

**LICENSE AGREEMENT
BETWEEN
THE CITY OF SAN LEANDRO,
THE ALAMEDA COUNTY FIRE DEPARTMENT
AND
CHABOT COLLEGE**

THIS LICENSE AGREEMENT, dated _____ for reference purposes only (“Agreement”), by and between the Alameda County Fire Department, a dependent fire district formed under the Fire Protection District Law of 1987 (Health and Safety Code Sections 13800, *et seq.*) and governed by the Alameda County Board of Supervisors sitting as its Board of Directors (“District”), the City of San Leandro, a municipal corporation (“City”) and Chabot Las Positas Community College District, Chabot College, a _____ (“Licensee”).

Recitals

- A. The City is the legal owner of the real property located at 890 Lola Street, San Leandro, CA 94577.
- B. Under the terms of the fire service agreement between the District and the City, the District is permitted the use of certain training facilities at the real property located at 890 Lola Street, San Leandro, CA 94577 in order to fulfill certain fire protection services for the City of San Leandro and the District.
- C. Under the terms of the lease agreement between the District and the City dated June 25, 2013, the District is permitted the use of the training facilities at the real property located at 890 Lola Street, San Leandro, CA 94577 in exchange for a monthly rental payment.
- D. The Licensee wishes to use those training facilities in connection with Licensee’s activities of providing fire protection and technology related educational services to students in the fire technology program.

Agreement

1. **AUTHORIZATION TO USE.** City confers to Licensee a personal, non-exclusive and non-possessory license to enter upon and use those certain facilities located at 890 Lola Street, San Leandro, CA 94577, including a training tower (the “Property”), for the purposes and subject to the terms, conditions and restrictions set forth below. This Agreement does not constitute a grant of any ownership, leasehold, easement or other property interest.

2. **USE OF FACILITIES.** Licensee may enter and use the Property in order to provide classroom and practical instruction in fire technology and science. Licensee shall comply with any conditions to approval or guidelines for use imposed in connection therewith, as set forth in Exhibit A, or as otherwise required by the City or District. City or District may

change such guidelines as necessary to promote or protect the public safety, health or convenience. City or District shall give reasonable notice of any such changes, subject to emergency situations.

3. RESTRICTIONS ON USE. Licensee shall not use the Property for any use or activities that are not expressly permitted under Section 2, Exhibit A, or by written authorization of the District. The term "Licensee" shall include Licensee, its officers, agents, employees, invitees, or students. By way of example only and without limitation, the following uses by Licensee are prohibited:

(a) Licensee shall not construct or place any permanent structures, signs or improvements on the Property, nor shall Licensee alter any existing structures, signs or improvements on the Property.

(b) Licensee shall not conduct any unauthorized activities on or about the Property that constitute waste or nuisance.

(c) Licensee shall not damage, destroy or deface the Property or any facilities or structures thereon.

(d) Licensee shall not cause Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Property, or transported to or from the Property, other than fuel and fluids required for fire apparatus, power tools and training props.

(1) Licensee shall immediately notify the City and District of any release or suspected release of Hazardous Material. Licensee shall comply with all laws requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination. In the event of a release of Hazardous Material, Licensee shall, without cost to the City or District and in accordance with all laws and regulations, return the Property to the condition immediately prior to the release. Licensee shall allow the City and District to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material.

(2) For purposes of this Agreement, "Hazardous Material" includes, without limitation, the following: any material defined as a "hazardous substance," or "pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.); a "hazardous substance" pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials; and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "release" or "threatened release" shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Property.

4. SUBJECT TO DISTRICT USES. Notwithstanding anything to the contrary in this Agreement, Licensee's rights to use the Property hereunder shall be subject and subordinate to the District's uses for the District's operations. In no case shall Licensee's use interfere with those District uses or operations. District retains the right to determine, in the exercise of its good faith judgment, whether Licensee's use interferes with District uses or operations. District also retains the right to use the Property in any manner that does not unreasonably interfere with Licensee's activities hereunder.

5. TERM OF AGREEMENT. The privilege given to Licensee pursuant to this Agreement is temporary only. The term of this Agreement shall be for two years and shall begin on February 21, 2018, unless amended or sooner terminated pursuant to the terms hereof. Either City or District or Licensee may terminate this Agreement with or without cause upon providing the other party thirty (30) days written notice.

6. SURRENDER. Upon the expiration or termination of this Agreement, Licensee shall surrender the Property in the same condition as received (ordinary wear and tear excepted), free from hazards and clear of all debris. At such time, Licensee shall remove all of its property from the Property.

7. REPAIR OF DAMAGE. Licensee shall promptly, at its sole cost, repair or replace, to City or District's satisfaction, any and all facilities and properties that the District reasonably determined have been damaged, destroyed, defaced or otherwise injured as a result of any activity or conduct of or by the Licensee or its officers, agents, employees, invitees, or students.

8. DISTRICT'S RIGHT TO CANCEL. District reserves the right to suspend all of Licensee's activities under this Agreement or to cancel or terminate this Agreement upon the happening of any of the following conditions. Upon such cancellation, Licensee shall immediately surrender the Property.

(a) The Licensee defaults in the payment of fees/charges or the Licensee is in material breach of any other term, covenant or condition of this Agreement, or should any activities or use under this Agreement interfere with or detrimentally affect District operations or uses, as determined by the District in the exercise of its good faith judgment. The District intends to allow reasonable time, as determined by District, for Licensee to cure such default, breach or interference, but reserves the right to cancel this Agreement immediately if in the District's sole judgment such cancellation is warranted by such default, breach or interference.

(b) The District determines that there is an emergency or lapse of insurance requiring cancellation of the Agreement.

(c) Licensee fails to provide all materials, information, or documentation as required under the Agreement.

(d) Should this Agreement be cancelled under this Section 8, Licensee will remove from the Property all property and equipment of Licensee, its agents, invitees, employees or students, within thirty (30) days.

9. COMPLIANCE WITH LAWS, REGULATORY APPROVALS. Licensee shall, at its sole expense, conduct and cause to be conducted all of its activities on the Property in compliance with all laws, regulations, codes, ordinances and orders of any governmental or other regulatory entity, whether presently in effect or subsequently adopted, and whether or not in the contemplation of the parties. Licensee shall, at its sole expense, also procure and maintain in force at all times during its use of the Property all business and other licenses or approvals necessary to conduct the activities allowed hereunder. Nothing herein shall limit in any way Licensee's obligation to obtain any required regulatory approvals from County of Alameda departments, City of San Leandro, boards or commissions or other governmental regulatory authorities.

10. PUBLIC SAFETY. Licensee shall use and exercise due care, caution, skill and expertise in performing all work under this Agreement, including appropriate and necessary supervision of students by qualified professionals, and shall take all reasonable steps to safeguard classroom areas, including without limitation existing facilities and property with full regard to the public safety and to observe all applicable regulations and requests of the County of Alameda, City of San Leandro and other government agencies responsible for public safety.

11. CITY AND DISTRICT'S RIGHT TO CURE DEFAULTS BY LICENSEE. If Licensee defaults in the performance of any of its obligations under this Agreement, City and District may, at their sole option, remedy such failure for Licensee's account and at Licensee's expense by providing Licensee with three (3) hours prior written or oral notice of City's or District's intention to cure such default (except that no such prior notice shall be required in the event of an emergency as determined by City or District). Such action by City or District shall not be construed as a waiver of any rights or remedies of City or District under this Agreement, and nothing herein shall imply any duty of City or District to do any act that Licensee is obligated to perform. Licensee shall pay to City or District upon demand, all costs, damages, expenses or liabilities incurred by City or District, including, without limitation, reasonable attorneys' fees and costs, in remedying or attempting to remedy such default. Licensee's obligations under this Section shall survive the expiration, termination or cancellation of this Agreement.

12. USE CHARGE: Licensee recognizes the value to its students and educational program that use of the training facility represents and that there are costs associated with the maintenance and operation of said facility. Licensee will pay \$5,000.00 per year to the District. This fee will be for each calendar year (January through December), and the first payment will be for the 2018 Year. Licensee may pay the use charge in one or more 6-month installments to align payments with the July through June fiscal year.

13. INSURANCE. Licensee agrees to maintain in full force and effect the following policies of insurance during the term of this Agreement:

| COVERAGE | LIMITS OF LIABILITY |
|---|---|
| Commercial general liability, including comprehensive, independent contractors, contractual, personal injury, and broad form property damage, products/completed operations, premises/operations and explosion/collapse and underground hazard. | Bodily Injury: \$5,000,000 each occurrence \$10,000,000 aggregate Property Damage: \$5,000,000 each occurrence Personal Injury: \$5,000,000 each occurrence \$10,000,000 aggregate |
| Automobile liability, including endorsement for owned, hired and non-owned automobiles. | Bodily Injury: \$1,000,000 per occurrence \$5,000,000 aggregate Property Damage: \$1,000,000 per occurrence |
| Worker's Compensation | Statutory |

Licensee shall maintain certificates of insurance evidencing such coverage in a standardized form approved by the City and District prior to undertaking any activities under this Agreement. Licensee shall also obtain, and provide copies to the District, an endorsement on each required policy establishing that the City, the County of Alameda, the District and their elected or appointed officials, officers, directors, agents and employees are additional named insureds under each respective policy.

In addition, the certificate shall require that Licensee and the insurer provide to the City and District at least thirty (30) days prior written notice of any material change or cancellation of the policies. All liability policies shall be written on a "per occurrence" basis.

14. "AS IS" CONDITION OF CITY PROPERTY, DISCLAIMER OF REPRESENTATIONS. Licensee accepts the Property in its "AS IS" condition, without representation or warranty of any kind by City or District, their elected or appointed officials, officers, agents or employees, including, without limitation, the suitability or safety of the Property or any facilities on the Property for Licensee's use. Licensee, at its own expense, shall obtain permission or other approvals from any third parties with existing rights as may be necessary for Licensee to make use of the Property in the manner contemplated hereby.

15. WAIVER OF CLAIMS.

(a) Neither City or District nor any of its commissions, departments, boards, elected or appointed officials, officers, agents or employees shall be liable for any damage to the Property of Licensee, its officers, agents, employees, invitees, or students, or for any bodily

injury or death to such persons, or for any other loss, resulting or arising from the condition of the Property or its use.

(b) Licensee fully releases, waives and discharges forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City and/or District, their elected or appointed officials, departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations, (i) for any claim or event relating to the condition of the Property or Licensee's use thereof, and (ii) in the event that City and/or District exercises its right to suspend, revoke, cancel or terminate this Agreement.

16. INDEMNITY. Licensee shall indemnify, defend, reimburse and hold harmless the City and the District, their elected or appointed officials, officers, agents, employees and contractors from and against any and all claims, legal or administrative proceedings, losses, damages, liabilities or expenses, costs, penalties, fines, liens, or judgments, including reasonable attorney fees incurred in the defense thereof, for the death of or injury to any person or damage to or destruction of any property occurring in, on or about the Property, or any part thereof, whether the person or property of Licensee, its elected or appointed officials, officers, agents, or employees (collectively, "Agents"), its invitees, students, guests or business visitors (collectively, "Invitees"), or third persons (collectively referred to as "Losses") relating in any manner to: (a) any failure by Licensee to faithfully observe or perform any of the terms, covenants or conditions of this Agreement; (b) the use of the Property or any activities conducted thereon by Licensee, its Agents or Invitees; or (c) any release or discharge, or threatened release or discharge, of any Hazardous Material caused or allowed by Licensee, its Agents or Invitees, on, in, under or about the Property, any improvements permitted thereon, or into the environment.

The above provision extends to all Losses except for those Losses caused solely by the negligence or willful misconduct of City or District or City or District's authorized representatives. The foregoing indemnity shall include, without limitation, reasonable attorneys' and consultants' fees, investigation and remediation costs and all other reasonable costs and expenses incurred by the indemnified parties, including, without limitation, damages for decrease in the value of the Property and claims for damages or decreases in the value of adjoining property. Licensee shall have an immediate and independent obligation to defend the City and District from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Licensee by City and District and continues at all times thereafter. Licensee's obligations under this Section shall survive the expiration, cancellation or termination of this Agreement.

17. NO ASSIGNMENT. This Agreement shall not be assigned, conveyed or otherwise transferred by Licensee under any circumstances. Any attempt to assign, convey or otherwise transfer this Agreement shall be null and void.

18. NO JOINT VENTURES OR PARTNERSHIPS, INDEPENDENT LICENSEE. This Agreement does not create a partnership or joint venture between the City, the District and Licensee. Licensee is, at all times during the term of this Agreement, an independent Licensee.

Licensee shall be solely responsible for all matters relating to payment of its employees and claims brought by its employees, including, without limitation, worker's compensation claims, compliance with any and all Federal, State or Local law and all other regulations governing such matters.

19. IMPOSSIBILITY OF PERFORMANCE. If, for any reason, an unforeseen event occurs which is beyond the control of the City or District, including, but not limited to, fire, casualty, or labor strike, which event renders impossible the fulfillment by the City or the District of any of its obligations under this Agreement, this License shall terminate and Licensee shall have no right to nor claim for damages against the City or the District.

20. NOTICES. Except as otherwise provided herein, any notices given under this Agreement shall be addressed as follows:

To District: Alameda County Fire Department
6363 Clark Avenue, Dublin, CA 94568
Attn.: David A. Rocha, Fire Chief

To City: City of San Leandro
835 East 14th Street, San Leandro, CA 94577
Attn.: Chris Zapata, City Manager

To Licensee: Chabot College
25555 Hesperian Blvd.
Hayward, CA 94545
Attn: Kristin Lima, Dean of Applied Technology and Business

Notice shall be deemed given three (3) days after the date when it is mailed if sent by first class, certified or overnight courier, or upon the date personal delivery is made.

21. GENERAL PROVISIONS.

(a) This Agreement may be amended or modified only by a writing signed by the City, District and Licensee.

(b) No waiver by any party of any of the provisions of this Agreement shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver.

(c) Except as expressly set forth herein to the contrary, all approvals and determinations of City or District requested, required or permitted hereunder may be made in the sole and absolute discretion of the City or District.

(d) This instrument (including the exhibits hereto) contains the entire agreement between the parties.

(e) The section and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement.

(f) Time is of the essence.

(g) This Agreement shall be governed by and subject to California law.

(h) If a party commences an action against another party or a dispute arises under this Agreement, the prevailing party shall be entitled to recover from the other party or parties reasonable attorneys' fees and costs.

(i) If Licensee consists of more than one person or entity, then the obligations of each person or entity shall be joint and several.

(j) Subject to the prohibition against assignments or other transfers by Licensee hereunder, this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns.

(k) This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

* * * * *

Licensee represents and warrants to City and District that it has read and understands the contents of this Agreement and Exhibits and agrees to comply with and be bound by all of its provisions. Licensee further represents and warrants to the City and District that all information provided by Licensee is true and correct.

SIGNATURES

FOR LICENSEE:
CHABOT COLLEGE

By: _____

Authorized Agent

Date: _____

Approved As To Form:

FOR DISTRICT:
COUNTY OF ALAMEDA

By: _____

President,
Alameda County Board of Supervisors

Date: _____

Approved As To Form:
Donna R. Ziegler, County Counsel

By: _____

Heather M. Littlejohn
Deputy County Counsel

FOR CITY:
CITY OF SAN LEANDRO

By: _____

Authorized Agent

Date: _____

Approved As To Form:

EXHIBIT A

1. For purposes of this Agreement, the subject property shall consist of the entire building and tower located at 890 Lola Street, San Leandro, CA 94577. Licensee's use of property is subject to the following terms and restrictions.
2. DAYS/HOURS OF USE OF THE PROPERTY: Licensee may use the Property for conducting its Chabot College Firefighter 1 Academy only. The Chabot College Firefighter 1 Academy currently operates during 18 weeks of the spring semester and during 18 weeks of the fall semester as follows: Saturdays and Sundays from 7 am until 7 pm, Tuesdays from 4 pm to 11 pm, and Thursdays from 4 pm to 11 pm. This time frame permits a reasonable period prior to the scheduled start time and after the scheduled stop time to allow for clean-up and securing or opening the Property. Licensee may request alternate times subject to mutual agreement.
3. MUTUAL RIGHT OF TERMINATION. Notwithstanding anything to the contrary contained in this Agreement, either party may terminate this license at any time by giving five (5) days written notice to the other party.
4. MAINTENANCE OF PROPERTY. Licensee is responsible for maintaining the Property during the Term in a clean and orderly fashion and free of graffiti and for carting away all of the refuse generated by its or its students' use. If any City or District property is damaged as a result of Licensee's or its students' use, Licensee is responsible for repairing such damage to the satisfaction of the City or District, or reimbursing the City or District for the work and materials. Should there be any damage to Licensee's or its students' property, during Licensee's or its students' use of the Property, City and District shall not indemnify Licensee, nor be responsible, for any resulting losses to Licensee. Licensee hereby assumes the risk of all such losses.
5. INSPECTION. City or District shall have the right at all times to enter upon the Property to inspect the same and determine if the use is to the satisfaction of City or District.
6. SECURITY/ACCESS. Licensee shall provide its own security to safeguard its and its students' property during use of the Property.
7. ACCIDENTS AND EMERGENCIES. If a death, serious personal injury or substantial property damage occurs in connection with the Licensee's use, Licensee shall immediately notify the City Manager's Office, City of San Leandro at a telephone number to be provided and the District at a telephone number to be provided. Licensee shall promptly submit a written report, in such form as may be required by the City and District, of all accidents

which occur in connection with this License. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Licensee's liability insurance carrier; (3) a detailed description of accident and whether any of City or District's equipment, tools, material or staff were involved. In case of any emergency during the event, Licensee shall contact the appropriate authorities and then call the 911 emergency dispatch number.

8. NON-DISCRIMINATION. Licensee assures that he/she will comply with Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1990, the Americans With Disabilities Act of 1990 and that no person shall, on the grounds of race, creed, color, disability, sex or national origin, age, religion, sexual orientation, Vietnam-era Veteran's status, political affiliation, or any other non-merit factors be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination under this Agreement.
9. Licensee shall not allow vendors and/or subcontractors on the Property during the Term of this Agreement.

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