

AGREEMENT FOR USE

CARLSBAD SAFETY TRAINING CENTER (STC)

1. PARTIES AND DATE

This Agreement for use of the Carlsbad Safety Training Center (STC) (“Agreement”) is entered into this ****INSERT DAY**** day of ****INSERT MONTH****, ****INSERT YEAR****, by and between the City of Carlsbad, a municipal corporation organized under the laws of the State of California with its principal place of business at 5750 Orion Street, Carlsbad, California 92010 (“City”), and *****INSERT NAME*****, a *****[INSERT TYPE OF ENTITY CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP, INDIVIDUAL OR OTHER LEGAL ENTITY]***** with its principal place of business at *****INSERT ADDRESS***** (“Agency”). City and Agency are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

2. RECITALS

2.1 Agency desires to use of certain City facilities located at 5750 Orion Street in the City of Carlsbad, California, known as the Carlsbad Safety Training Center (“STC Facilities”); and

2.2 Agency desires to use the STC Facilities for the purposes of **[Choose the following: Weapons Training, Fire Training, Classroom Training, Vehicle Training, Trench Training, Confined Space Training, Special Weapons and Tactics Training, Defensive Tactics Training]** on or about ****INSERT DATE/TIME**** (“Training Events”).

2.3 City is willing to allow the Agency to use the STC Facilities pursuant to the terms and conditions set forth below.

3. TERMS AND CONDITIONS

3.1 STC Facilities. City agrees to allow Agency to use the STC Facilities pursuant to this Agreement including the conditions, requirements and fees as described in Exhibit “A”, Exhibit “B”, and the STC Standard Operating Procedures (SOP), as may be amended from time to time by the City at its sole and absolute discretion, all as incorporated herein by this reference. The STC Facilities are subject to the needs of the City and as such the Agency’s use of STC Facilities may be cancelled by the City at any time. In the event City determines, in its sole and absolute discretion, that the STC Facilities are needed for any City purposes, the Agency shall immediately vacate the STC Facilities upon notice by the City. It will also be understood that the STC Facilities will be made available on an “as is” basis.

3.2 Training Events. Agency represents and warrants that all attendees, participants, students, observers, instructors and any other persons brought to the STC Facilities by the Agency (“Agency Invitees”) are qualified to participate in the Training Events, and use of the STC Facilities. The City retains the discretion to terminate this Agreement and requires all Agency Invitees to immediately vacate the STC Facilities if the Training Events or anyone’s participation in the Training Events poses any kind of threat or liability to the City, the public, Agency Invitees or anyone else. Agency Invitees shall not be considered an employee or agent of City for any purpose related to the Training Events.

3.3 Release of Liability / Assumption of Risk. In consideration of the City’s Agreement to allow the Agency to use the STC Facilities, the Agency, on behalf of itself and its

elected officials, officers, employees, contractors, agents, volunteers, students, and all Agency Invitees hereby releases and forever discharges the City and each of its elected officials, officers, employees, contractors, agents, and volunteers from any and all known and unknown, certain or contingent, past, present or future obligations, liabilities, demands, claims, costs, expenses, debts, controversies, damages, actions, and causes of action of every nature, character, or description which they may have against the City, arising from or in any way related to the Training Events, use of STC Facilities or this Agreement. Furthermore, Agency assumes all risks associated with using the STC Facilities for the Agency's purposes, including but not limited to inspections of the facility prior to and after use, determination that the facilities "as is" status is appropriate for the Agency's Training Events, supervision and control of all Agency Invitees involved in the Agency's use of the STC Facilities including Agency Invitees, members of the general public and anyone else exposed during the period of time the Agency is using the STC Facilities.

AGENCY HEREBY ACKNOWLEDGES THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 ("SECTION 1542"), WHICH IS SET FORTH BELOW:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

BY SIGNING BELOW, AGENCY HEREBY WAIVES THE PROVISIONS OF SECTION 1542 IN CONNECTION WITH THE RELEASED MATTERS.

Signature of Agency Representative

Printed Name of Agency Representative

3.4 Indemnification / Hold Harmless. Agency shall indemnify, defend and hold harmless City, its elected officials, officers, employees, contractors, agents, and volunteers ("Indemnified Parties") from and against any and all claims, damages, demands, liability, costs, losses and expenses, including, without limitation, court costs and reasonable attorneys' fees and costs, arising out of, in connection with or in any way related to Agency's actions or inactions related to this Agreement, including without limitation any actions or inactions related to use of STC Facilities or the Training Events, to the fullest extent permitted by law.

3.5 Assumption of Risk Agreement and Participant Release. Agency shall ensure that all Agency Invitees observing or participating in the Training Events sign and execute a release, substantially in the same form as set forth in the attached Exhibit "B", incorporated by this reference ("Participant Release"). No one shall attend or participate in the Event or use the STC Facilities without signing and executing a Participant Release also commonly known as a Hold Harmless Agreement.

3.6 Insurance. Agency shall, at its sole expense, procure and maintain for the duration of its obligations under this Agreement insurance against claims for injuries to persons or damages to property which may arise from or be in connection with the STC Facilities and the Training Events or activities conducted by the Agency, its elected officials, officers, employees, contractors, agents, volunteers, students, and Agency Invitees. The insurance shall take the form of a commercial general liability policy or approved self-funding agreement, to include bodily injury, personal injury, and property damage coverage, written on an occurrence basis with a company reasonably acceptable to the City, in an amount not less than Two Million Dollars (\$2,000,000) to cover any activities performed by any person under the permission granted herein and any damage or loss suffered or incurred by the City, its elected officials, officers, employees, contractors, agents, and volunteers resulting from such activity. The insurance will be obtained from an insurance carrier admitted and authorized to do business in the State of California. The insurance carrier is required to have a current Best's Key Rating of not less than "A-:VII" **OR** with a surplus line insurer on the State of California's List of Eligible Surplus Line Insurers (LESLI) with a rating in the latest Best's Key Rating Guide of at least "A:X". Agency shall maintain Workers Compensation coverage in the statutorily required amounts, if applicable. Agency shall require its insurer to waive all rights of subrogation against City, its elected officials, officers, employees, contractors, agents, and volunteers, except for any liability resulting from the willful misconduct or grossly negligent acts of City. The Agency will provide evidence of such insurance coverage to City's satisfaction prior to initiating the Training Events. The Agency shall cause all such policies to be endorsed to add the City, its elected officials, officers, employees, contractors, agents, and volunteers as Additional Insured's. Agency's self-funded programs will be required to provide evidence that meets City's requirements as determined at the sole and absolute discretion of the City.

3.7 Governmental Approvals. Agency shall or has obtained all necessary and applicable federal, state and local approvals, certifications, and permits to conduct the Training Events prior to use of STC Facilities. City reserves the right to require Agency to provide proof regarding these approvals, certifications, and permits, if applicable.

3.8 Scheduling of Facility / Cancellations. Agency may schedule use of the City's Facilities on an "as available", "first come first served" basis by contacting the City's Facility Manager. In the event Agency is unable to use its allotted time(s), it shall, contact the City's Facility Manager within ten (10) business days. Agency will be invoiced for hours scheduled not actual hours used if sufficient notice for cancellation is not provided.

3.9 Term of Agreement. The term of this Agreement shall commence upon execution of this Agreement by City, and shall terminate five (5) years from the date of commencement. It is also understood that the City may terminate this Agreement at any time for any or no reason.

3.10 Payments for Use of STC Facilities. City shall invoice Agency on an hourly fee based upon Agency scheduling and use of STC Facilities. All STC Facility use fees shall be in accordance with the STC Facility fee table which may be amended by the City from time to time. Agency shall remit payment in full to the attention of City of Carlsbad, 1635 Faraday Avenue, Carlsbad, CA 92008, within thirty days (30) days of receipt of such invoice. A late charge equivalent to 5% of the unpaid balance shall be assessed on all accounts ten (10) or more days past due. Agency shall be liable for the payment at the full cost of the use of the STC Facilities for the hours scheduled for Training Events whether or not Agency subsequently uses the STC Facilities or not.

3.11 Accidents / Damage Investigations. The Agency Safety Officer, as such person is described in the STC Facilities Standard Operating Procedures (SOP), shall immediately report any injury or non-injury accidents, equipment damage and/or negligent firearm discharges immediately to the City Facility Manager. The parties agree to fully and promptly cooperate in the investigations of injury or non-injury accidents, equipment damage and/or negligent firearm discharges arising from Agency's use of the STC Facilities. The City's Facility Manager will coordinate such investigations for the purpose of determining cause, responsibility and any physical or operational modifications or improvements deemed necessary to improve facility safety. In the event damage to the STC Facility requires repair and/or replacement, City shall affect such repair and present to the Agency an invoice for the cost of the repairs/replacement plus 5% (five percent) for City administrative costs. Agency shall remit payment in full to the attention of City of Carlsbad, 1635 Faraday Avenue, Carlsbad, CA 92008, within thirty days (30) days of receipt of such invoice. A late charge equivalent to 5% of the unpaid balance shall be assessed on all accounts ten (10) or more days past due.

3.12 Facility Inspections / Cleanup. The parties will conduct a joint inspection of STC Facilities before and after use. All damages will be annotated on inspection sheets provided by the City's Facility Manager to Agency. Agency shall be responsible for general cleanup of the STC Facilities following its use of the same. For purposes of this Agreement, "cleanup" for STC Facilities will be described in further detail in the STC Facilities SOP.

3.13 Notices. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Agreement to be served on or given to either party to this Agreement shall be in writing and shall be deemed duly served or given when personally delivered to the party to whom it is directed or to any managing or executive officer or director of that party in lieu of personal service when deposited in the United States mail, first class postage prepaid, addressed as follows:

<p>If to Agency:</p> <p>**INSERT NAME AND ADDRESS**</p>	<p>If to City:</p> <p>City of Carlsbad 1635 Faraday Avenue Carlsbad, CA 92008 Attn: Property and Environmental Management Division</p>
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3.14 Survival. Agency's obligations to release, indemnify, defend, and hold harmless the City as set forth in this Agreement, shall survive expiration or termination of the term of this Agreement and shall remain in effect until there is no risk to the City of any liability for any claims or losses due to the use of the STC Facilities for the Training Events.

3.15 Interpretation. The provisions of this Agreement are intended by the parties to be interpreted and construed to provide the fullest protection possible under the law to the City.

3.16 Selection of Counsel. Agency's obligation to indemnify the City under this Agreement shall include the obligation of the Agency to defend City with legal counsel of City's own choosing. In the event City elects not to select such counsel, the designation of such counsel shall be made by the Agency but shall be subject to prior approval by City.

3.17 Entire Agreement. This written document contains the entire agreement of the parties and supersedes any prior oral or written statements or agreements between the parties. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by the parties.

3.18 Waiver and Severability. No waiver of any default shall constitute a waiver of any other breach or default, whether of the same or of any other covenant or condition. No waiver, benefit, privilege or service voluntarily given or performed by either party shall give the other party any contractual right by custom, estoppel or otherwise. If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

3.19 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

3.20 Authority; Binding on Successors and Assigns. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to enter into this Agreement and bind each respective party. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties. Notwithstanding the foregoing, this Agreement may not be assigned by Agency unless City consents in writing to such assignment.

3.21 Governing Law and Venue. This Agreement shall be governed by the laws of the State of California. Any action to interpret or enforce this Agreement shall be brought and maintained exclusively in the courts of and for San Diego County, California.

[SIGNATURES ON NEXT PAGE]

AGREEMENT FOR USE OF THE CARLSBAD SAFETY TRAINING CENTER (STC)

BETWEEN

THE CITY OF CARLSBAD AND ****INSERT NAME****

4. AUTHORITY

The individuals executing this Agreement and the instruments referenced in it, on behalf of Agency, each represent and warrant that they have the legal power, right and actual authority to bind Agency to the terms and conditions of this Agreement.

CITY OF CARLSBAD

By: _____
David Hauser
Property and Environmental
Management Director

Attest: _____
Barbara Engleson
City Clerk

Proper notarial acknowledgment of execution by Agency must be attached.
If a corporation, Agreement must be signed by one corporate officer from each of the following two groups:

Group A
Chairman,
President, or
Vice-President

Group B
Secretary,
Assistant Secretary,
CFO, or Assistant Treasurer

AGENCY

By: _____
Signature

Name (Print)

Title (Print)

By: _____
Signature

Name (Print)

Title (Print)

APPROVED AS TO FORM:

CELIA A. BREWER, City Attorney

By: _____
Assistant City Attorney

EXHIBIT "A"

SAFETY TRAINING CENTER FACILITY DESCRIPTION, CAPABILITIES AND LOCATION

1. The Carlsbad Safety Training Center (STC) is a four-acre facility that provides training resources which can replicate emergency scenarios and high risk training events that Joint First Responders may encounter when conducting public safety operations. The STC Facilities are predominantly used by firefighting and law enforcement agencies to maintain and enhance their First Responder capabilities and to increase the readiness of internal public safety networks. The training conducted at this facility is crucial to building a rapid and capable First Responder Agency that can respond to emergencies within the City of Carlsbad and outlying cities.

2. The STC Facilities consists of a primary training building which houses two indoor shooting ranges (25 yards and 100 yards), multiple storage areas, and three classrooms with audio visual systems, and a training room for computer generated training scenarios. The outside areas of the facility consists of a residential live fire burn prop, four story commercial tower with multiple live fire burn props, confined space training area, trench extrication area, vehicle extrication area, city streetscape, emergency vehicle training area (grinder), parking, and various equipment storage areas that house City of Carlsbad Police and Fire related equipment.

3. General Location Information:

a. The STC is located at 5750 Orion Street, Carlsbad, CA 92010.

b. U.S. Geological Survey (USGS) Information:

-Map Sheet: San Luis Rey Quadrangle, California-San Diego (7.5 Minute Series)

-Latitude and Longitude: N 33° 8' 16.106" W 117° 16' 0.397"

-Grid Reference System (10-digit/WGS-84 Datum): 11S MS 75118 66596

EXHIBIT "B"

**PARTICIPANT RELEASE
(HOLD HARMLESS CERTIFICATION)**

I, _____ (print name), have voluntarily requested that the City of Carlsbad ("City") allow me to use or observe the use of the facilities at the Carlsbad Safety Training Center and/or the various safety training apparatus located at 5750 Orion Street, Carlsbad, California, 92010, known as the Carlsbad Safety Training Center ("STC Facilities"), for the purposes of [Choose the following: Weapons Training, Fire Training, Classroom Training, Vehicle Training, Trench Training, Confined Space Training, Special Weapons and Tactics Training, Defensive Tactics Training] on or about **[**INSERT DATE/TIME**]** ("Training Events"). I hereby acknowledge, understand and agree that the City is allowing the use of said STC Facilities for my sole benefit. I also acknowledge, understand and agree that by using STC Facilities I may be exposed to risks of damage to my person or property, including, but not limited to, personal property damage, personal bodily injury, mental or psychological effects, gunshot wounds, small explosions, strikes from bullet fragments and shell casings, falls from high structures, trip and snag hazards, falls on wet surfaces, lead contamination, falling debris, motor vehicle accidents, and/or other known and unknown hazards that may result in serious bodily injury or death.. I understand, acknowledge and agree that such serious bodily injury or death may be caused, either directly or indirectly, in whole or in part, by the fact that I am present upon the STC Facilities site whether or not I may be participating in or observing a Training Event.

I HEREBY ACKNOWLEDGE, UNDERSTAND AND AGREE that I am fully aware of the risks and hazards inherent in using or observing the use of STC Facilities or participating in a Training Events, and I hereby accept and assume full responsibility for any and all risks of damage, injury, effects or death resulting to me or my property while using or observing the use of the STC Facilities, or participating in a Training Event, or resulting from the use or condition of STC Facilities, whether or not using STC Facilities, and whether or not the risks are known or unknown to me or to City. _____ **(Initial)**

I HEREBY ACKNOWLEDGE, UNDERSTAND AND AGREE, in consideration for the City allowing me to use or observe the use of STC Facilities or to participate in the Training Events, that I, my personal representatives, heirs, next-of-kin and assigns (collectively the "Releasers") hereby release, waive, discharge, and covenant not to sue or bring any claim or demand, whether administrative, judicial or otherwise, against the City and its elected officials, officers, employees, contractors, agents, and volunteers for any and all liability from and for any loss or damage to me or the other Releasers, and from and for any claims or demands therefor on account of injury to the person or property of me or the other Releasers, including, but not limited to, personal property damage, personal bodily injury, mental or psychological effects, or death, whether caused by the negligence or willful misconduct of me, the City, other participants in the Training Events, or anyone else while I participate in the Training Events, or the condition of STC Facilities and whether or not using STC Facilities, and whether or not the risks are known or unknown to me or the City. _____ **(Initial)**

I HEREBY ACKNOWLEDGE, UNDERSTAND AND AGREE to release on my behalf and on behalf of the Releasers any and all unknown claims. I understand and agree that the released claims include not only claims presently known to me and/or the Releasers, but also include all known and unknown, suspected and unsuspected, claims, rights, demands, actions, obligations, liabilities, and causes of action of every kind and character that would otherwise come within the scope of the claims released herein. I understand that I and/or the Releasers may hereafter discover facts different from what I/they now believe to be true, which if known, could have materially affected the terms of this release, waiver, indemnity and hold harmless

certification, but we (the Releasors and I) nevertheless waive and relinquish any claims or rights based on such different or additional facts. With respect to the released claims, I knowingly and voluntarily waive and relinquish any and all rights or benefits that I and/or the Releasors may now have, or in the future may have, under the terms of Section 1542 of the California Civil Code, which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

_____ **(Initial)**

I HEREBY ACKNOWLEDGE, UNDERSTAND AND AGREE to defend, indemnify, save and hold free and harmless the City and its elected officials, officers, employees, contractors, agents, and volunteers from any and all liability from loss, damage, cost or injury, including death, to any property or persons, including third parties, in any manner arising out of or incident to any acts, omissions or willful misconduct of me while I participate in the Training Events, whether while using STC Facilities, including without limitation the payment of attorneys’ fees and costs (with attorneys of City’s choosing, in its sole and absolute discretion). Further, I shall defend at my own expense, including attorneys’ fees and costs (with attorneys of City’s choosing, in its sole and absolute discretion), the City and its elected officials, officers, employees, contractors, agents, and volunteers in any action or proceeding, legal, administrative or otherwise, based upon such acts, omissions or willful misconduct. _____

(Initial)

I HEREBY ACKNOWLEDGE, UNDERSTAND AND AGREE that this release, waiver, indemnity and hold harmless certification is intended to be as broad and inclusive as is permitted by the laws of the State of California, and that if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect. _____

(Initial)

I HEREBY ACKNOWLEDGE, UNDERSTAND AND AGREE that I have read, understand, and voluntarily sign this release, waiver, indemnity and hold harmless certification and have had the opportunity to review this certification with legal counsel, and I agree that no oral representations, statements or inducements apart from the foregoing written certification have been made, and I further agree this certification shall be binding on me and my personal representatives, heirs, assigns and next-of-kin. _____ **(Initial)**

I HEREBY ACKNOWLEDGE, UNDERSTAND AND AGREE that I am age 18 or older, and that I will strictly abide by all safety requirements and other instructions given to me by any and all City personnel and/or agency instructors at all times during my presence on the STC site and during my participation in any Training Events or use of STC Facilities. _____ **(Initial)**

I HAVE CAREFULLY READ, UNDERSTAND, ACKNOWLEDGE AND AGREE TO THIS RELEASE, WAIVER, INDEMNITY AND HOLD HARMLESS CERTIFICATION. I UNDERSTAND THAT I AM GIVING UP VALUABLE LEGAL RIGHTS BY SIGNING THIS RELEASE, WAIVER, INDEMNITY AND HOLD HARMLESS CERTIFICATION. I HAVE AGREED TO SIGN THIS CERTIFICATION OF MY OWN FREE WILL. I UNDERSTAND THAT I MAY SEEK THE ADVICE OF AN ATTORNEY IN ANY MATTER CONNECTED WITH THIS RELEASE, WAIVER, INDEMNITY AND HOLD HARMLESS CERTIFICATION BEFORE SIGNING.

PARTICIPANT SIGNATURE:

By: _____
Signature

Printed Name

Date