AGREEMENT TO USE CITY OF FRESNO DEPARTMENT OF PUBLIC UTILITIES PROPERTY LOCATED AT 2792 W. San Madele Ave., Fresno, CA 93711 ("Property"), FOR TRAINING ACTIVITIES

Department of Public Utilities Phone: 559-621-8600

In consideration for the use of the Property, it is mutually agreed as follows:

1. Description of Property. The property subject to this Agreement is that property located at 2792 W. San Madele Ave. in Fresno, CA ("Property"), which is an unoccupied single-family residence.

2. Purpose. Fresno County Sherriff's Office ("SHERIFF") is hereby given a nonexclusive license to use the Property for training purposes only. This license is personal to Sheriff and shall not be assigned. Any attempt to assign the license shall automatically terminate it. No legal title or leasehold interest in the Property or premises is created or vested in Sheriff by the grant of this license.

3. Reservations for Facilities. SHERIFF shall request in writing specific days and specific times for the use of the Property at least 10 calendar days prior to the date of the requested use. Requests shall be submitted to the Department of Public Utilities, Attn: Thomas Esqueda, 2600 Fresno St., Fresno, CA 93721, which will then dispatch a written confirmation of the reservation. It is understood that other contracting parties with the CITY may have a similar use of the Property, and reasonable accommodation of all such parties is the desired objective. SHERIFF's use of amenities will be subject to availability.

4. Limitations.

(a) The use of the Property is subject to the understanding that the amenity is/can be reserved only if not in use by the CITY or other similar contracting parties with the CITY.

(b) CITY reserves the right to close the Property during times of emergency, when needed by the CITY for its activities, for repair and maintenance, or in the event of non-appropriation of sufficient funds for its continued operation.

(c) The use of the Property is subject to the understanding that all of the Property is made available on an "as is" condition, and the property is not currently served by any utilities.

(d) SHERIFF may make an appointment with CITY to inspect the Property prior to use. SHERIFF recognizes and accepts that the Property may not be suited for training or qualification of any kind and accepts the Property with all defects, latent or patent.

(e) All persons using the Property shall complete a "Release, Waiver and Indemnity Agreement" form, attached hereto as **Exhibit A**.

(f) No private use of the Property is permitted. Guests and non-SHERIFF members or persons not expressly included with SHERIFF's prescribed use of the Property, are not allowed to enter the Property without the prior express written consent of the CITY, which may in its sole discretion require the person to complete a City of Fresno release form (depending upon the nature and purpose of the entry, the form may or may not be the form attached in **Exhibit A**). In any event, all such guests and non-SHERIFF members or persons shall be the sole responsibility of SHERIFF.

(g) SHERIFF will maintain the Property in a safe operative condition while in use by the SHERIFF and will conduct adequate periodic inspections prior to and at the conclusion of each use to that end.

(h) No firearms shall be discharged on the subject property.

(i) SHERIFF will contact the Department of Public Utilities Office at (559) 621-8635 whenever a unit enters the Property for a reserved period of use that is during non-business hours. SHERIFF shall be responsible for ensuring that the entrance remains locked and secure at all times with alarm activated.

(j) Any improvements installed or provided by SHERIFF shall be submitted to CITY in writing and are subject to the written approval by CITY prior to the installation period. Approval by CITY is in CITY's sole and absolute discretion, and may be withheld for any reason. Fixtures shall remain following termination or expiration of this Agreement.

(k) CITY, or its duly authorized representatives or agents, may enter upon said premises at any and all reasonable times during the term of this Agreement for the purpose of determining whether the SHERIFF is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of CITY.

(l) SHERIFF shall supply its personnel with all equipment necessary to use the Property.

(m) After each use of the Property, SHERIFF's personnel shall leave the Property in the same condition it was in before use including, but not limited to, removal of personal equipment belonging to SHERIFF, and shell casings and all other debris when using the firing range. If the Property is not adequately restored to the same condition it was in before use, the CITY reserves the right to charge SHERIFF for the costs the CITY incurs in restoring the Property to their prior condition including, without limitation, the storing of any such personal equipment. SHERIFF shall promptly pay for all charges upon receipt of written notice or invoice.

(n) SHERIFF shall not interfere with the use of the Property by other users.

5. <u>Indemnification, Release and Waiver</u>.

(a) To the furthest extent allowed by law, SHERIFF forever releases, discharges, indemnifies, holds harmless and defends the CITY and each of its officers,

officials, employees, agents and volunteers (referred to collectively as "CITY" in this Section) from and against any and all loss, liability, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY, SHERIFF or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of SHERIFF's use of the Property. SHERIFF's obligations under the preceding sentence shall apply regardless of whether CITY is negligent, but shall not apply to any loss, liability, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of CITY.

(b) CITY shall not be liable for any damage to any property owned or leased by SHERIFF, or in SHERIFF's care, custody or control, or for any bodily injury or death to any person, arising or alleged to have arisen from the hidden, latent, or obvious defects in the premises, Property or equipment used.

(c) SHERIFF acknowledges that the Property and activities involving weapons, physical agility and contact, K-9 training, and law enforcement specialized driver training have inherent dangers that no amount of care, caution, instruction or expertise can eliminate.

(d) SHERIFF VOLUNTARILY ASSUMES THE RISK OF PERSONAL INJURY, PROPERTY DAMAGE AND/OR WRONGFUL DEATH TO SHERIFF WHILE PARTICIPATING IN TRAINING ACTIVITIES AT THE FACILITIES AND/OR USING THE FACILITIES, AND DOES HEREBY VOLUNTARILY RELEASE AND DISCHARGE THE CITY FROM, AND DOES WAIVE ANY RIGHT OF ACTION OR CLAIM FOR, ANY LIABILITY FOR PERSONAL INJURY, PROPERTY DAMAGE AND/OR WRONGFUL DEATH CAUSED BY CITY'S NEGLIGENCE, EXCEPT WHEN CAUSED SOLELY BY THE GROSS NEGLIGENCE OF CITY.

(e) The license granted hereunder is freely revocable by CITY and in view of such fact, SHERIFF expressly assumes the risk of making any expenditures in connection with this license, even if such expenditures are substantial. Without limiting any indemnification obligations or other waivers contained herein and as a material part of the consideration for this license, SHERIFF fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and actions in law or equity against, and covenants not to sue, CITY under any present or future laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, in the event that CITY exercises its right to revoke or terminate this license.

(f) SHERIFF, as a material part of the consideration to be rendered to CITY under this Agreement, waives all claims against CITY for damages to all SHERIFF's personal property in, on, or about the Property.

(g) CITY shall not be liable to SHERIFF for any damage by or from any act or negligence of any other user of the Property. SHERIFF agrees to pay for all damages to the Property, as well as all damage to other persons using the

Property and to the property of those persons caused by SHERIFF's misuse or negligent use of the Property.

(h) This Section shall survive expiration or termination of this Agreement.

6. Insurance.

(a) It is understood and agreed that City and SHERIFF maintain insurance policies or self-insurance programs to fund their respective liabilities. SHERIFF agrees that policy coverage for Workers' Compensation shall contain a waiver of subrogation as to CITY and each of its officers, officials, agents, employees and volunteers.

(b) SHERIFF'S General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. SHERIFF shall establish additional insured status for the City.

2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.

3. For any claims relating to this Agreement, SHERIFF'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents and volunteers shall be excess of SHERIFF'S insurance and shall not contribute with it.

(c) Verification of coverage. SHERIFF shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required hereunder. All certificates and applicable endorsements are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences. Upon request of CITY, SHERIFF shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

7. Conformity with Law and Safety. SHERIFF shall observe and comply with, and shall ensure that its personnel utilizing the Property observes and complies with, all applicable laws, ordinances, codes and regulations of all governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over aspects of this Agreement. The use of the Property by SHERIFF shall be in accordance with the then current Manual and these laws, ordinances, codes and regulations. SHERIFF shall hold CITY harmless from any and all

liability, fines, penalties and consequences from any noncompliance or violations of laws, ordinances, codes and regulations.

8. Accidents. If a death, personal injury or property damage occurs in connection with the performance of this Agreement, SHERIFF shall immediately notify the CITY in person or by telephone. SHERIFF shall promptly submit to CITY a written report, in such form as may be required by CITY, of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of SHERIFF's liability insurance carrier; (3) a detailed description of accident and whether any of CITY's equipment, tools, material or staff were involved.

9. City Property. SHERIFF shall promptly pay for or restore any damage to CITY property caused by SHERIFF and arising out of the performance of this Agreement, upon receipt of written notice or invoice. SHERIFF shall not use CITY premises, property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.

10. Drug-Free Workplace. SHERIFF and SHERIFF's employees shall comply with the CITY's policy of maintaining a drug-free workplace. Neither SHERIFF nor SHERIFF's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code Section 812, including marijuana, heroin, cocaine and amphetamines, at the CITY facility, including the Property. If SHERIFF or any employee of SHERIFF is convicted or pleads nolo contendre to a criminal drug statute violation occurring at a CITY facility or work site, the SHERIFF within 5 days thereafter shall notify the CITY in writing. Violation of this provision shall constitute a material breach of this Agreement.

11. Non-discrimination. SHERIFF assures that it 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 be subjected to discrimination under this Agreement.

12. Assignment of Agreement. Nothing contained in this Agreement shall be construed to permit assignment or transfer by SHERIFF of any rights under this Agreement and such assignment or transfer is expressly prohibited and void.

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,
a municipal corporation

Thomas Esqueda,
Director, Department of Public Utilities

FRESNO COUNTY OFFICE OF THE SHERIFF,
a division of the County of Fresno, California

By: _____

Name: GREG GUCARTE

Title: CAPTAIN

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: Sherri L Badertscher
Deputy 8/7/2015

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____
Amanda B. Freeman Date

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE
BY: Amanda B. Freeman 8.7.15
DEPUTY CITY ATTORNEY