

STATE OF CALIFORNIA
STANDARD AGREEMENT
STD 213 (Rev 06/03)

AGREEMENT NUMBER REQ0009498
REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:
- STATE AGENCY'S NAME
Department of Consumer Affairs
- CONTRACTOR'S NAME
City of Fresno
2. The term of this Agreement is: March 1, 2013 or upon approval, whichever occurs later through February 29, 2016
3. The maximum amount of this Agreement is: \$11,460.00 (eleven thousand four hundred sixty dollars and no cents)
4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Exhibit A – Use of Facility	1 page
Attachment I – FPD Agreement. Exhibits 1-2.	11 pages
Attachment II – FPD Facility Procedures and Operations Manual	40 pages
Exhibit B – Budget Detail and Payment Provisions	2 pages
Exhibit C – General Terms and Conditions (as modified)	3 pages
Exhibit D – Special Terms and Conditions (as modified)	1 page
Exhibit E – Additional Terms and Conditions (as modified)	2 pages

CCC 307* Item showed with an Asterisk (*), is hereby incorporated by reference and made part of this agreement as if attached hereto. This document can be viewed at www.ols.dgs.ca.gov/Stanard+Language

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

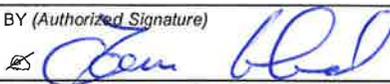
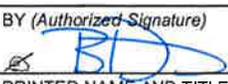
CONTRACTOR		California Department of General Services Use Only <div style="border: 2px solid blue; padding: 10px; text-align: center;"> APPROVED APR 17 2013 DEPT OF GENERAL SERVICES </div>
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) City of Fresno		
BY (Authorized Signature) 	DATE SIGNED (Do not type) 3/26/2013	
PRINTED NAME AND TITLE OF PERSON SIGNING TOM LABAND, LIEUTENANT		
ADDRESS 6375 W. Central Ave. Fresno, CA 93706		
STATE OF CALIFORNIA		
AGENCY NAME Department of Consumer Affairs		
BY (Authorized Signature) 	DATE SIGNED (Do not type) 4/8/13	
PRINTED NAME AND TITLE OF PERSON SIGNING Brian Dawley, Contract Operations Manager		
ADDRESS 1625 N. Market Blvd., Suite S-103 Sacramento, CA 95834		



EXHIBIT A

USE OF FACILITY

1. The Contractor shall provide the Department of Consumer Affairs (DCA), Division of Investigation (DOI), with the non-exclusive use of the Classroom, Mat Room, Tactical House and Firing Range (except Range #6) amenities of Contractor's "Training Facilities," as described in Exhibit A, Attachment I—City of Fresno Police Department Regional Training Center Agreement. Such use is limited to employees of DOI. Any reference in this Agreement to the "Firing Range" shall not include Range #6. Such Range #6 is expressly excluded from those amenities available at the Training Facilities for use under this Agreement.
2. The Classroom, Mat Room, Tactical House and Firing Range amenities are located at the City of Fresno Police Department Regional Training Center located at 6375 West Central Ave., Fresno, CA 93706.
3. The use of the Classroom, Mat Room, Tactical House and Firing Range amenities by DOI shall be limited to 4 hours per day during the hours of 8 a.m. to 5 p.m. Monday thru Friday, except State Holidays, subject to availability as determined by Contractor's Police Department as provided in Exhibit A, Attachment I.
4. The project coordinators and representatives during the term of this agreement will be:

Department of Consumer Affairs

Division of Investigation

Name: Farrah Yang

Address: 1747 North Market Blvd., Suite 265
Sacramento, CA 95834

Phone: (916) 515-5107

Fax: (916) 928-2201

E-mail: farrah.yang@dca.ca.gov

City of Fresno Police Department

Regional Training Center

Name: Lieutenant Tom Laband

6375 West Central Ave.
Fresno, CA 93706

Phone: (559) 621-2169

Fax: (559) 621-2175

E-mail: tom.laband@fresno.gov

Direct all agreement inquiries to:

Department of Consumers Affairs

Contract Unit

Attention: Dennis Sellers

Address: 1625 N. Market Blvd., Suite S-103
Sacramento, CA 95834

Phone: (916) 574-7290

Fax: (916) 574-8658

E-mail: dennis.sellers@dca.ca.gov

City of Fresno Police Department

Regional Training Center

Name: Lieutenant Tom Laband

Address: 6375 West Central Ave.
Fresno, CA 93706

Phone: (559) 621-2169

Fax: (559) 621-2175

E-mail: tom.laband@fresno.gov

5. DOI shall request in writing specific days and times for use of the Classroom, Mat Room, Tactical House and Firing Range amenities in accordance with Section 4 of Exhibit A, Attachment I; the Contractor will then dispatch a written confirmation of the reservation.
6. The DOI shall provide a qualified range master, ammunition, qualifying targets, and weapons. The DOI training is conducted under the absolute direction of DOI's Range Masters, who are solely responsible for the safety of DOI's trainees.
7. DOI shall abide by, and its use of the amenities hereunder are subject to, the Agreement for the use of Training Facility, marked Exhibit A- Attachment I which is incorporated and made a part of this agreement.

EXHIBIT B

BUDGET DETAIL AND PAYMENT PROVISIONS

1. **INVOICING AND PAYMENT**: Upon receipt and approval of the invoices, the State agrees to compensate the Contractor in accordance with the rates specified herein.

Itemized invoices shall include the Agreement Number and be submitted, in triplicate, not more frequently than monthly in arrears to:

Department of Consumer Affairs
Division of Investigation
Agreement Number: REQ0009498
Farrah Yang
1747 N. Market Blvd., Suite 265
Sacramento, CA 95834

2. **BUDGET CONTINGENCY CLAUSE**: It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to the Contractor or to furnish any other considerations under this Agreement and the Contractor shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either: cancel this Agreement with no liability occurring to the State, or offer an Agreement Amendment to the Contractor to reflect the reduced amount.

3. **PROMPT PAYMENT CLAUSE**: Payment will be made in accordance with and within the time specified in Government Code, Chapter 4.5 (commencing with Section 927).
4. **COST BREAKDOWN: Multiple Fiscal Years**

FY 2012/2013 (March 1, 2013 - June 30, 2013)

8 shooters x \$15.00 per shooter = \$120.00 x 1 time per year on different days	\$120.00
Classroom half day = \$175.00 x 1 time per year on different days	\$175.00
Mat Room half day = \$250 x 1 time per year on different days	\$250.00
Tactical House half day = \$350.00 x 1 time per year on different days	<u>\$350.00</u>
Fiscal Year Total	\$895.00

FY 2013/2014 (July 1, 2013 - June 30, 2014)

8 shooters x \$15.00 per shooter = \$120.00 x 6 times per year on different days	\$720.00
Classroom half day = \$175.00 x 4 times per year on different days	\$700.00
Mat Room half day = \$250 x 4 times per year on different days	\$1,000.00
Tactical House half day = \$350.00 x 4 times per year on different days	<u>\$1,400.00</u>
Fiscal Year Total	\$3,820.00

**ATTACHMENT I
CITY OF FRESNO POLICE DEPARTMENT
REGIONAL TRAINING CENTER
6375 W. Central Ave.
Fresno, CA 93706
Phone: 559-621-2157 Fax: 559-621-2175**

AGREEMENT FOR USE OF TRAINING FACILITIES

This Agreement is made and entered into effective the first day of March or upon approval, whichever occurs later, 2013 ("Effective Date") by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY") and the State of California Department of Consumer Affairs, Division of Investigation (hereinafter referred to as "DOI").

RECITALS

WHEREAS, CITY owns and operates certain Training Facilities on its property in the City of Fresno, State of California; and

WHEREAS, DOI, a public entity, desires permission for the non-exclusive use of said Training Facilities; and

WHEREAS, CITY is agreeable to said use of its Training Facilities and hereby grants permission for said use upon the terms and conditions herein and DOI agrees to the terms and conditions herein; and

WHEREAS, DOI acknowledges that entry into this Agreement is subject to the requirements in City Council Resolution No. 2010-184.

AGREEMENT

NOW, THEREFORE, in consideration for the use of the Training Facilities it is mutually agreed as follows:

1. Description of Property. The property subject to this Agreement is that property located at 6375 W. Central Ave., and adjacent land and structures commonly known as follows: Fresno Police Department Regional Training Center ("Training Facilities"), which consists of the following amenities - Smart Classrooms, Mat Room, Six Tactical Pistol Ranges, 200 Yard Rifle Range and Sniper Tower, Tactical Training House, K-9 Field and an Emergency Vehicle Operations Course (EVOC) with Pursuit Intervention Technique (PIT) area and Skid Pad, and Driver Awareness Pad. However, for purposes of this Agreement, Range #6 is expressly excluded whenever "Training Facilities" is otherwise referenced in this Agreement.
2. Purpose. DOI is hereby given a nonexclusive license to use the Training Facilities (except Range #6) for meeting and training purposes only. This license is personal to DOI and shall not be assigned. Any attempt to assign the license shall automatically terminate it.
3. Term of Agreement. The term of this Agreement shall commence on the Effective Date set forth above and shall continue until February 29, 2016 unless canceled by either party upon 30 calendar days' written notice to the other party's designated representative set forth herein. In the event of termination, DOI shall pay to CITY all fees for use of amenities provided.

4. Reservations for Facilities. Except for the initial period of March 1, 2013 through June 30, 2013 ("Initial Period"), DOI will notify CITY in advance of scheduled Qualification Training ("QT") periods for the fiscal year (July through June) not later than January 15th of each year. For the Initial Period, DOI will notify CITY in advance of scheduled Qualification Training ("QT") periods immediately upon entry into this Agreement by the parties. DOI shall request in writing specific days and specific times for non-QT use of the Training Facilities as far in advance as possible and, in any event, at least 10 calendar days prior to the date of the requested use except in case of emergency. The notification and the requests shall be submitted to the Fresno Police Department Training Facility, 6375 W. Central Avenue, Fresno, California 93706, 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 Training Facilities, and reasonable accommodation of all such parties is the desired objective. However, one range ("Range #5") will be designated as primary for use by DOI, and DOI will have priority use of this range during pre-scheduled QT periods, and other periodic non-QT periods as reasonably scheduled in advance in accordance with this provision. DOI's use of other amenities of the Training Facilities will be subject to availability, and DOI acknowledges that criminal justice agencies (including DOI) will be given priority use of same.

REQUEST FOR FACILITY USAGE SHALL BE SUBMITTED TO:

FRESNO POLICE DEPARTMENT
REGIONAL TRAINING CENTER
6375 W. Central Ave.
Fresno, California 93706
Phone: 559-621-2157 FAX 559-621-2175

5. Limitations.

(a) The use of the Training Facilities 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) Following use of the Training Facilities and receipt of invoice from CITY, DOI must pay CITY the applicable fee designated in CITY's Master Fee Schedule in effect on the Effective Date. The current applicable fees are attached hereto as **Exhibit 1**. DOI shall make payment to CITY at the address for the Regional Training Center set forth above in Section 4.

(c) CITY reserves the right to use the Training Facilities at all times, and may terminate use of the Training Facilities by notice to DOI'S designated representative:

Department of Consumer Affairs
Division of Investigation
Attention: Farrah Yang
1747 North Market Blvd., Suite 265
Sacramento, CA 95834
Phone: 916-515-5107
FAX: 916-928-2201
Farrah.yang@dca.ca.gov

This shall be DOI's designated representative for all coordination between CITY and DOI, or such other representative as DOI may from time to time designate in a written notice to CITY.

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

(e) The use of the Training Facilities is subject to the understanding that all of the Training Facilities are made available on an "as is" condition.

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

(g) No private use of the Training Facilities is permitted, except as expressly provided for in the then current Fresno Police Department Regional Training Center Operations Manual ("Manual") as the Fresno Police Department may amend from time-to-time, prescribing procedures and conditions in utilizing the Training Facilities, a copy of which is attached and incorporated into this Agreement (including any future amendments) as if fully set forth herein. Guests and non-DOI members or persons not expressly included with DOI's prescribed use of the Training Facilities, are not allowed to enter the Training Facilities without the prior express written consent of the Fresno Police Department Regional Training Center Supervisor who may in his/her sole discretion require the person to complete a City of Fresno release form. In any event, all such guests and non-DOI members or persons shall be the sole responsibility of DOI and subject to all Fresno Police Department Training Center rules, regulations and directions of its staff.

(h) DOI will maintain the Training Facilities in a safe operative condition while in use by the DOI and will conduct adequate periodic inspections prior to and at the conclusion of each use to that end.

(i) All range firing will be under direct supervision of competent Rangemasters who have completed a government approved firearms/rangemaster instructor course (e.g., POST). DOI'S use of the firing ranges must be conducted in compliance with the then current Manual. A copy of all Rangemaster certifications must be on file with the CITY prior to the use of the firing ranges.

(j) Utilities (water and electricity) that are available without alteration or modification by CITY will be supplied without charge and the repair and maintenance of the Training Facility will be the responsibility of CITY.

(k) DOI will contact the Fresno Police Department Duty Office at (559) 621-2375 whenever a unit enters the Training Facilities for a reserved period of use that is during non-business hours as set forth in the then current Manual. DOI shall be responsible for ensuring that the entrance remains locked and secure at all times with alarm activated.

(l) Any improvements installed or provided by DOI 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.

(m) 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 DOI is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of CITY.

(n) DOI shall supply its personnel with all equipment necessary to use the Training Facilities (e.g., targets, ammunition, weapons and other equipment necessary for any use of the firing range).

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

(p) DOI shall not interfere with the use of the Training Facilities by other users.

6. Indemnification, Release and Waiver.

- (a) To the furthest extent allowed by law, DOI 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 6) 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, DOI 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 DOI's use of the Training Facilities during the life of this Agreement. DOI's obligations under the preceding sentence shall not apply to any loss, liability, costs or damages caused solely by the negligence, or caused by the willful misconduct, of CITY during the life of this Agreement. This paragraph shall survive expiration or termination of this Agreement.
- (b) CITY shall be liable for any damage to any property owned or leased by DOI, or in DOI's care, custody or control, and 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, Training Facilities or equipment used.
- (c) DOI acknowledges that the Training Facilities and activities involving firearms, 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) DOI VOLUNTARILY ASSUMES THE RISK OF PERSONAL INJURY, PROPERTY DAMAGE AND/OR WRONGFUL DEATH TO DOI 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, EXCEPT WHEN CAUSED SOLELY BY THE NEGLIGENCE, OR CAUSED BY THE WILLFUL MISCONDUCT, OF CITY.
- (e) The license granted hereunder is freely revocable by CITY and in view of such fact, DOI 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, DOI 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) DOI, as a material part of the consideration to be rendered to CITY under this Agreement, waives all claims against CITY for damages to all DOI's personal property in, on, or about the Training

Facilities, except when caused solely by the negligence of City, or caused by the willful misconduct of City.

- (g) CITY shall not be liable to DOI for any damage by or from any act or negligence of any third party user of the Training Facilities. DOI agrees to pay for all damages to the Training Facilities, as well as all damage to other persons using the Training Facilities and to the property of those persons caused by DOI's misuse or negligent use of the Training Facilities.

7. Insurance/Self-insurance.

- (a) Throughout the life of this Agreement, DOI shall pay for and maintain in full force and effect all insurance as required in **Exhibit 2** or as may be authorized in writing by CITY's Risk Manager or his/her designee at any time and in his/her sole discretion.
- (b) DOI may elect to maintain self-insurance without the prior written consent of CITY's Risk Manager, provided that the limits of self-insurance meet or exceed the limits of insurance as required in **Exhibit 2**. Self-insurance shall respond to the same extent, and in the same manner, as if DOI purchased the respective insurance policy(ies). In such event, DOI shall furnish CITY with a certificate of self-insurance in lieu of the certificate(s) of insurance and applicable endorsements as required in **Exhibit 2**.
- (c) If at any time during the life of the Agreement or any extension, DOI fails to maintain any required insurance in full force and effect, use of the Training Facilities shall be discontinued immediately until written notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve DOI of its responsibilities under this Agreement.
- (d) The fact that insurance (including, without limitation, self-insurance) is obtained by DOI shall not be deemed to release or diminish the liability of DOI, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by DOI. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of DOI, its officials, principals, officers, agents, employees or invitees.
- (e) Upon request of CITY, DOI 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 during the life of this Agreement and for a period of 4 years following expiration or termination of this Agreement. This requirement shall survive expiration or termination of this Agreement.

8. Conformity with Law and Safety. DOI shall observe and comply with, and shall ensure that its personnel utilizing the Training Facilities observes and complies with, all applicable requirements contained in the then current Manual and 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 Training Facilities by DOI shall be in accordance with the then current Manual and these laws, ordinances, codes and regulations. DOI shall hold CITY harmless from any and all liability, fines, penalties and consequences from any noncompliance or violations of such Manual, laws, ordinances, codes and regulations.

- 9. Accidents. If a death, personal injury or property damage occurs in connection with the performance of this Agreement, DOI shall immediately notify the Fresno Police Department Regional Training

Center Administrator, Duty Office, in person or by telephone. DOI shall promptly submit to CITY and the Fresno Police Department Regional Training Center 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 DOI's liability insurance carrier; (3) a detailed description of accident and whether any of CITY's equipment, tools, material or staff was involved.

10. City Property. DOI shall promptly pay for or restore any damage to CITY property caused by DOI and arising out of the performance of this Agreement, upon receipt of written notice or invoice. DOI 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.
11. Drug-Free Workplace. DOI and DOI's employees shall comply with the CITY's policy of maintaining a drug-free workplace. Neither DOI nor DOI'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 Training Facilities. If DOI or any employee of DOI is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a CITY facility or work site, the DOI within 5 days thereafter shall notify the Fresno Police Department Regional Training Center in writing. Violation of this provision shall constitute a material breach of this Agreement.
12. Non-discrimination. DOI assures that he/she/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.
13. Binding. Subject to Section 14 below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.
14. Assignment of Agreement. Nothing contained in this Agreement shall be construed to permit assignment or transfer by DOI of any rights under this Agreement and such assignment or transfer is expressly prohibited and void.
15. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.
16. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.
17. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.
18. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

19. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.
20. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.
21. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit A or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.
22. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
23. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.
24. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement, and the Agreement Number REQ0009498 to which this Agreement is made a part thereof as Exhibit A, Attachment I, represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral.
25. Modification of Agreement. This Agreement may be supplemented, amended or modified only by mutual agreement of the parties. No supplement, amendment or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.
26. Notices. Any written notice required or intended to be given to either party under the terms of this Agreement shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth in this Agreement (i.e., in Section 5 for DOI, and in Section 4 for CITY) or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.
27. Authority to Contract. By signing on the signature page below, the DOI's signatory warrants and represents that she/he executed this Agreement in his/her authorized capacity and by her/his signature on this Agreement, she/he or the entity upon behalf she/he acted, executed this Agreement.
28. Condition Precedent. The following is a condition precedent to the effectiveness of this Agreement. This condition must be satisfied by March 1, 2013 or this Agreement will be void and of no effect.

Condition Precedent - Execution of Agreement Number REQ0009498

CITY and DOI have fully executed Agreement Number REQ0009498, dated March 1, 2013, for the State of California Department of Consumer Affairs, Division of

Investigation's use of the firing range facility at the City of Fresno Police Department Regional Training Center and such Agreement is in full force and effect as evidenced by the satisfaction of all conditions precedent contained therein.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year written below, and CITY has hereunto caused its corporate name to be signed by the designee of the Chief of the Fresno Police Department who hereunto is duly authorized the day and year written below:

CITY:
CITY OF FRESNO,
a California municipal corporation

DOI:
State of California Department of Consumer Affairs

By: 

By: 

Name: Tom Laband

Name: Brian Dawley

Title: LIEUTENANT
Fresno Police Department

Title: SSM I

DATE: 3/26/2013

DATE: 4/8/13

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By:  3/26/13
Deputy

APPROVED AS TO FORM:
FRANCINE M. KANNE Daug T. Sloan
Interim City Attorney

By:  3-21-13
Nancy A. Algier Date
Senior Deputy Karen J. Ray

Attachments:

- Exhibit 1 – Master Fee Schedule (Excerpt)
- Exhibit 2 – Insurance Requirements

Exhibit 1
CITY OF FRESNO
MASTER FEE SCHEDULE (Excerpt)
REGIONAL TRAINING CENTER FACILITIES FEES
All fees effective 07/01/12 unless otherwise noted
MFS Amendment #510 (June 2012)

Range Office – monthly	450.00
Shared Range Office – monthly	225.00
Classroom – daily	250.00
Classroom – half day	175.00
Mat Room – daily	400.00
Mat Room – half day	250.00
Pistol Range – daily	600.00
Pistol Range – half day	400.00
Rifle Range – daily	700.00
Rifle Range – half day	450.00
Tactical House – daily	500.00
Tactical House – half day	350.00
Range Fee – Daily rate per person (included in Pistol Range & Rifle Range fee)	15.00
Emergency Vehicle Operations Course (EVOC) – daily	1,300.00
Driver Awareness Pad – daily	400.00
K-9 Field – daily	200.00
Pursuit Car – daily	88.00
PIT Car – daily	75.00
Motorcycle – daily	47.00
Training Officer – Hourly Straight Time	53.90
Training Officer – Hourly Overtime	56.01
Training Sergeant – Hourly Straight Time	63.62
Training Sergeant – Overtime	67.52

Exhibit 2
INSURANCE REQUIREMENTS
Agreement for Use of Training Facilities between City of Fresno ("CITY")
and State of California Department of Consumer Affairs ("DOI")

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations, and contractual liability.
2. The most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, which shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). **[This coverage is only required if DOI intends to, or does operate, DOI-owned vehicle(s) on the Training Facilities' Emergency Vehicle Operations Course (EVOC), Pursuit Intervention Technique (PIT) area, Skid Pad or Driver Awareness Pad.]**
3. Workers' Compensation insurance as required by the California Labor Code and Employer's Liability Insurance.

Minimum Limits of Insurance

DOI shall maintain limits of liability of not less than:

1. General Liability:
 - \$1,000,000 per occurrence for bodily injury and property damage
 - \$1,000,000 per occurrence for personal and advertising injury
 - \$2,000,000 aggregate for products and completed operations
 - \$2,000,000 general aggregate
2. Automobile Liability:
 - \$1,000,000 per accident for bodily injury and property damage
3. Employer's Liability:
 - \$1,000,000 each accident for bodily injury
 - \$1,000,000 disease each employee
 - \$1,000,000 disease policy limit

Umbrella or Excess Insurance

In the event DOI purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Deductibles and Self-Insured Retentions

DOI shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and DOI shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the CITY'S Risk Manager or his/her designee. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

Other Insurance Provisions

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers.
2. DOI's insurance coverage shall be primary and no contribution shall be required of CITY.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: DOI and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents and volunteers.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice by certified mail, return receipt requested, has been given to CITY. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, DOI shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, DOI shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

Acceptability of Insurers

All policies of insurance required hereunder shall be placed with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide; or authorized by CITY'S Risk Manager.

Verification of Coverage

DOI 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 use by DOI of the Training Facilities commences.

FY 2014/2015 (July 1, 2014 - June 30, 2015)

8 shooters x \$15.00 per shooter = \$120.00 x 6 times per year on different days	\$720.00
Classroom half day = \$175.00 x 4 times per year on different days	\$700.00
Mat Room half day = \$250 x 4 times per year on different days	\$750.00
Tactical House half day = \$350.00 x 4 times per year on different days	<u>\$1,400.00</u>
Fiscal Year Total	\$3,820.00

FY 2015/2016 (July 1, 2015 - February 29, 2016)

8 shooters x \$15.00 per shooter = \$120.00 x 5 times per year on different days	\$600.00
Classroom half day = \$175.00 x 3 times per year on different days	\$525.00
Mat Room half day = \$250 x 3 times per year on different days	\$750.00
Tactical House half day = \$350.00 x 3 times per year on different days	<u>\$1,050.00</u>
Fiscal Year Total	\$2,925.00

TOTAL CONTRACT AMOUNT **\$11,460.00**

EXHIBIT C (GTC 610 AS MODIFIED)

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to any costs incurred by Contractor for restoration of the Contractor's facility or storage of State's property which is subject to reimbursement by the State. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to any costs incurred by Contractor for restoration of the Contractor's facility or storage of State's property which is subject to reimbursement by the State. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. DISPUTES: Contractor and the State shall continue with the responsibilities under this Agreement during any dispute.
6. TERMINATION FOR CAUSE: This Agreement may be terminated at any time, with or without cause, by either party, upon written notice given to the other party at least 30 days prior to the date specified for such termination. In the event of termination, each party shall fully pay and discharge all obligations in favor of the other accruing prior to the date of such termination, and each party shall be released from all obligations which would otherwise accrue subsequent to the date of termination.
7. INDEPENDENT CONTRACTOR: Neither State, nor Contractor, and the respective agents and employees thereof, in the performance of this Agreement, shall act as officers or employees or agents of the other but shall act in an independent capacity.
8. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

9. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

10. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.
11. TIMELINESS: Time is of the essence in this Agreement.
12. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.
13. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:
- a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
 - b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
14. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

15. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING
REQUIREMENTS:

- a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

- b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

EXHIBIT D

SPECIAL TERMS AND CONDITIONS

1. AGENCY LIABILITY: The Contractor warrants by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the State shall, in addition to other remedies provided by law, have the right to annul this Agreement without liability, paying only for the value of the work actually performed, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.
2. IMPRACTICABILITY OF PERFORMANCE: This Contract may be suspended or cancelled, without notice at the option of the Contractor, if the Contractor's or State's premises or equipment is destroyed by fire or other catastrophe, or so substantially damaged that it is impractical to continue to license the facility, or in the event the Contractor is unable to make available the facility as a result of any action by any governmental authority.
3. LICENSES AND PERMITS: If applicable, the Contractor shall be an individual or firm licensed to do business in California and shall obtain at his/her expense all license(s) and permit(s) required by law for accomplishing any work required in connection with this Agreement.

In the event the Contractor fails to keep in effect at all times all required license(s) and permit (s), the State may, in addition to other remedies it may have, terminate this Contract upon occurrence of such event.

EXHIBIT E

ADDITIONAL TERMS AND CONDITIONS

1. RIGHT TO TERMINATE: Both parties reserve the right to terminate this agreement subject to 30 days written notice to the other.

However, the agreement can be immediately terminated for cause. The term "for cause" shall mean that the party fails to meet the terms, conditions, and/or responsibilities of the agreement. In this instance, the agreement termination shall be effective as of the date indicated on the terminating party's notification to the other party.

2. CONFIDENTIALITY OF DATA: No reports, information, inventions, improvements, discoveries, or data obtained, repaired, assembled, or developed by the Contractor pursuant to this Agreement shall be released, published, or made available to any person (except to the State) without prior written approval from the State.

The contractor by acceptance of this Agreement is subject to all of the requirements of California Civil Code Sections 1798, et seq., regarding the collections, maintenance, and disclosure of personal and confidential information about individuals.

3. DISABLED VETERAN BUSINESS ENTERPRISE (DVBE): The State has determined that the DVBE participation goals for this Agreement are exempt. However, the Contractor may use DVBE's and report the participation to the State.
4. WORKERS COMPENSATION AND EMPLOYERS LIABILITY : It is understood and agreed that, without limiting the right of Contractor to obtain indemnification from the State or any third parties, Contractor shall maintain a self-insurance program or statutory worker's compensation and employer's liability coverage for all its employees who will be engaged in the performance of this contract. Employer's liability limits of \$1,000,000 are required.
5. INSURANCE REQUIREMENTS: It is understood and agreed that, without limiting the right of Contractor to obtain indemnification from the State or any third parties, Contractor shall maintain a self-insurance program or have in effect at all times during the term of this Contract general liability insurance of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined.

The Contractor agrees that the liability insurance herein provided for shall be in effect at all times during the term of this Contract. In the event said insurance coverage expires at any time during the term of this Contract, Contractor agrees to provide at least 30 days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than one year. New certificates of insurance are subject to the approval of the Department of General Services. In the event the Contractor fails to keep in effect at all times insurance coverage as herein provided, the State may, in addition to any other remedies, terminate this Contract.

6. Condition Precedent. The following is a condition precedent to the effectiveness of this Contract. This condition must be satisfied by March 1, 2013 or this Contract will be void and of no effect.

Condition Precedent - Execution of Agreement

Contractor and DOI have fully executed the City of Fresno Police Department Regional Training Center Agreement attached as Exhibit A, Attachment I to this Contract (Contract Number REQ0009498), dated March 1, or upon approval, whichever occurs later, 2013, for the State of California Department of Consumer Affairs, Division of Investigation's use of the firing range facility at the City of Fresno Police Department Regional Training Center and such Agreement (Exhibit A, Attachment I to this Contract) is in full force and effect as evidenced by the satisfaction of all conditions precedent contained therein.



OFFICE OF ADMINISTRATIVE SUPPORT SERVICES
Contracts Unit
1625 N. Market Boulevard, Suite S-103
Sacramento, CA 95834
P (916) 574-7290 F (916) 574-8658



City of Fresno, Police Department
6375 W. Central Ave.
Fresno, CA 93706

Attention: Tom Laband

tom.lanand@fresno.gov

Subject: Agreement Number REQ0009498

APR 29 2013

April 29, 2013

Dear Contractor:

In an effort to streamline the way the State of California conducts business, we are in the process of standardizing current contracting procedures and formats. The first step toward achieving this goal is to eliminate unnecessary duplication of agreement language and documentation. You will note that in the new format (Std 213), a copy of the General Terms and Conditions is not provided. It is available on the Internet at <http://www.ols.dgs.ca.gov/Standard+Language/default.htm> and may be downloaded and printed for your files. However, if you do not have Internet capabilities, you may request a hard copy by contacting the person listed below.

This Agreement cannot be considered binding on either party until approved by appropriate authorized State agencies. No services should be provided prior to approval, as the State is not obligated to make any payments on any Agreement prior to final approval. Expedious handling of this Agreement is appreciated. For inquiries regarding this Agreement, call Dennis Sellers at (916) 574-7290.

Complete the following item(s) and return to my attention at the address stated above:

___ Std. 213 - Standard Agreement with attached Exhibits/Attachments. Please sign two (2) original signature sheets (Std. 213) and return all enclosed documents for further processing.

___ Std. 204 - Vendor Data Record. No payment can be made unless this form is completed and returned.

___ CCC 307 - Contractor Certification Clauses. The Contractor Certification Clauses contain terms and conditions that may apply to your Agreement and to persons doing business with the State of California. The CCC 307 will be kept on file in a central location and must be renewed every three (3) years and updated as changes occur. It is available on the above referenced Internet site. Please sign and return page one (1) of the CCC 307. Failure to do so will prohibit the State of California from doing business with your company.

___ A copy of your insurance certification which states coverage will not be canceled without 30 days written notice to the State of California, and which also includes the State of California, its officers, agents, and employees as additional insured.

X ___ The attached approved Agreement is for your records. You are now authorized to provide the agreed upon services.

Thank You,

Dennis Sellers, Contract Analyst

cc: Division of Investigation/Farrah Yang

Attachment(s)