

**CITY OF MONTEREY
RYAN RANCH CORPORATION YARD
(25 Ryan Ranch Road, Monterey, California)**

LICENSE AGREEMENT

This License Agreement (referred to herein as “Agreement” or “License”) is entered into by and between CITY OF MONTEREY, a California municipal corporation, as Licensor, hereinafter referred to as “City”, and COUNTY OF MONTEREY, a division of the State of California, as Licensee, hereinafter referred to as “County” or “Licensee”. City hereby enters into this Agreement by and through its City Manager or Mayor, or their designees, pursuant to Resolution 13-204 C.S., adopted by the Monterey City Council on December 17, 2013.

I. LICENSE/PREMISES

1. License Granted. For and in consideration of the observance of the terms and conditions set forth herein, City hereby grants to Licensee, a non-exclusive and revocable license (the “License”) to allow County mechanics access to and use of a designated portion of the City-owned Ryan Ranch corporation yard, as further described in paragraph 2 below (the “Premises”), for the purpose of conducting repairs on County-owned sheriff vehicles, and to utilize certain City-owned shop equipment as may be permitted by the on-duty City supervisor on a day-to-day basis.

2. Premises. The City-owned premises at Ryan Ranch subject to this License are:
- a. A five hundred (500) square foot vehicle bay designated by City including access to and use of a vehicle lift;
 - b. Both secured covered and uncovered parking/storage spaces for parking of County vehicles while at the Ryan Ranch facility for maintenance and repairs as designated by City;
 - c. City-employee break room including use of City-owned break room equipment (including but not limited to coffee machine, refrigerator, and microwave); and
 - d. City restroom facilities, shower and locker room.

II. USE

1. Term of Agreement. This License Agreement shall commence on July 1, 2014 and shall continue for a period of one year to and including July 1, 2015. This agreement shall automatically extend on an annual basis for a maximum of four (4) additional years up to and including July 1, 2019 unless terminated sooner by either party pursuant to the terms of Section IV below.

2. Permitted Uses. Licensee shall be permitted access to and use of the Premises during the facility's operating hours of 8:00 a.m. to 4:30 p.m. Monday through Friday, except holidays observed by City. City employees will grant entrance to the facility to County employees and County employees will not be provided with keys or the alarm code to the facility. Licensee's use of the Premises shall be solely for the purpose of allowing its employees to store and conduct repairs on County-owned vehicles. Licensee shall also be permitted to use the vehicle lift located within the designated vehicle bay, and will have shared use of City's break room and employee restroom as described in Section 1.2 above.

3. Responsibilities of the Licensee.

- a. County shall be solely responsible for management of all operations related to its use of the Premises and acknowledges that City will not exercise any supervision or control of the activities of the County or its employees under this Agreement.
- b. County shall provide its own labor, staff, administrative support including but not limited to computer support, parts, tools and all other equipment or services related to the maintenance and repair of County-owned vehicles and equipment at the City's Ryan Ranch facility, except for the City-owned vehicle lift located in the designated vehicle bay and use of any additional City equipment later agreed to as provided in Section II.5 herein. County will provide its own fleet management system necessary to perform its own maintenance and repairs. County's system will operate on a standalone Wireless System, provided by the County thus not requiring any type of connection through the City's existing computer network.
- c. County agrees to provide City with the names of all County employees who will be permitted access to and use of the Premises and understands and acknowledges that City may refuse access to the Premises by any County employee, or person purporting to be a County employee, who has not been previously identified in writing by County.
- d. County acknowledges and agrees that its employees who are granted access to and use of the Premises will remain County employees with all salary and employee benefits, including but limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance and disability benefits remaining the sole and exclusive responsibility of the County.
- e. County shall require its employees who will be allowed access to and use of the Premises to comply with the rules and regulations of the City shop, and shall ensure that its employees are familiar with those rules, including but not limited to all safety-related rules. County shall further advise its employees that permission to use any City-owned shop equipment must be expressly granted by the City, and that use of all other City-owned equipment and property and access to other areas not expressly set forth in this Agreement is prohibited.

- f. County shall be solely responsible for securing its tools, vehicles and other equipment on the Premises and understands that City's responsibilities and obligations under this License Agreement are limited to the City providing County a location to store and conduct maintenance and repairs on its own vehicles. The City does not, by grant of this License, assume the responsibilities of a bailee and has no duty to protect, safeguard or maintain any of County's equipment, tools or vehicles.
- g. County shall be responsible for maintaining the Premises in a safe, clean and sanitary manner in a manner satisfactory to City at all times. Any damage to City facilities or equipment by County shall be immediately remedied by County by either repairing or replacing the damaged items, at County's sole expense, to the satisfaction of City. Licensee's responsibility for repair to or replacement of City property shall extend beyond that of any security deposit made by Licensee.
- h. No alterations shall be made to the Premises without written approval of the City, and any such approved alterations shall be at the sole expense of Licensee. Any such alterations to the Premises except movable equipment shall become the property of City.
- i. Should Licensee's use of the Premises result in any increase in the existing rate of insurance upon the Premises, County shall be responsible for funding any such increase in cost, or in the alternative, City may terminate this agreement following any such insurance rate increase.

4. Responsibilities of the City.

- a. City shall provide County use of and access to the Premises during regular working hours as set forth in Section II.2 above, and shall pay for all utilities (electricity, water, trash pick-up, etc.) except for any costs related to disposal of oil, batteries, used parts, etc. from County vehicles.
- b. City shall provide normal maintenance of the Premises, including janitorial service to the employee break room and employee restroom.

5. Limitations on Use. No other uses of City property or equipment except as expressly permitted herein shall be permitted unless otherwise agreed to in writing by the parties and any additional use of City facilities or equipment not expressly agreed to herein shall be subject to an additional charge as determined by the parties. This License does not grant to Licensee the authority to use any area beyond the Premises. Licensee acknowledges that this License is in the nature of a privilege to use the Premises for a specific purpose and for a specified period and does not convey complete or exclusive control over the Premises. City reserves the right to enter upon the Licensed Premises at any time for asserting its superior real property interests or for other legitimate purposes.

6. Acceptance of Facilities. Licensee accepts the condition of the Premises on an “as is, where is, with all faults” basis and understands and acknowledges that the City makes no representations, warranties, guarantees or statements of any kind or nature regarding the condition of the Premises.

7. License Fee. In consideration of the license granted hereunder, the Licensee shall pay to the City a monthly fee of Six Hundred Dollars (\$600.00), payable in advance on the first day of each calendar month throughout the term of this License Agreement. In the event Licensee fails to pay the license fee when due and payable, a late-payment penalty of ten percent (10%) per month shall accrue. In addition, failure to pay the license fee when due and payable shall be justification for the City’s revocation of this License Agreement. City reserves the right to conduct an audit of the costs associated with County’s use of the Premises at the end of each year this Agreement is in effect and reserves the right to increase the License Fee set forth herein in order to ensure that the fee paid is adequate to cover the City’s costs.

8. Security Deposit. A security deposit equivalent to one-month’s License Fee (\$600) shall be paid by Licensee upon execution of this Agreement. Upon a default by Licensee, City shall have the right to apply as much of the Security Deposit as is necessary to cure such default or pay an expenses incurred as a result of such default. Any remaining balance of the Security Deposit shall be returned by City to Licensee within sixty (60) days after the termination or expiration of this License Agreement and vacation of the premises by Licensee. The Security Deposit shall not be considered an advance payment of the monthly License Fee or a measure of City’s damages in case of default by Licensee.

9. Liens and Encumbrances. The Licensee shall have no authority, express or implied, to create or to place a lien or an encumbrance of any kind upon any interest in the Facility, including any mechanic, stop notice, material or laborer’s liens.

III. INSURANCE, INDEMNIFICATION AND DAMAGES

1. Insurance.

- a. The County shall, at its own cost and expense, throughout the term of this License Agreement or any extension thereof, maintain Self-insurance in the following types and amounts for the term of this Agreement:
 - i. Commercial General Liability Self-insurance or insurance including but not limited to premises, personal injury, spectators, pollution, property damage, bodily injury, products and completed operations, with a combined single limit of not less than \$3,000,000 per occurrence and \$5,000,000 in the aggregate.
 - ii. Workers’ Compensation Insurance. Licensee shall maintain workers’ compensation insurance in accordance with California Labor Code section 3700 et seq.
 - iii. Self-insurance or commercial automobile liability insurance covering all of Licensee’s automobiles, including owned, leased, non-owned, and hired

automobiles, used in providing services under this Agreement, with a combined single limit of not less than \$3,000,000 per occurrence and \$5,000,000 in the aggregate.

- b. All insurance required under this Agreement must be written by an insurance company either admitted to do business in California with a current A.M. Best rating of no less than A:VI; or an insurance company with a current A.M. Best rating of no less than A:VII. Exception may be made for the State Compensation Insurance Fund when not specifically rated.
- c. Prior to the commencement of the term of this Agreement, Licensee shall file a letter of self-insured evidencing the coverage required by this agreement with the City of Monterey.
- d. Neither the insurance requirements hereunder, nor acceptance or approval of Licensee's insurance, nor whether any claims are covered under any insurance, shall in any way modify or change Licensee's obligations under the indemnification clause in this Agreement, which shall continue in full force and effect. Notwithstanding the insurance requirements contained herein, Licensee is financially liable for its indemnity obligations under this Agreement.

2. Mutual Indemnification.

Licensee shall indemnify, defend, and hold harmless the City, its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Licensee and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by the Licensee. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the City. The Licensee shall reimburse the City for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Licensee is obligated to indemnify, defend and hold harmless the City under this Agreement.

City shall indemnify, defend, and hold harmless the Licensee, its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Licensee and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by the City. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the Licensee. The City shall reimburse the Licensee for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the City is obligated to indemnify, defend and hold harmless the Licensee under this Agreement.

IV. TERMINATION

1. Mutual Consent. The parties agree that this License Agreement may be terminated by mutual written consent of City and Licensee at any time.

2. Termination for Cause. City may terminate this License Agreement if there is any material breach of or failure to comply with the terms of this Agreement, and said failure or breach is not corrected within five (5) days of receipt of written notice by Licensee.

3. Rights/Remedies. Upon termination of this Agreement as set forth in Sections IV.1 and IV.2 above, all rights and privileges herein granted to Licensee shall cease and terminate. Licensee shall have no right to reimbursement from City for any costs or expenditures incurred due to termination of this Agreement under this section.

4. Emergency Suspension. Notwithstanding the provisions of Paragraphs IV.1 through IV.3 above, City reserves the right to temporarily suspend this License Agreement without notice upon order of the Chief of Police, Fire Chief or City Manager for reasons constituting an imminent threat to the public peace, health or safety, or if authorized by emergency declaration of the Monterey City Council. Upon conclusion of the threat or emergency event causing such temporary suspension, Licensee may continue its use of the Licensed Premises as set forth in the Agreement.

5. Force Majeure. In the event that either party is unable to perform its obligations under this Agreement as a result of a force majeure, neither party shall be liable to the other for direct or consequential damages resulting from lack of performance. "Force Majeure" shall mean fire, earthquake, flood, act of God, strikes, work stoppages, or other labor disturbances, riots or civil commotions, litigation, war or other act of any foreign nation, power of government, or governmental agency or authority, or any other cause like or unlike any cause above-mentioned that is beyond the control of either party.

V. NOTICES

1. To City. Notices to City shall be addressed to:

Monterey City Clerk
City Hall
Monterey, CA 93940

or to such other address as may be hereafter be designated in writing by City.

2. To Licensee: Notices to Licensee shall be addressed to:

County of Monterey
Attn: Contracts/Purchasing Officer
168 West Alisal Street 3rd Floor
Salinas, CA 93901

Or to such other address as may be hereafter be designated in writing by Licensee

3. Delivery. All notices shall be given either by personal delivery to the addresses set forth above, or by deposit in the United States Mail, in a sealed envelope postage prepaid. Service by mail shall be deemed completed at the time of deposit in the United States Mail is made.

VI. OTHER PROVISIONS

1. Relationship of the Parties. Nothing contained herein shall be deemed or construed by the parties hereon, or by any third party, as creating the relationship of principal and agent, joint venturers, partners, or any other similar such relationship between the parties hereto. It is understood and agreed that no provision contained herein nor any acts of the parties hereto create a relationship other than that of Licensor and Licensee.

2. Applicable Law. Licensee agrees that in the performance of this Agreement it will comply with all applicable State, Federal and local laws and regulations and shall at all times act in accordance with the rights of the public. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the City of Monterey. Jurisdiction of litigation arising from this License Agreement shall be in the State of California, in the County of Monterey or in the appropriate federal court with jurisdiction over the matter.

3. Non-assignability. The rights and obligations of Licensee hereunder are not assignable and cannot be delegated without approval of the City Council.

4. Severability. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force without being impaired or invalidated in any way.

5. Enforcement. In the event a party to this Agreement brings any action under its terms, the prevailing party shall be entitled to prompt reimbursement of reasonable attorney's fees and costs.

6. Authority. Neither party shall have any authority to bind, obligate or commit the other party by any representation or promise without the prior written approval of the other party.

7. Modifications/Amendments. No modifications or amendments to the Agreement and no waiver of any provisions hereof shall be valid unless in writing and signed by duly authorized representatives of the parties.

8. Entire Agreement. This Agreement, together with its exhibits and the authorizing resolution(s), shall constitute the entire Agreement as it relates to the Licensed Premises. The parties agree that the Agreement is the complete and exclusive statement of the agreement between the parties relating to the subject matter of the Agreement, and supersedes all protocols, letters of intent or prior agreements, oral or written, and all other communications and representations between the parties relating to the subject matter of the Agreement.

9. Authority. The signer of this License Agreement hereby represents and warrants that he or she has full authority to execute this Agreement on behalf of Licensee and that he or she has had full opportunity to read the contents hereon and to seek its review by legal counsel.

10. Counterparts. This License Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement.

IN WITNESS WHEREOF, this Agreement is entered into by the parties hereto on _____, 2014, in Monterey, California.

COUNTY OF MONTEREY:

CITY OF MONTEREY:

By: _____
Contracts/Purchasing Officer

By: _____
Michael McCarthy, Interim City Manager

APPROVED AS TO FORM:

By: *Cynthia L. Jackson*
Deputy County Counsel 4-23-14

APPROVED AS TO FISCAL PROVISIONS:

By: *Don Holy*
County Auditor/Controller

COUNTY OF MONTEREY
APPROVED AS TO INDEMNITY/
ARBITRATION LANGUAGE

APPROVED AS TO LIABILITY:

By: *John Frank*
County Risk Management
Date: 4/23/14

Authorized by Monterey City Council Resolution No. 13-204 C.S. on December 17, 2013