

MEMORANDUM OF UNDERSTANDING
CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT & CITY OF HAYWARD HAYWARD FIRE
STATION #6 & FIRE TRAINING CENTER

This Memorandum of Understanding (“MOU”) is entered into this _____ day of _____, 2018 by and between Chabot-Las Positas Community College District (“District”) and the City of Hayward (“City”) with reference to the following Recitals, all of which are incorporated herein.

WHEREAS, the District is a community college district organized and existing under California law; Chabot College, located in Hayward, California is a college of the District.

WHEREAS, Chabot College offers a Fire Technology Program which provides training for fire-fighting and related emergency services (“Chabot Fire Technology Program”).

WHEREAS, the City is organized and existing as a charter city under California law.

WHEREAS, the City provides fire-fighting and related emergency services through the City Fire Department.

WHEREAS, the City Fire Department maintains Fire Stations at various locations throughout the City, including a Fire Station #6 on West Winton Avenue (“Winton Fire Station”).

WHEREAS, the City Fire Department intends to demolish the existing Winton Fire Station and to construct, on the Winton Fire Station site, a new Winton Fire Station (“Fire Station”) along with a new fire training center (“Fire Training Center”).

WHEREAS, The Fire Training Center consists of a number of separate facilities, including: a HangarStorage Building, Outdoor Classroom, Apparatus Building, driver training course and related training and site improvements; references herein to the Fire Training Center include all such improvements.

WHEREAS, the improvements planned by the City for the Fire Station include facilities for fire-fighting equipment storage, Winton Fire Station personnel housing, classroom-training/office spaces, parking lot adjacent to the Fire Station for use in connection with the classroom-training/office spaces and related facilities; all of the foregoing are referred to herein as “Fire Station Facilities” and the classroom-training/office spaces along with the parking lot adjacent to the Fire Station are collectively referred to herein as “Classrooms”.

WHEREAS, the District and the City are each authorized to enter into contracts and agreements, including without limitation this MOU, subject to approval or ratification by the District’s Governing Board and the City’s City Council.

NOW THEREFORE, in consideration of the mutual covenants herein, the City and District agree as follows:

1. Mutual Objectives.

1.1. Chabot Fire Technology Program and City Fire Department. Similar classroom-styled facilities are necessary for City Fire Department training and the Chabot Fire Technology Program. The Chabot Fire Technology Program requires specialized facilities such as those contemplated for the Fire Training Center. In consideration of these mutual needs, the City and the District acknowledge that mutual benefits for the City Fire Department and the Chabot Fire Technology Program are achieved by pooling City and District resources to design, construct, operate and use the Fire Station Facilities and Fire Training Center.

1.2. MOU Objectives. By this MOU, the District and the City intend to establish the basis for the District and the City to enter into agreements relating to the District’s ground lease of a portion of the Winton Fire Station real property, design and construction of the Classrooms, and the following Fire Training Center facilities: HangarStorage Building, Outdoor Classroom and Apparatus Building (collectively “District Fire Training Facilities”); the District Fire Training Facilities and the Classrooms are collectively referred to herein as “District Facilities.”.

2. Ground Lease. The District and the City intend to effectuate a ground lease of real property

particularly described as a subplot of Parcels One (1) through Five (5) on APN 432012400104, upon which the District Facilities will be situated.

- 2.1. Term. The Ground Lease Term will be thirty (30) years. The District will have two consecutive ten (10) year options to extend the lease term. The lease term, including options, shall not exceed (50) years.
- 2.2. Rent. Annual Ground Lease Rent will be \$1.
- 2.3. District Facilities Financial Contribution. The District will contribute funds for design, construction and furnishing of the District Facilities ("District Financial Contribution"). The maximum District Financial Contribution shall be Twenty Million Dollars (\$20,000,000). The District Financial Contribution includes costs for Project Inspectors of Record and materials tests/inspections as required by DSA during construction of the District Facilities.
 - 2.3.1. District Facilities Design Costs. The District Financial Contribution will be for design professional services relating to design of the District Facilities as a square foot proportion of the cost for the overall design including design professional services during construction of the District Facilities.
 - 2.3.2. District Facilities Construction Phase DSA Project Inspector. The District is solely responsible for retaining and paying for the DSA Project Inspector during construction of the District Facilities. All payments made by the District to the DSA Project Inspector are deemed part of the District Financial Contribution; the District will provide the City summaries of billings and payments made by the District to the DSA Project Inspector.
 - 2.3.3. District Facilities Construction. The City will require the contractor for the Fire Training Center and the Fire Station to prepare a detailed schedule of values for the District Facilities that is subject to review and acceptance by the District. The District Financial Contribution for construction of the District Facilities will be limited to costs established in the District accepted schedule of values.
 - 2.3.4. Reimbursement of District Financial Contribution. If at anytime in the three hundred sixty (360) months after completion of Fire Station and Fire Training Center construction, the City elects to use the real property upon which the Fire Station or Fire Training Center are situated for purposes other than a fire station or fire training center and such other City use of the real property materially impairs the District's use of the District Facilities for the intended purposes, the City shall reimburse the District for the pro-rata portion of the District Financial Contribution based on the number of months after completion of Fire Station and Fire Training Center construction the City elects to change use of the real property divided by three hundred sixty (360).
- 2.4. District Facilities Ownership. During the Term or Renewal Terms of the Ground Lease, the District shall be the sole owner of the District Facilities. Upon expiration of the Ground Lease Term or Renewal Term, as applicable, the District will convey title of the District Facilities, including any and all improvements, fixtures, furniture, furnishings, and equipment, to the City. The foregoing notwithstanding, fixtures, furniture, furnishings and equipment to be conveyed by the District shall be limited to items purchased/acquired with the District Financial Contribution.
- 2.5. District Facilities Design and Construction. The City will serve as the Lead Agency for design of the District Facilities and procuring construction services to construct the District Facilities. The City shall coordinate with District to ensure that the design of District Facilities meets the programmatic needs of the District. Final design approval from the District shall be in writing.
 - 2.5.1. Classrooms Scope. The area of the Classrooms facilities within the Fire Station will consist of approximately 10,710 square feet and designed to accommodate at least three (3) approximately one thousand (1,000) square foot classrooms along with two offices workstations, conference rooms and ancillary spaces. Classrooms include exterior site work which will include at least ninety (90) automobile parking spaces, landscaping, hardscaping and related improvements.

- 2.5.2. Apparatus Building Scope. The Apparatus Building will be approximately eight thousand three hundred (8,300) square foot building which incorporates an approximately six hundred ninety (690) square foot classroom, men's and women's locker rooms, shop, break room, large vehicle storage and other related areas.
- 2.5.3. Hangar Storage Building Scope. The Hangar Storage Building will be an approximately one thousand one hundred sixty (~~1,5124,460~~) square foot building with interior improvements suitable for storage of Chabot Fire Technology Program equipment.
- 2.5.4. Outdoor Classroom Scope. The Outdoor Classroom will be an approximately one thousand six hundred (1,600) square foot facility incorporating an approximately nine hundred sixty (960) square foot outdoor classroom, restrooms and an enclosed interior area for Chabot Fire Technology Program equipment storage.
- 2.5.5. Design Phase. The City will require District Facilities design to conform to requirements of the Division of State Architect ("DSA") and District requirements for providing Chabot College Fire Technology Program classroom and training instruction. Design Documents for the District Facilities will be subject to District review and acceptance. DSA will be the permitting agency for construction of the District Facilities.
- 2.5.6. Bid Phase. The City will procure construction services to construct the Fire Training Center and the Fire Station in accordance with the City's procurement requirements and applicable requirements of the California Public Contract Code. Bids for the Fire Station Facilities will include specific "break-out" of the costs to construct the District Facilities.
- 2.5.7. Construction Phase. The City will require the contractor(s) constructing the District Facilities to complete construction in accordance with the Design Documents permitted by DSA for construction and in conformity with applicable DSA regulations. The District's acceptance of and final payment for the District Facilities upon completing construction thereof will be conditioned on DSA issuance of a Project Certification attesting to completion of construction of the District Facilities in accordance with DSA permitted Design Documents and DSA requirements.
- 2.5.8. District Financial Contribution. The District's disbursements of portions of the District Financial Contribution to the District Facilities design and construction will be generally based on City approved billings for design services, construction, and construction administration services relating to the District Facilities that have been reviewed and accepted by the District. Except for payments due the DSA Project Inspector retained by the District pursuant to Paragraph 2.3.2 above, the City is solely responsible for disbursement of payments due for services relating to design or construction of the Fire Training Center and the Fire Station Facilities.
- 2.6. Use and Operation of District Facilities. Upon completing construction of the District Facilities, the District will have the rights of use and occupancy of the District Facilities in accordance with the following.
- 2.6.1. District Facilities. The District shall have exclusive rights to use and occupy the District Facilities. The District right of use and occupancy of the District Facilities shall be subject to all: (i) the terms of the Lease Agreement, including amendments thereto; (ii) rules, regulations, laws, ordinances, and directives now existing or thereafter promulgated by the City ("City Enactments") or any government agency with jurisdiction over the Premises. The foregoing notwithstanding: (i) City Enactments shall not be selectively directed to the District, the District Facilities or this Agreement and (ii) City Enactments affecting the District Facilities, District use of the District Facilities or the rights/obligations under this Agreement are based on a demonstrated compelling purpose that is narrowly tailored to address the compelling purpose and which is least restrictive on District use of District Facilities. If City Enactments materially impair the District's use of District Facilities, the District shall have the right to terminate the Ground Lease upon not less than sixty (60) days advance written notice to the City. If the District terminates the Ground Lease prior to expiration of the initial thirty (30) year Term of the Ground

Lease pursuant to the foregoing, the District shall be entitled to reimbursement from the City for a portion of the District Financial Contribution based on based on the number of months after completion of Fire Station and Fire Training Center construction and the date of the District's notice of termination, divided by three hundred sixty (360). The District shall have the right to grant the use of the District Facilities to parties other than the City provided that use of the District Facilities by others does not materially impair, disrupt, constitute waste, nuisance, unreasonable annoyance, or disturb Fire Station activities.

- 2.6.1.1. District Facilities Utility Services. The City is responsible for securing and paying for electrical power, natural gas, domestic water, sewer and trash disposal services sufficient for the intended uses and occupancy of the District Facilities. The District is responsible for securing and paying for voice/data telecommunications services necessary for the District's use and occupancy of the District Facilities.
- 2.6.1.2. District Facilities Custodial. This City is responsible for all costs, charges, fees or expenses to complete routine and regular custodial services for the District Facilities; custodial services will conform to and be consistent with the custodial services provided by the City for the Fire Station or Fire Training Center, as applicable.
- 2.6.1.3. Building and Building Equipment/Systems Maintenance. The City is responsible for maintaining the Fire Station Facilities, including the District Facilities, including without limitation electrical/mechanical equipment, electrical/mechanical/plumbing systems; structural components and building roofs. The foregoing notwithstanding, the District is responsible for costs of repair/replacement of building equipment or building systems resulting from District negligent or intentional conduct.
- 2.6.1.4. Classrooms Furniture, Furnishings and Equipment ("FFE"). The City is responsible for providing FF&E items necessary for use of the Classrooms for education, training and instructional purposes. The District will have the sole and exclusive discretion to determine the nature, quantity, quality and other criteria relating to Classroom FF&E. Costs to procure and install Classrooms FF&E are included in the District Financial Contribution. Regardless of the funding source for Classrooms FF&E, the City and District use of Classrooms FF&E shall be without charge, cost or expense.
- 2.6.1.5. Safety and Security. The City will be generally responsible for implementing measures necessary for safety and security of persons using the District Facilities and security of the Fire Station Facilities. The foregoing notwithstanding, the District will be responsible for security of District owned personal property items situated in the District Facilities.
- 2.6.1.6. Third Party Use of District Facilities. The District will have the right to permit third parties to use the District Facilities and District owned FF&E items situated in the District Facilities during the Term or Renewal Term of the Ground Lease. The District's right to grant use of the District Facilities to third parties will be subject to the following:
- 2.6.1.7. District Facilities Use. Unless prior consent is granted by the City, third party use of the District Facilities is generally limited to training/education relating to fire-fighting or emergency public safety services. Third party use of the Classrooms will not interfere with or disrupt City Fire Department Use of the Fire Station Facilities for City Fire Department purposes.
- 2.6.1.8. District Facilities Use Charges. Third party use of the District Facilities will be subject to use charges the District is authorized to impose pursuant to the Civic Center Act, Education Code §82537 et seq. Funds collected by the District for third party Classroom use where charges are limited to "direct costs" (as that term is used and defined in Education Code §82542(b)) will be transferred from the District to the City. All such "direct costs" funds will be used by the City solely and exclusively for routine maintenance, repair, restoration or refurbishment of the District Facilities. Funds

collected by the District for third party Classroom use where charges are based on “fair rental value” (as that term is used and defined in Education Code §82542(f)) will be transferred to the City. The City use of such “fair rental value” proceeds shall be first allocated to direct costs of routine maintenance, repair, restoration or refurbishment of the District Facilities resulting from third party use thereof and all remaining “fair rental value” proceeds shall be allocated to a City fund account exclusively dedicated to pay for costs to maintain or replace District Facilities building systems or building equipment.

2.7. Insurance and Indemnity.

2.7.1. District Insurance. The District will obtain and maintain the following policies of insurance during the Term or Renewal Term of the Ground Lease: Workers’ Compensation, General Liability and Property Damage covering the District Facilities and listing City as named insured.

2.7.2. City Insurance. The City will obtain and maintain the following policies of insurance during the Term or Renewal Term of the Ground Lease: Workers Compensation, General Liability and Property Damage covering the Fire Station and listing District as a named insured..

2.7.3. Indemnity. The City and District will defend, indemnify the other from claims and liabilities arising out of the negligent, grossly negligent or intentional conduct of the City or District. In addition to the foregoing, the City will defend, indemnify and hold harmless the District from all claims, demands, liabilities, actions or causes of action arising out of or related in any manner to payments due or claimed to be due by a design professional, contractor or others providing services relating to design or construction of the Fire Station or the Fire Training Center.

2.8. Damage or Destruction. At this time the parties are unable to draft this provision with clarity due to the parties ongoing discussions with insurance carriers regarding the proposed scope of usage of the Fire Station and District Fire Training Facilities. The parties will continue to negotiate this provision, which will be included in the Ground Lease.

3. Fire Training Center Joint Use Agreement. The City and District will develop and enter into an agreement establishing the City’s use of District Facilities and the District’s right to use the Fire Training Center facilities other than the Classrooms, Apparatus Building, HangarStorage Building and Outdoor Classroom in connection with the Chabot College Fire Technology Program. The City and District will develop and enter into an Agreement establishing the City’s right to use the District Fire Training Center Facilities and Classrooms.

3.1. District and City Uses of Fire Training Center. The Joint Use Agreement will establish procedures for the City and District to determine days/times/durations of the District’s use of the Fire Training Center. The Joint Use Agreement will establish the nature, scope and other related matters for the City’s use of the District Fire Training Center Facilities.

3.2. Charges for District and City Fire Training Center Use. The Joint Use Agreement will establish charge to Chabot College for use of the Fire Training Center and charges to the City for the City use of the District Fire Training Center Facilities.

3.3. City and District’s Responsibilities.

3.3.1. Training Materials. Except for facilities or improvements then situated at the Fire Training Center, the District is responsible for securing all items necessary for District use of the Fire Training Center at the District’s cost and expense.

3.3.2. Insurance. The District will obtain General Liability, Property Casualty and Workers Compensation insurance covering District activities at the Fire Training Center.

3.3.3. Indemnity. The District and City will mutually defend, indemnify the other from claims and liabilities arising out of the negligent, grossly negligent or intentional conduct of the District or City, as applicable in connection with their respective use of the Fire Training Facility.

~~3.3.3.~~

4. District and City Acknowledgements.

4.1. Non-Enforceable Commitments. The City and District acknowledge that the terms of this MOU are not intended to be enforceable against either the City or the District. The City and District agree that the terms of this MOU are intended to: (i) provide a general description of the mutual intent and mutual objectives relating to the Fire Training Center, the Fire Station and the District Facilities; and (ii) framework for development of terms and conditions of the Ground Lease and Joint Use Agreement.

4.2. Schedule. The City and District acknowledge that time is of the essence in developing the terms and conditions of the Ground Lease and the Joint Use Agreement. Accordingly, the City and the District agree to complete activities necessary for development of the Ground Lease and Joint Use Agreement generally in accordance with the following schedule:

City Council and Board of Trustees MOU approval	May 2018
Develop Ground Lease and Joint Use Agreement	July 2018
City Council and Board of Trustees Approval of Ground Lease and Joint Use Agreement	August 2018

5. Entire Understanding. The foregoing represents the entire understanding and agreement of the District and the City relating to the subject matter hereof.

IN WITNESS HEREOF, the District and the City have executed this MOU as of the date set forth above.

CITY
CITY OF HAYWARD

By: _____
Title _____

DISTRICT
CHABOT-LAS POSITAS
COMMUNITY COLLEGE DISTRICT

By: _____
Title _____