

**AGREEMENT
BETWEEN
THE CITY OF PLEASANTON
AND
LAS POSITAS COLLEGE
FOR USE OF FIRE TRAINING FACILITY**

THIS AGREEMENT, dated **January 1, 2021**, is by and between the City of Pleasanton, a California municipal corporation (“City”) and Las Positas College, a California community college (“Las Positas”).

RECITALS

A. The City owns and operates a Fire Training Facility which is in the City’s Operation Services Department’s facility located at 3333 Busch Road, Pleasanton, California (“Fire Training Facility”); and

B. Las Positas wishes to use the Fire Training Facility in connection with its Fire Service Technology program.

NOW, THEREFORE, the parties agree as follows:

1. USE OF FIRE TRAINING FACILITY. Las Positas may enter upon and use the Fire Training Facility in connection with its Fire Services Technology program subject to the conditions set forth in Appendix A. This Agreement does not constitute a grant of any ownership, leasehold, easement or other property interest.

2. RESTRICTIONS ON USE. Las Positas shall not use the Fire Training Facility for any use or activities that are not expressly permitted pursuant to Appendix A, or by written authorization of the City. Uses and activities that are expressly prohibited, include but are not limited to the following:

- (a) constructing or placing any permanent structures, signs or improvements;
- (b) altering any existing structures, signs or improvements;
- (c) conducting any unauthorized activities that constitute waste or nuisance; or
- (c) damaging, destroying or defacing any part of the Fire Training Facility or structures that are located at the Facility.

3. HAZARDOUS MATERIALS.

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

(b) Las Positas shall immediately notify the City of any release or suspected release of Hazardous Material. Las Positas 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, Las Positas shall, without cost to the City and in accordance with all laws and regulations, return the Fire Training Facility to the condition immediately prior to the release. Las Positas shall allow the City 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.

(c) 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 Fire Training Center.

4. SUBJECT TO CITY USES. Notwithstanding anything to the contrary in this Agreement, Las Positas' rights to use the Fire Training Facility shall be subject and subordinate to the City's uses and operations. In no case shall Las Positas' use interfere with City uses or operations. City retains the right to determine, in the exercise of its good faith judgment, whether the use of the Fire Training Facility by Las Positas interferes with City uses or operations. City also retains the right to use the Fire Training Facility in any manner that does not unreasonably interfere with Las Positas' activities hereunder.

5. TERM OF AGREEMENT. This Agreement shall commence on **January 1, 2021** and terminate on **December 31, 2021**. However, either party may terminate this Agreement earlier with or without cause upon providing the other party thirty (30) days written notice.

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

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

8. **COMPLIANCE WITH LAWS, REGULATORY APPROVALS.** Las Positas 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. Las Positas 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 under this Agreement. Nothing in this Agreement shall limit in any way Las Positas' obligation to obtain any required regulatory approvals from all applicable governmental regulatory authorities.

9. **PUBLIC SAFETY.** Las Positas 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 all government agencies responsible for public safety.

10. **USE CHARGE.** For use of the Fire Training Grounds and Tower, (District) Las Positas College shall pay the City \$510 /Day, billed monthly, plus \$2.60 per student, commensurate with the number of days used in the previous calendar month, payable within 15 days of receipt of invoice.

11. **INSURANCE.**

(a) During the term of this Agreement, Las Positas will maintain in full force and effect at its own cost and expense the following insurance coverage as minimums only, or such greater or broader coverage if available in Las Positas' policies, with insurers with an A.M. Best's rating of no less than A: VII:

COVERAGE	LIMITS OF LIABILITY
Commercial general liability, including comprehensive, independent contractors, contractual, personal injury, and broad form property damage, products/completed operations and premises/operations.	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

(b) Las Positas shall maintain Certificates of Insurance evidencing such coverage in a standardized form approved by the City prior to undertaking any activities under this Agreement. Las Positas shall also obtain, and provide copies to the City, an endorsement on each required policy establishing that the City and its officers, directors, agents and employees are additional named insureds under each respective policy. Each policy will state in writing either on the Certificate of Insurance or attached rider that this insurance will operate as primary insurance for Las Positas and its subcontractors under this Agreement and that no other insurance effected by City or other named insured will be called on to cover a loss.

(c) The Certificate of Insurance will provide in writing that the insurance afforded by this Certificate will not be suspended, voided, canceled, reduced in coverage or in limits without providing thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City. In addition, the insured will provide thirty (30) days prior written notice to the City of any suspension, cancellation, reduction of coverage or in limits, or voiding of the insurance coverage required by this Agreement. The City reserves the right to require complete certified copies of policies.

(d) The specific coverage obligations set forth in this section are minimums only, and Las Positas will have the obligation to provide the minimum coverages stated in this Agreement or such greater or broader coverage, if available in Las Positas' policies.

(e) The insurer shall agree to waive all rights of subrogation against the City, its officers, employees and agents.

(f) Coverage will be provided on a "pay on behalf" of basis, with defense costs payable in addition to policy limits. There will be no cross-liability exclusions.

(g) Las Positas will include all subcontractors as insured under its policies or will furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors will be subject to all of the requirements stated in this Agreement, including but not limited naming additional insureds.

12. INDEMNITY. Las Positas shall indemnify, defend (with counsel approved by the City) and hold harmless the City, Councilmembers, officials, employees, agents, consultants, and contractors (collectively, the "Indemnitees") from and against any and all liabilities, losses, costs, expenses (including without limitation attorneys' fees and costs of litigation), claims, demands, actions, suits, causes of action, writs, judicial or administrative proceedings, penalties, deficiencies, fines, orders, judgments and damages (all of the

foregoing collectively “Claims”) which in any manner, directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, result from, or relate to negligent or wrongful performance of this Agreement by Las Positas or any contractor or subcontractor of Las Positas. This indemnity includes the fees and costs reasonably incurred by the City for its own in-house or special counsel retained to protect the City's interests. Each Party is entitled to legal counsel of its choice, at Las Positas' expense. The Parties and their respective counsel shall cooperate with each other in the defense of any such actions, including in any settlement negotiations. If a court in any such action awards any form of money damages to such third party, or any attorneys' fees and costs to such third party, Las Positas shall bear full and complete responsibility to comply with the requirements of such award, and hereby agrees to timely pay all fees and costs on behalf of City. This indemnity obligation shall not extend to any claim to the extent arising solely from the City's gross negligence or the City's failure to perform its obligations under this Agreement, and shall survive termination of this Agreement.

The City shall indemnify, defend (with counsel approved by the Las Positas) and hold harmless The District, Board, officials, employees, agents, consultants, and contractors (collectively, the “Indemnitees”) from and against any and all liabilities, losses, costs, expenses (including without limitation attorneys' fees and costs of litigation), claims, demands, actions, suits, causes of action, writs, judicial or administrative proceedings, penalties, deficiencies, fines, orders, judgments and damages (all of the foregoing collectively “Claims”) which in any manner, directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, result from, or relate to negligent or wrongful performance of this Agreement by The City or any contractor or subcontractor of The City. This indemnity includes the fees and costs reasonably incurred by Las Positas for its own in-house or special counsel retained to protect Las Positas' interests. Each Party is entitled to legal counsel of its choice, at Las Positas' expense. The Parties and their respective counsel shall cooperate with each other in the defense of any such actions, including in any settlement negotiations. If a court in any such action awards any form of money damages to such third party, or any attorneys' fees and costs to such third party, The City shall bear full and complete responsibility to comply with the requirements of such award, and hereby agrees to timely pay all fees and costs on behalf of Las Positas. This indemnity obligation shall not extend to any claim to the extent arising solely from Las Positas gross negligence or Las Positas failure to perform its obligations under this Agreement, and shall survive termination of this Agreement.

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

14. NO JOINT VENTURES OR PARTNERSHIPS, INDEPENDENT CONTRACTOR. This Agreement does not create a partnership or joint venture between the City and Las Positas. Las Positas is, at all times during the term of this Agreement, an independent contractor. Las Positas 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.

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

To City:

123 Main Street
P.O. Box 520
Pleasanton, CA 94566-0802
Attn: City Manager

To Las Positas:

Las Positas College
3000 Campus Hill Drive
Livermore, CA 94551-7623
Attn: Jonah R. Nicholas, Vice Chancellor of Business Services

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.

16. **GENERAL PROVISIONS.**

(a) This Agreement may be amended or modified only by a writing signed by the City and Las Positas.

(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) This Agreement contains the entire agreement between the parties.

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

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

(f) 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.

THIS AGREEMENT is executed the date and year first above written.

CITY OF PLEASANTON

LAS POSITAS

By: _____
Nelson Fialho
City Manager

By: _____
Jonah R. Nicholas
Vice Chancellor of Business Services

ATTEST:

Karen Diaz, City Clerk

APPROVED AS TO FORM:

Daniel G. Sodergren, City Attorney

APPENDIX "A"

CONDITIONS FOR USE OF FIRE TRAINING FACILITY

I. USE OF FIRE TRAINING FACILITY

Section 1.1 - Use of Facilities and Training Area

Las Positas access and use of the Fire Training Center shall be limited to identified buildings and areas contained within the "boundary line" on the LP Fire Training Center Map (Appendix B); excluding the area designated as the Law Enforcement Area. These include parking area; tower classroom; drill grounds; training tower; dirty classroom; technical rescue site; compressor room; and drafting pit.

Access to any area outside of the boundary line is prohibited without explicit permission from the Battalion Chief of Training or designated alternate in the case of vacancies and/or extended absences.

Section 1.2 – Parking

Parking shall be limited to the area designated as parking; and/or the parking area directly adjacent to the tower classroom.

Section 1.3 – Las Positas Authorized Representative

Las Positas shall provide a college representative anytime the facility is being used by the college. The faculty member shall remain on the premises and ensure the facility is secured prior to departing.

Section 1.4 – Access

The city shall provide access cards and keys to Las Positas Faculty to access the approved facilities and buildings. Las Positas shall be financially responsible for any associated costs to replace lost or damaged access cards / keys.

Section 1.5 – Scheduling

All requests to use the facility, outside an established schedule, shall be made in writing (email) and sent to the Battalion Chief of Training, or designee. All requests made outside an established schedule shall be given priority consideration based on availability to accommodate the event(s). Las Positas shall receive written confirmation from the Battalion Chief of Training, or designee, indicating approval or denial of request.

Section 1.6 – Training Use Report

Completion of a Training Use Report is required anytime the facility is being used by the college. These reports shall be kept in a binder, on-site in a designated area, and available to city personnel.

Section 1.8 – Training Center Log

A Training Center Log shall be completed anytime damaged or loss of use occurs to any facility, piece of equipment, or training prop. The Training Center Logs shall be kept in a binder, on-site in a designated area, and available to city personnel.

Section 1.7 – General Use Rules for Training Center

Purpose:

The purpose for this procedure is to ensure proper care of the Training Center and to maintain safety of personnel.

- * All persons using the Training Center shall keep safety foremost in any activity they do.
- * Individuals shall pick up after themselves and leave their training center in the same condition as it existed before use.
- * Any damaged or loss of use to facility, piece of equipment, or training prop shall be documented in the Training Center Log. Any piece of equipment that requires repair, or is unsafe for use, shall be clearly tagged or marked out-of-service.
- * Horse play is prohibited
- * Fire streams, regardless of size and quantity, are restricted to being played in the training tower and drill grounds. Use of charged hoses without water discharge, can be used in other areas excluding classrooms and any other area where water could cause damage to the buildings or contents.
- * All equipment, training aids, library materials, etc. are the property of the city. Nothing shall be removed from the Training Center without explicit permission from the Battalion Chief of Training or designee.
- * All consumable materials used or needed shall be paid for the college.
- * Dirty and wet turnouts are prohibited in the tower classroom building, with the exception of access to the restroom when entered through the west entrance door.
- * Ladders shall not be used on the tower classroom building.
- * The fire apparatus test pit shall be kept clear of foreign material. Should any foreign material enter the test pit, the pit shall immediately be drained, material removed and the pit refilled.
- * The fire apparatus test pit shall be secure by chaining and locking the covers over the test pit as well as locking down the roll up door to the pit after usage.

- * Other than the Tower, the buildings, light standards, communication tower and landscaped areas shall not be used as targets for hose streams due to the possibility of damage. Care must be used in areas containing gravel to avoid displacing the gravel covering.
- * The training ground speed limit is 15 MPH except for the supervised training of fire apparatus drivers.
- * The lead instructor will be considered the on-site Safety Officer unless a Safety Officer is assigned to oversee the operations.
- * No forcing of doors or breaking of windows on any building or facility other those specifically built and designated as a training prop for those purposes.
- * Fires are strictly limited to the 2 designated burn rooms using Class A materials ONLY. Flammable liquids are PROHIBITED.

Section 1.8 – Proper Disposal of Garbage and Recycled Materials

The city is required by statute, to properly recycle and dispose of materials as required by the Alameda County Waste Management Agency. Las Positas shall abide by these same provisions.

Section 1.9 – Equipment Use & Storage

Both parties agree to meet and confer in the future to discuss the specifics about the storage of college equipment, and the use of city and/or fire department equipment located at the LPPD Training Center. Any agreement will include the specifics about the associated fees and/or cost responsibilities.

Section 1.10 – Facility Security

Las Positas personnel shall ensure Training Center security at all times. This includes preventing unauthorized access, securing gates and buildings, properly stowing equipment, and preventing access by any of constituents to those areas explicitly outlined in Exhibit B.

II. RESTRICTIONS ON USE

Section 2.1 – Use of Facilities, building, equipment, and training props

During the term of this agreement, the facility and premises shall be used for the exclusive purposes of providing fire training consistent with established educational and fire service curriculum, and industry best practices. Use of the facility, buildings, equipment, and training props shall be limited to those purposes for which they were built, designed and/or designated, and intended use.

III. HAZARDOUS MATERIALS

All requirements outlined in the Recitals

IV. CITY ACCESS

The city and any of its officers, agents, employees, or independent contractors, shall have full access to the facility at all reasonable times for the purpose of examining and inspecting, maintaining or repairing the facility, provided that such activities shall not unduly or unreasonably interfere with or impede the college's use of the facility.

V. TERM

All requirements outlined in the Recitals

VI. SURRENDER

Upon the expiration or termination of this Agreement, Las Positas shall surrender all access cards and keys provided by the city.

VII. REPAIR / DAMAGE

All requirements outlined in the Recitals

VIII. COMPLIANCE OF LAWS

All requirements outlined in the Recitals

IX. PUBLIC SAFETY

All requirements outlined in the Recitals

X. USE CHARGES

All requirements outlined in the Recitals

XI. INSURANCE

All requirements outlined in the Recitals

XII. INDEMNITY

All requirements outlined in the Recitals

XIII. NO ASSESSMENT

All requirements outlined in the Recitals

XIV. NO JOINT VENTURES

All requirements outlined in the Recitals

XV. NOTICES

Section 15.1 – General Accommodations

Any requests by the college to use a facility, building, equipment, training prop, or any other property not outlined to in this agreement, will be made in writing to the Battalion Chief of Training. All requests shall receive a written response either approving or denying the request.

XVI. GENERAL PROVISIONS

All requirements outlined in the Recitals

APPENDIX "B"

LP FIRE TRAINING CENTER MAP

