileges granted.

3.2 Additional Services

MCRFD shall reimburse COUNTY for any additional MCRFD requested services during use of the Facility not previously identified in this Agreement on a time and materials basis. These services may include, but are not limited to, staff assistance, equipment, vehicles, repair work, monitoring and supervision, vessels, and vehicles.

MCRFD shall make payment to COUNTY within fifteen (15) days after the Event.

4.0 GENERAL OBLIGATIONS

A. MCRFD

4.1 MCRFD shall be required to obtain all permits and licenses required under this Agreement and provide copies to the COUNTY at least two (2) week prior to the Event. This may include, but is not limited to, California Highway Patrol, Federal Aviation Administration, Monterey County Public Health, Monterey County Sheriff's Office, and CalTrans.

4.2 MCRFD, its agents, employees, and patrons shall be responsible to act in accordance to and obey all federal, state, and local laws related to and/or required to engage in the Event, its conduct, and its performance under this Agreement.

4.3 MCRFD shall not commit or permit any injury or damage to any part of Facility, or its appurtenances nor any waste thereon. All property utilized by MCRFD during the Event shall be returned to COUNTY in the same condition or repair after each program use, reasonable wear and tear excepted.

4.4 MCRFD shall promptly arrange and pay to have repairs made for any damage to the Facility arising out of MCRFD's operation hereunder. MCRFD will complete all environmental repairs, as agreed to with COUNTY representatives, within seven (7) days following the Event. If repairs are not completed to the satisfaction of COUNTY, COUNTY will have repairs performed and an invoice will be sent to MCRFD for the cost.

4.5 MCRFD shall be responsible for all equipment used at the Event.

4.6 MCRFD shall return all on-site picnic tables, if moved for Event, to original locations after the Event.

4.7 It is mutually agreed that this Agreement and the privileges granted herein, or any

part thereof, cannot be assigned or otherwise disposed of without the written consent of the COUNTY.

B. COUNTY

4.8 COUNTY shall conduct pre-Event and post-Event walk-throughs to ensure site conditions are documented.

4.8.1 COUNTY shall notify MCRFD of the walk-through time and place not less than three (3) business days in advance to provide MCRFD the opportunity to attend.

4.8.2 Walk-throughs shall be documented with notes and photographs as necessary.

4.8.3 During the post-Event walkthrough, the COUNTY will identify any damage as a result of the Event, and any necessary restoration, including fixing fields. COUNTY shall provide a written Restoration Letter based on findings made during the walk-through.

4.8.4 County will invoice MCRFD for any damages not repaired, removal of MCRFD property and any cleanup performed by COUNTY as a result of MCRFD leaving Facility in an unsatisfactory condition. Payment of invoice will be due within seven (7) days of receipt.

5.0 INDEMNIFICATION

5.1 MCRFD shall indemnify, defend, and hold harmless the County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorney fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the MCRFD's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the County. "MCRFD's performance" includes MCRFD's action or inaction and the action or inaction of MCRFD's officers, employees, agents and subcontractors.

6.0 INSURANCE & EVIDENCE OF COVERAGE

6.1 Evidence of Coverage: Prior to commencement of this Agreement, MCRFD shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, MCRFD, upon request, shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to COUNTY, unless otherwise directed. MCRFD shall not proceed with performance under this Agreement, and COUNTY shall have no liability, until MCRFD has obtained all insurance required and such insurance documentation has been provided to and approved by COUNTY. This approval of insurance shall neither relieve nor decrease the liability of MCRFD. Acceptance or approval of insurance shall in no way modify or change the Indemnity and Hold Harmless clauses in this Agreement, which shall continue in full force and effect. Failure by MCRFD to maintain such insurance is a default of this Agreement, which entitles COUNTY, at its sole discretion, to terminate this Agreement immediately.

6.2 Qualifying Insurers: All insurance required by this Agreement shall be with a company acceptable to COUNTY and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by COUNTY.

6.3 Insurance Coverage Requirements: Without limiting MCRFD's duty to indemnify, MCRFD shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the minimum limits of liability as listed in this section.

Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Business Automobile Liability Insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence, if applicable.

Worker's Compensation Insurance of MCRFD employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease, if applicable.

Commercial general liability and automobile liability policies required by this Agreement shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the MCRFD's work, including ongoing and completed operations, and shall further provide an endorsement stating that such insurance is primary insurance to any insurance or self-insurance maintained by COUNTY and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the MCRFD's insurance. **(Insurance requirements are modified by Exhibit A – Insurance Modifications)**

6.4 Other Insurance Requirements: Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect

for a period of three years following the date MCRFD completes its performance of services under this Agreement.

Each liability policy shall provide that COUNTY shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for MCRFD and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Prior to the execution of this Agreement by COUNTY, MCRFD shall file certificates of insurance with the COUNTY, showing that MCRFD has in effect the insurance required by this Agreement. MCRFD shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

7.0 RELATIONSHIP

Neither party hereto is the agent of the other and neither party shall have the right to act for or on behalf of the other or bind the other in any manner whatsoever. Neither party shall be responsible for any debts, obligations, or expenses incurred by the other party, whether or not in connection with the Event contemplated hereby in the absence of written approval thereof in advance. MCRFD shall clearly establish at all times during the terms hereof that COUNTY is merely permitting the use of the subject premises in accordance with the terms hereof and that COUNTY is not co-partner or otherwise liable or obligated for any cost, expenses, or MCRFD's conduct of same. The COUNTY makes no representation or warranty with respect to the suitability of Facility for MCRFD activities conducted hereunder.

8.0 MISCELLANEOUS PROVISIONS

- 8.1** Notices to the parties to this Agreement shall be to the parties and their Agreement representatives indicated in the signature section below.
- 8.2** This Agreement is not binding upon the COUNTY until it has been duly accepted and signed by its authorized representative.
- 8.3** MCRFD agrees that any staff of COUNTY shall always have access to Facility which includes the areas closed for the MCRFD event.
- 8.4** It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid, unless made in writing and signed by the parties hereto, and that no oral understandings or agreements not incorporated herein and no alterations or variations of the terms hereto, unless made in writing and signed by the parties hereto, shall be binding upon any of the parties hereto.
- 8.5** No part of this Agreement or performance under it may be subcontracted or assigned to

another entity or party without the express prior written approval of the other party; such consent may be withheld whether for reasonable or unreasonable cause at the sole discretion of that party.

- 8.6** In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.
- 8.7** NO REPRESENTATION OR WARRANTY OF FITNESS. MCRFD acknowledges that it has been advised by COUNTY that the conditions which MCRFD is authorized to use in accordance with this Agreement has not been represented as being fit for MCRFD's intended use or for any particular use. MCRFD acknowledges that it has been advised to inspect the condition, facilities, and other areas MCRFD is permitted to use hereunder prior to the issuance of this Agreement, and/or prior to MCRFD's actual use from time to time. Based upon MCRFD's personal inspection or upon MCRFD's right to inspect, MCRFD further acknowledges that the conditions, facilities, and other areas are safe and adequate for MCRFD's intended use. MCRFD shall be responsible for all equipment and for adequate safeguards for the protection of MCRFD and others.
- 8.8** COUNTY and MCRFD shall be relieved of their obligation to the other if unable to perform the terms and conditions of this Agreement by virtue of governmental regulations or order, or by strike or war (declared or undeclared) or other calamity such as fire, earthquake, hurricane, or similar acts of God, or because of other similar or dissimilar cause or causes beyond their control.

IN WITNESS WHEREOF, this Agreement has been executed by and on behalf of the parties hereto the day and year first above written.

<p>NAME: MONTEREY COUNTY REGIONAL FIRE DISTRICT</p> <p>DocuSigned by: By: <i>M. Urquides</i></p> <hr/> <p><small>78EA1E8901E6487...</small> (Signature)</p> <p>Michael Urquides Fire Chief Address: Monterey County Regional Fire District 19900 Portola Dr Salinas CA 93908-1234</p> <p>Date: <u>10/21/2021 10:50 AM PDT</u></p>	<p>NAME: COUNTY OF MONTEREY</p> <p>By:</p> <hr/> <p>(Signature)</p> <p>Randell Ishii, MS, PE, TE, PTOE Director of Public Works, Facilities & Parks Address: County of Monterey Public Works, Facilities & Parks 1441 Schilling Pl S Fl2 Salinas CA 93901-4527</p> <p>Date: _____</p>
	<p>APPROVED AS TO FORM Office of the County Counsel Leslie J. Girard, County Counsel</p> <p>DocuSigned by: By: <i>Kristi Markey</i></p> <hr/> <p><small>C210B2A9D63041C...</small> (Signature)</p> <p>Kristi Markey Deputy County Counsel</p> <p>Date: <u>10/24/2021 9:48 PM PDT</u></p>
	<p>APPROVED AS TO FISCAL PROVISIONS Office of the Auditor-Controller Rupa Shah, CPA, Auditor-Controller</p> <p>DocuSigned by: By: <i>Gary Giboney</i></p> <hr/> <p><small>D3838BFECTD8449...</small> (Signature)</p> <p>Gary Giboney Chief Deputy Auditor-Controller</p> <p>Date: <u>10/25/2021 7:53 AM PDT</u></p>
	<p>APPROVED AS TO INDEMNITY AND INSURANCE PROVISIONS Office of the County Counsel-Risk Management Leslie J. Girard, County Counsel-Risk Manager</p> <p>DocuSigned by: By: <i>Danielle P. Mancuso</i></p> <hr/> <p><small>2AEDFB99D2744CC...</small> (Signature)</p> <p>Danielle P. Mancuso Risk Manager</p> <p>Date: <u>10/21/2021 11:35 AM PDT</u></p>

EXHIBIT A - INSURANCE MODIFICATION

Requested Modification:

Commercial General Liability

MCRFD carries Commercial General Liability in the amounts required by the County of Monterey; however, MCRFD is unable to provide the primary and non-contributory language endorsements which are required by Section 6.3. This modification of insurance does not affect MCRFD's responsibility and duty to indemnify the County under the provisions of this Agreement.