



**AGREEMENT FOR LEASE OF
REAL PROPERTY**

**SACRAMENTO REGIONAL FIRE/EMS
COMMUNICATIONS CENTER**

**3121 GOLD CANAL DRIVE
RANCHO CORDOVA, CA 95670**

AGREEMENT FOR LEASE OF REAL PROPERTY
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AGREEMENT FOR LEASE OF REAL PROPERTY

3121 Gold Canal Drive, Rancho Cordova, CA 95670

THIS AGREEMENT is made and entered into this _____ day of _____, 2017 by and between the SACRAMENTO METROPOLITAN FIRE DISTRICT, an autonomous Special District established under California Health and Safety Code Section 13800, hereafter "District," and SACRAMENTO REGIONAL FIRE/EMS COMMUNICATIONS CENTER, a Joint Powers Authority organized pursuant to the provisions of the California Government Code Section 6500, hereafter "Lessee."

WHEREAS, District owns certain real property located at 3121 Gold Canal Drive in the City of Rancho Cordova, California; and

WHEREAS, Lessee provides dispatching services to several emergency response agencies in Sacramento County; and

WHEREAS, Lessee desires to lease that certain real property from District to conduct Lessee's business; and

WHEREAS, District is willing to grant the same to Lessee, upon the promises, terms, conditions, and covenants set forth herein.

NOW, THEREFORE, for consideration of the promises, terms, conditions, and covenants contained herein, District and Lessee hereby agree as follows:

Article 1

Definitions

As used herein, the following words and phrases shall have the meanings set forth below:

1.01 Anniversary Date

"Anniversary Date" shall mean the first day of a Lease Year.

1.02 Commencement Date

"Commencement Date" shall mean the date the Agreement is effective which shall be July 1, 2017.

1.03 Chief

"Chief" shall mean the Fire Chief of the Sacramento Metropolitan Fire District and his or her authorized representatives.

1.04 District

"District" shall mean Sacramento Metropolitan Fire District, an autonomous Special District, as represented by the Sacramento Metropolitan Fire District Board of Directors.

1.05 Execution Date

"Execution Date" shall mean the date the Agreement is approved and executed by the Chief.

1.06 Gross Revenues

"Gross Revenues" means all revenue attributable to (1) the subletting or renting out of the Leased Premises, in whole or in part, by Lessee (2) the operation of catering services upon the Leased Premises, or (3) any other activity unrelated to the core functions of the Lessee (collectively, the "Revenue Generating Activities").

1.07 Sign

"Sign" shall mean any advertising sign, billboard, identification sign or symbol, poster, or other similar device, regardless of content.

1.08 Leased Premises

"Leased Premises" shall mean those certain premises leased by Lessee, more particularly described by Article 2.02.

1.09 Lease Year

"Lease Year" shall mean a period of twelve (12) consecutive calendar months beginning July 1 and ending June 30.

1.10 Trade Fixtures

"Trade Fixtures" shall mean, but will not be limited to: all fixtures, furnishings, equipment, and machinery used in connection with Lessee's required or permitted activities pursuant to this Agreement, whether or not such machinery or equipment is bolted or otherwise attached to the Leased Premises; and all other miscellaneous personal property affixed in such a manner that they can be readily removed without damage to the remainder of the Leased Premises and without substantially changing the character of the improvements. All non-affixed items, including point of sale equipment, moveable furnishings, safes, racks, telephone equipment, and non-affixed display fixtures, shall be deemed to be Trade Fixtures for the purposes of this Agreement.

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Article 2 Special Conditions

2.01 Term

A. Initial Term

The term of this Agreement shall be for three years, commencing on July 1, 2017 and terminating on June 30, 2020.

Whenever the word "Term" is used hereafter in this Agreement it shall mean the Term as set forth in this Section.

B. Option to Extend

Lessee, with the consent of District, may extend this Agreement upon the expiration of the Initial Term for up to two (2) additional one (1) year terms. If Lessee prefers to exercise this option, Lessee shall give written notice to District of its desire to renew the Agreement not less than 90 days prior to expiration of the Agreement. If the District consents to the Term extension, Lessee's rental of the Leased Premises shall be upon the same terms, covenants and conditions contained in this Agreement.

2.02 Description of Leased Premises

District hereby leases to Lessee the entire premises at 3121 Gold Canal Drive, Rancho Cordova, CA 95670, hereinafter Leased Premises.

Except as provided herein, all Leased Premises are leased in their "as is" condition and without any expressed or implied representations or warranties of any kind whatsoever.

2.03 Use of the Leased Premises

A. Permitted Use

Subject to the limitations set forth in Section 2.03(b), and elsewhere in this Agreement, Lessee may use the Leased Premises for any or all of the following purposes, but for no other purposes:

1. Lessee shall have the right to use the Leased Premises as a dispatch center in support of Lessee's normal operations.
2. Lessee shall have the right and privilege to operate a Training Center, including the right to rent rooms, meeting facilities and provide other services incidental to and normally provided by a concessionaire.

Lessee's use of Leased Premises shall at all times be in accordance with and comply with all applicable federal, State, and local laws, regulations, and ordinances.

B. Limitations

Lessee shall use the Leased Premises in accordance with the following limitations and all other applicable terms, promises, conditions, and covenants contained herein. Lessee shall not engage in any commercial activity at the Leased Premises

other than as provided in Section 2.03 (a), without first obtaining the required permits or agreements from District.

2.04 Rent

Lessee shall pay Rent to District during the Term of the Agreement as follows:

A. Time and Manner of Payment

Lessee shall pay all Rent in advance, in equal monthly installments, at the District's accounting office, at the address shown for District under Section 2.12 herein, on the first day of each calendar month throughout the Term of this Agreement.

B. Rent

Commencing July 1, 2017, Rent shall be paid on the first day of each and every calendar month throughout the Term of this Agreement and without prior notice thereof. Lessee shall pay to District Rent in the amount of One Thousand Five Hundred Dollars (\$1,500) per month.

C. Percentage Rent

In addition to the Rent set forth above, Lessee shall pay rent in the amount of fifteen percent (15%) of Lessee's Gross Revenues that exceed Fifty Thousand Dollars (\$50,000) in Lessee's fiscal year ("Percentage Rent"). Lessee shall pay Percentage Rent in full no later than thirty (30) days after the close of Lessee's fiscal year.

2.05 Security Deposit

A. Deposit Amount

Lessee shall deposit with the District a Security Deposit in the sum equivalent to three month's Rent, initially Four Thousand Five Hundred and 00/100ths Dollars (\$4,500.00). Such deposit shall be in the form of an irrevocable, automatically renewing, bank letter of credit, performance bond obtained from a company that has an A.M. Best's rating of no less than A:VII or other security satisfactory to the District, in a form approved by the Chief. Upon notice from the Chief, this requirement may be removed until such time that a Security Deposit is required from Lessee. Documents evidencing this deposit must provide that the same shall remain in full force and effect for a period extending two months following any termination or cancellation of this Agreement as herein provided. At all times upon request of District, Lessee will increase the amount on deposit with District to an amount equivalent to at least three months of monthly rental payment due.

B. Conditions of Deposit

The sum paid by Lessee for the Security Deposit shall be held by District for Lessee, and shall not be subject to the claim of any creditor of District. District may use such deposit, or any portion thereof, for payment of any sum owed to District by Lessee with respect to this Agreement, and such use may be without prior notice to Lessee. If any portion of such deposit is used to correct such a default, Lessee shall pay to District, upon demand therefore, such sums as are needed to return the full amount of the deposit with District to an amount equivalent to three month's Rent, and such payment shall be made to District by Lessee within fifteen (15) days of such demand. District

shall not be responsible for paying any interest or additional charges or costs during the period in which such deposit is held.

Within fifteen (15) days of applying such deposit to correct a default or to pay amounts due or owing upon termination of this Agreement, District shall provide Lessee with an accounting of such deposit application. Upon termination of this Agreement, such deposit less any amounts due or owing to District by Lessee shall be refunded to Lessee.

C. Waiver of Deposit

District shall waive the Security Deposit requirement specified in Paragraph A of this Section as long the District is a member of the Sacramento Regional Fire/EMS Communications Center Joint Powers Authority.

2.06 Additional Fees, Charges and Rentals

Lessee shall pay to District additional fees, charges and rentals in the event of any of the following:

- a) If District has paid any sum or sums, or has incurred any obligation or expense, for which Lessee has agreed to pay or reimburse District, or for which Lessee is otherwise responsible;
- b) If District is required or elects to pay any sum or sums, or incur any obligation or expense, because of the failure, neglect or refusal of Lessee to perform or fulfill any of the promises, terms, conditions or covenants required of it herein; or
- c) Pursuant to any separate agreement between the parties not contained herein.

Lessee's obligations pursuant to this Section shall include all interest, cost, damages, and penalties in conjunction with such sums so paid or expenses so incurred by District, which may be added by District to any installment of fees, charges, and rents payable herein. Each and every part of such payment by District shall be recoverable by District in the same manner and with like remedies as if it were expressly set forth herein.

For all purposes under this Section, and in any suit, action or proceeding of any kind between the parties hereto, any receipt showing the payment of any sum or sums by District for or in connection with any work done or material furnished shall be prima facie evidence against Lessee that the amount of such payment was necessary and reasonable.

Lessee shall pay District pursuant to this Section within thirty (30) days following demand therefor.

2.07 Interest Charges Applied To Late Payments

If Lessee is in arrears for seven (7) days or more following the due date of any amount payable to the District herein, the parties acknowledge that additional clerical, accounting and other work will be performed which would not otherwise be needed absent the late payment. In addition, because the actual charges as a result of the late payment are difficult to identify, the parties hereby agree that Lessee shall pay as a reasonable interest charge for the late payment the amount of Five percent (5%) computed as an annual percentage rate, applicable from the date such payment was due to the date the actual payment is received by the District. If the maximum charge permitted by law is less than the foregoing amount, then the rate shall be such amount determined to be the maximum legal amount. These interest charges shall be

calculated and posted on a monthly basis, and shall be prorated by the number of days in the month.

2.08 Utilities

Lessee, at Lessee's sole cost and expense, shall make its own arrangements and pay for all charges assessed for any and all other utilities including, but not limited to, electricity, gas, water, sanitary sewer, telephone and communication services, including any and all connection and metering charges, as billed directly to Lessee by utility companies furnishing such services or as billed by District. If billed by District, Lessee shall pay standard nondiscriminatory rates and charges including, but not limited to, administrative charges as may be established by District from time to time, within thirty (30) days following the date of such billing.

Lessee agrees that any and all such charges for any and all such services shall be paid before their delinquency and that District shall be protected and held harmless by Lessee therefrom. District shall not be liable to Lessee for any interruption in or curtailment of any utility service, nor shall any such interruption or curtailment constitute a constructive eviction or grounds for rental abatement in whole or in part herein.

2.09 Maintenance of Leased Premises

A. Responsibility of District

Throughout the Term of this Agreement, District shall provide the following maintenance to the Leased Premises:

- 1) Repair and patch roof, as necessary. Clean and clear gutters as necessary.
- 2) Provide structural maintenance and/or structural repair to the Leased Premises, including exterior walls, roof and foundation.
- 3) Maintain, repair and perform preventative maintenance of heating, ventilation, air conditioning equipment and filters.
- 4) Maintain, repair, and perform all ordinary preventative maintenance of electrical (including relamping and ballast replacement) and all subsurface plumbing systems.
- 5) Maintain, repair and replace exterior doors and windows as needed.
- 6) Maintain, repair and replace the parking lot surfaces as needed.

B. Responsibility of Lessee

Except as otherwise expressly provided in Section 2.09 (A), during the Term of this Agreement, Lessee shall at its sole cost and expense perform all other maintenance and repair, including but not limited to:

- 1) Maintain, repair and perform all ordinary preventative maintenance and upkeep of the Leased Premises. Such maintenance and repair shall include all appliances and fixtures within Lessee's Leased Premises.

- 2) Maintain, repair and replace any improvements, alterations, or additions caused by Lessee whether Lessee has or has not obtained advance authorization from District in accordance with Section 2.10 of this Agreement.
- 3) Clean and perform all janitorial service within the Leased Premises.
- 4) Provide pest control services necessary to maintain the Leased Premises in a pest and vermin free condition.
- 5) Provide landscaping services necessary for the upkeep of the Leased Premises.

As between District and Lessee, Lessee shall be solely responsible for the cost of any repair or maintenance to the Leased Premises resulting from the negligent acts or omissions of Lessee, its officers, agents, employees, invitees, suppliers, or contractors. In the event of such damage, District may elect to perform such repair or maintenance itself, at Lessee's sole cost and expense, or require Lessee to perform the same at Lessee's sole cost and expense. Provided, however, if such repair or maintenance is not of an emergency nature, as determined by the Chief, in his sole discretion, District shall give Lessee five (5) days advance written notice of its election in such matter.

Lessee agrees to take good care of the Leased Premises and to return the same at the termination of this Agreement in as good order and condition as when received, excepting ordinary wear and tear and natural decay.

2.10 Improvements or Alterations

Lessee shall make no alterations or improvements, including repairs, to Leased Premises without the prior written approval of the Chief which shall set forth the procedures applicable to the alteration. To obtain the Chief's written authorization, Lessee agrees to submit written specifications of the modifications requested. The Chief's approval shall not waive any local, State or federal requirements governing such alterations and improvements. All alterations, improvements or repairs made to the Leased Premises will be at the sole cost and expense of Lessee.

2.11 Insurance

Throughout the term of this Agreement, Lessee for itself and its officers, representatives, agents, employees, guests, patrons, contractors, subcontractors, licensees, invitees, volunteers and suppliers shall maintain in full force and effect the forms of insurance specified herein:

- A. Lessee shall pay for and maintain insurance throughout the life of this Lease with general liability coverage of One Million Dollars (\$1,000,000).
- B. Lessee shall furnish District with proof on insurance and an endorsement issued by an insurer approved by District showing the coverage to be in force and showing District as a named insured for the current Term.
- C. Any insurance policies required by this Lease shall not be amended or cancelled without thirty (30) days' prior written notice being given to District.
- D. In the event Lessee does not have the required certificate(s) of insurance and/or binder(s) evidencing the proper insurance coverage, or the required

insurance coverage lapses, this Agreement shall be terminated at District's option by the Chief giving written notice to Lessee.

2.12 Notices

Any notice, demand, request, consent or approval required pursuant to this Agreement shall be in writing and either served personally or sent by U.S. Mail, overnight courier or email. Such matters shall be addressed to the other party at the following address:

When to District:

Sacramento Metropolitan Fire District
ATTN: Property Manager
10545 Armstrong Ave #200
Mather, CA 95655

When to Lessee:

SRFECC
10230 Systems Parkway
Sacramento, CA 95827-3007

or to any other address as either party may designate to the other by giving fifteen (15) days prior written notice. All communications shall be deemed received upon delivery if personally delivered or when delivered by recognized overnight delivery service, or within five (5) business days following deposit in the mail, if sent by mail. If sent by email, notice shall be presumed to have been received by the recipient upon printed confirmation by email that the following email addresses are used:

When to District:

Frye.Jeff@metrofire.ca.gov

When to Lessee:

tmurray@srfecc.ca.gov

If notice is given in any other manner or at any other place, it will also be given at the place and in the manner specified in this Section. Either Party, by notice given under this Section, may designate different addresses to which subsequent notices will be sent.

Article 3 General Conditions

3.01 Acceptance of Leased Premises

Lessee hereby accepts the Leased Premises in its "as-is" condition existing at the commencement of the Term hereof. Taking possession of the Leased Premises by Lessee shall be conclusive evidence that the condition thereof is satisfactory to Lessee. District makes no representation or warranty that the Leased Premises are suitable for the uses to which Lessee shall be restricted pursuant to this Agreement.

3.02 Accord and Satisfaction

No payment by Lessee or receipt by District of a lesser amount than the rent, fees and/or charges due to be made by Lessee herein shall be deemed to be other than on account of the rent, fees and/or charges due, and no endorsement or statement on any check or in any letter accompanying any check or payment as rent, fees and/or charges shall be deemed an accord and satisfaction, and District may accept such check or payment without prejudice to District's right to recover the balance of such rent, fees and/or charges or to pursue any other remedy provided in this Agreement.

3.03 Assignment, Transfer, and Subletting

A. Assignment and Transfer

Lessee shall have no right to assign, mortgage, pledge, or otherwise transfer this Agreement, either voluntarily or by operation of law, in whole or in part, without the prior written consent of District in each instance. Such consent shall be subject to the standards and conditions specified in this Section, provided, however, that this Agreement may be assigned in its entirety without such consent to any successor in interest of Lessee with, or into which, the Lessee may merge or consolidate, or which may succeed to the assets of the Lessee or the major portion of its assets; provided further, that such succeeding entity or purchaser executes and delivers to District an instrument in a form satisfactory to the District assuming the obligations of Lessee as if it were the original Lessee herein and a transfer to such entity shall not defeat or undermine the purposes of this Agreement.

B. Subletting

Lessee shall have no right to sublease all or any part of the Leased Premises without the prior written consent of District. As to such a sublease, the Chief is authorized to give or revoke such written consent as the agent of the District. Each sublease shall be in a form satisfactory to the Chief. The Chief's consent shall be subject to the standards and conditions specified in this Section.

C. Information Required by District

In connection with any proposed assignment or sublease, Lessee shall submit an initial request to the Chief in writing, which shall be accompanied by the following:

- 1) The name and legal composition of the proposed assignee or Lessee;
- 2) The proposed effective date of such assignment or sublease;
- 3) The proposed assignee's or Lessee's intended use and operations at the Leased Premises, and any other information Chief may reasonably require relating to the impact of the intended use;
- 4) Such information as to the proposed assignee's or Lessee's financial responsibility, standing, and financing capability as is available;
- 5) A written consent of the proposed assignee or Lessee to all the terms and conditions of this Agreement and said assignee's or Lessee's consent to the incorporation of the terms and conditions of this Agreement into any assignment or sublease;
- 6) All the terms and conditions upon which the proposed assignment or sublease is to be made; and
- 7) Such other information as the Chief may reasonably require to make a judgment regarding an assignment or sublease.

Within thirty (30) days of receipt of such written request, the Chief may give written notice to Lessee of any additional information as may be reasonably required in order to make a determination regarding the proposed assignment or sublease.

D. No Release of Lessee's Liability

No assignment shall release Lessee of Lessee's obligation herein or alter the primary liability of Lessee to pay the minimum monthly Rent and other payments required herein, and to perform all other obligations to be performed by Lessee herein. District may accept Rent from any person other than Lessee pending approval or disapproval of such assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent shall constitute a waiver or estoppel of District's right to exercise its remedies for the breach of any of the terms or conditions of this Section of this Agreement. Consent to one assignment shall not be deemed a waiver of the necessity for consent for any subsequent assignment. In the event of default by any assignee or Lessee of Lessee, or any successor of Lessee, in the performance of any of the terms hereof, District may proceed directly against Lessee without the necessity of exhausting remedies against said assignee or Lessee. District may consent to subsequent assignments of this Agreement or amendments or modifications to this Agreement with assignees of Lessee without notifying Lessee, or any successor of Lessee, and without its or their consent thereto and such action shall not relieve Lessee of liability under this Agreement.

E. District Processing Fee

In the event that Lessee, or a mortgagee of Lessee, requires or requests District's review, investigation, processing, recordation, or any other consideration of Lessee's proposed sublease, assignment or other transfer permitted in accordance with this Section, estoppel certificates, documentation regarding Lessee's financing of its leasehold interest, or any other documentation, Lessee agrees that as a condition precedent to the District's review, Lessee shall reimburse District for all District's reasonable costs, including but not limited to, all of District's staff labor, which shall

include any consultants and attorney fees, all postage (both first class and express mail) and all materials used or expended in completing District's review. Lessee shall make said reimbursement to District within thirty (30) days after District's written request is received by Lessee. District may terminate this Agreement should Lessee not pay the District's reimbursement described in this Section within thirty (30) days of receipt.

3.04 Authority of Agreement

Lessee warrants and represents that it has the right, power, and legal capacity to enter into, and perform its obligations under this Agreement, and no approvals or consents of any persons are necessary in connection with it. The execution, delivery, and performance of this Agreement by the undersigned Lessee representatives have been duly authorized by all necessary corporate action of Lessee, and this Agreement will constitute a legal, valid, and binding obligation of Lessee, enforceable in accordance with its terms.

3.05 Authority of the Chief

The Chief shall administer this Agreement on behalf of District. Unless otherwise provided herein or required by applicable law, the Chief shall be vested with all rights, powers, and duties of District herein. With respect to matters herein subject to the approval, satisfaction, or discretion of District or the Chief, the decision of the Chief in such matters shall be final.

3.06 California Law

This Agreement shall be interpreted and enforced in accordance with the statutory and decisional law of the State of California. In the event of a dispute between the parties as to the language of this Agreement or the construction or meaning of any term hereof, this Agreement shall be deemed to have been drafted by the parties in equal parts so that no presumption or inferences concerning its terms or interpretation may be construed against any party to this Agreement. Any litigation filed by Lessee or District against the other regarding the terms of this Agreement, performance of a party's obligations under this Agreement, or any other reason related in any way to this Agreement, shall be filed in a federal or State court of competent jurisdiction located in Sacramento, California.

3.07 Certified Access Specialist

Statement Regarding a Certified Access Specialist – Pursuant to California Civil Code §1938, the SUCCESSOR AGENCY states that the Premises:

Have not undergone an inspection by a Certified Access Specialist (CASp).

Have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards and a disability access inspection certificate has been issued pursuant to California Civil Code §55.51 et seq.

Have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq.

A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

3.08 Chronic Delinquency

In the event of a Chronic Delinquency (as hereinafter defined), at District's option, District shall have the right, in addition to all other remedies under this Agreement and at law, to require that Rent be paid by Lessee quarterly, in advance. This provision shall not limit in any way nor be construed as a waiver of the rights and remedies of District provided herein or by law in the event of delinquency. "Chronic Delinquency" shall mean failure by Lessee to pay Rent, or any other payments required to be paid by Lessee under this Agreement, within three (3) days after written notice thereof for any three (3) months (consecutive or nonconsecutive) during any twelve (12) month period.

3.09 Compliance with Law

Lessee shall not, in connection with any of its activities or operations, use any of the District's facilities or permit the same to be used by any of its officers, representatives, agents, employees, contractors, subcontractors, licensees, subtenants, invitees, or suppliers for any illegal purpose. Lessee is responsible for obtaining all licenses, permits, and other governmental and private permissions necessary for, or related to, all Lessee's activities on the Leased Premises.

Lessee shall comply with all applicable ordinances, laws, rules, and regulations of any city, District, State, federal government or agency that has jurisdiction to pass laws or ordinances or to make and enforce rules and regulations governing conduct on and operations at the Leased Premises.

3.10 District's Remedies

Pursuant to Section 1951.2 of the California Civil Code:

- a) In the event that Lessee breaches this Agreement and abandons the property before the end of the Term hereof, or if Lessee's right to possession is terminated by District because of a breach of this Agreement, this Agreement terminates. Upon such termination, the District may recover from Lessee:
- b) The "worth at the time of award" of the unpaid Rent which had been earned at the time of termination;
- c) The "worth at the time of award" of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided;
- d) Any other amount necessary to compensate District for all the detriment proximately caused by Lessee's failure to perform its obligations under this

Agreement, or which in the ordinary course of things would be likely to result therefrom.

- e) Efforts by District to mitigate the damages caused by Lessee's breach of this Agreement do not waive District's right to recover damages pursuant to said Section 1951.2 and this Section 3.09.
- f) Nothing in this Section 3.09 affects the right of District under this Agreement to indemnification for liability arising prior to the termination of this Agreement for personal injuries or property damage, as herein provided.
- g) Notwithstanding the foregoing, in the event of Lessee's breach of this Agreement and abandonment of the Leased Premises, pursuant to Section 1951.4 of the California Civil Code, District may, at its sole option, elect to continue this Agreement and enforce all its rights and remedies herein against Lessee, including the right to recover the Rent as it becomes due.

3.11 Cumulative Remedies

No remedy or election herein shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

3.12 Damage or Destruction of Improvements

In the event that any or all of the improvements located in or on the Leased Premises shall suffer partial or substantial destruction at any time during the Term of this Agreement, the respective rights and obligations of the parties hereto with respect to reconstruction, repairing, and/or restoring such improvements and/or with respect to the matter of the continuance or termination of this Agreement following any such destruction, shall be controlled by the provisions of this Section.

A. Definitions

For the purpose of this Agreement, the following definitions shall apply: 1) the term "Partial Destruction" as used herein, shall be deemed to mean a destruction of improvements to such an extent that the then currently estimated total costs of restoring the destroyed improvements to as good a condition of habitability and/or usability (for those certain uses herein authorized and intended therefore) as existed immediately prior to the occurrence of any such destruction shall not exceed fifteen percent (15%) of the then current estimated total replacement costs of all of the improvements on the Leased Premises (excluding land and personal properties); 2) the term "Substantial Destruction" as used herein, shall be deemed to mean a destruction of improvements to such an extent that the then current estimated total costs of restoring the destroyed improvements to as good a condition of habitability and/or usability (for those certain uses herein authorized and intended therefore) as existed immediately prior to the occurrence of any such destruction shall exceed fifteen percent (15%) of the then current estimated total replacement costs of all of the improvements on the Leased Premises (excluding land and personal properties).

B. Repair Obligations and Rights of Termination

In the event the District-owned improvements located in or on the Leased Premises shall suffer Partial or Substantial Destruction at any time during the Term hereof, then:

- 1) District may, but shall not be obligated to, perform the reconstruction, repair, and/or restoration of such improvements.
- 2) If the destruction is substantial, either party may cancel and terminate this Agreement as of the date of the occurrence of such destruction by giving written notice to the other party within sixty (60) days after such destruction.
- 3) If within sixty (60) days after the date of any partial destruction District has not completed the reconstruction, repair, and/or restoration of the destroyed improvements, then, at any time prior to the completion of such reconstruction, repair and/or restoration by District, Lessee may cancel and terminate this Agreement by service of a minimum of thirty (30) days advance written notice upon District.
- 4) If within sixty (60) days after the date of any substantial destruction, District has not commenced the reconstruction, repair or restoration of the destroyed improvements or if such action has been commenced during said period but the Leased Premises shall not have been fully reconstructed, repaired or restored to a tenantable condition within one hundred twenty (120) days following the date of such Substantial Destruction, then, at any time prior to the completion of such reconstruction, repair or restoration by District, Lessee may cancel and terminate this Agreement by service of a minimum of thirty (30) days advance written notice upon District.

C. Limitation on District's Obligations

The foregoing provisions of this Section 3.11 notwithstanding, District shall not be liable for or obligated to reconstruct, repair, restore, reinstall, or replace any improvements or any furnishings, fixtures, or equipment, or other personal property, installed, placed, located in, on or about the Leased Premises by Lessee, Lessee's employees, agents, representatives, tenants, or Lessees.

D. The Payment of Rent

In the event any or all of the District improvements located in or on the Leased Premises shall suffer either Partial or Substantial Destruction at any time during the Term hereof, the Rent due to be paid by Lessee shall be paid to the date of such destruction and shall then be abated to the extent that the Leased Premises are untenable, so that Lessee shall only be obligated to pay Rent on those portions of the Leased Premises that are tenantable.

E. Destruction

Lessee waives the provisions of California Civil Code Sections 1932(2) and 1933(4) which relate to termination of leases when the thing leased is destroyed and agrees that such event shall be governed by the provisions of this Section 3.11.

3.13 Early Termination by District

District may terminate this Agreement prior to expiration of the Term hereof upon the happening of one or more of the following events:

- a) Lessee fails to make any payment of Rent or any other required payment, as and when due herein, where such failure continues for a period of fifteen (15) days following service of notice thereof upon Lessee by District;

- b) Lessee makes a general assignment for the benefit of its creditors;
- c) Lessee files a voluntary petition, or becomes the subject of an involuntary petition, in any proceedings in Bankruptcy Court;
- d) Lessee vacates or abandons the Leased Premises for a period of thirty (30) days or more;
- e) Lessee fails to obtain or maintain any of the insurance coverage set forth in Article 2.11 of this Agreement. The Chief may, in his sole discretion, immediately terminate this Agreement;
- f) Lessee defaults in performance of any promise, term, condition, or covenant required of it herein (other than those expressly set forth in Subsections (a) and (e) above, wherein no further default notice is required), provided Lessee fails to cure such default within thirty (30) calendar days following receipt of written notice of such default from District. However, if the nature of such default is such that it cannot reasonably be cured within such period, Lessee shall be deemed to have cured such default if within such period Lessee commences performance thereof and thereafter diligently prosecutes the same to completion.

Early termination by District pursuant to this Section 3.12 shall be upon not less than fifteen (15) days advance written notice to Lessee, which notice shall state the basis of such termination and the effective date thereof. Upon the effective date of such termination, District may take possession of the Leased Premises, without further notice or demand to Lessee. Failure to serve notice of termination upon the happening of any of the events described in this Section shall not operate to bar or destroy District's right to thereafter declare such termination upon the subsequent happening of any such event.

3.14 Early Termination by Lessee

If Lessee is legally compliant, and not in default of its payments or any other obligations under the Agreement to the District herein, Lessee may terminate this Agreement prior to expiration of the Term under the following terms and conditions:

- a) If the District defaults in the performance of any promise, term, condition or covenant required of it to be performed herein, provided District fails to cure such default within sixty (60) calendar days following receipt of written notice of such default from Lessee, Lessee may terminate its Agreement with thirty (30) days written notice to the Chief. However, if the nature of such default is such that it cannot reasonably be cured within such period, District shall be deemed to have cured such default if within such period District commences performance thereof and thereafter diligently prosecutes the same to completion.

In the event of early termination by Lessee pursuant to this Section, Lessee shall pay Rent to District, up to and including the date of such termination.

3.15 Entire Agreement

This Agreement constitutes the entire agreement between the parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein.

3.16 Execution and Approval of Agreement

Submission of this document by District for review, examination or execution by Lessee does not constitute a reservation of an option to lease space, and this document shall not be effective as a lease agreement, or otherwise, unless and until approved by the Board of Directors of the District and/or executed by the officer authorized by said Board.

3.17 Force Majeure

Neither District nor Lessee shall be deemed to be in breach of this Agreement if either is prevented from performing any of its obligations herein by reason of strike, boycott, labor dispute, embargo, shortage of energy or materials, act of God, act of a public enemy, act of a superior governmental authority, weather conditions, rebellion, riot, sabotage, or any other circumstance for which it is not responsible, which is not within its control and which cannot be modified or overcome by reasonable efforts of the prevented party.

3.18 Headings

The headings of the articles and sections of this Agreement are inserted only as a matter of convenience and for reference, and do not define or limit the scope or intent of any provisions of this Agreement, and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

3.19 Hold Over

If Lessee remains in possession of the Leased Premises following the expiration or sooner termination of this Agreement, such hold over shall not be deemed to constitute an extension or renewal of this Agreement, but shall merely create a tenancy from month-to-month which either party hereto may terminate upon thirty (30) days advance written notice to the other. In the event of such hold over, Lessee shall perform all terms, promises, conditions and covenants required of it hereunder, but shall pay Rent to District in such amounts as may be designated by the Chief, which in no case shall be less than that in effect immediately prior to such expiration or sooner termination of this Agreement.

3.20 Indemnification of District

Lessee shall indemnify, defend, and hold harmless District, its Board of Directors, officers, chiefs, agents, employees and volunteers ("Indemnified Parties") from and against any and all claims, demands, actions, losses, liabilities, damages, and costs, including reasonable attorneys' fees, (collectively, "Claims") arising out of or resulting from the performance of this Agreement, regardless of whether caused in part by a party indemnified hereunder, except that Claims do not include those arising out of, pertaining to, or relating to the active negligence, sole negligence, or willful misconduct of the Indemnified Parties.

3.21 Independent Contractor

Lessee is not an employee or agent of District by reason of this Agreement, or otherwise. Lessee is an independent contractor, and as between District and Lessee, Lessee shall be solely responsible for its acts and omissions arising from or relating to its operations or activities at Leased Premises.

3.22 Interpretation of Agreement

Nothing herein contained shall be construed or interpreted, in any manner whatsoever, as limiting, relinquishing or waiving any of the rights of ownership enjoyed by District.

3.23 Invalid Provisions

In the event of any covenant, condition or provision of this Agreement, or the application thereof to any person, entity, or circumstances, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person, entity, or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated, provided that such invalidity, voiding or unenforceability of such covenant, condition or provision does not materially prejudice either party in its respective rights and obligations contained in the then remaining valid covenants, conditions or provisions of this Agreement.

3.24 Licenses and Permits

Lessee shall obtain, at its sole cost and expense, all necessary licenses and permits required for construction of improvements or installation of equipment on the Leased Premises, and any other licenses or permits necessary for the conduct of Lessee's operations.

3.25 Nonwaiver of Rights

No waiver of default by either party hereto of any of the terms, promises, covenants, or conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, promises, covenants, or conditions herein contained, to be performed, kept, and observed by such other party.

3.26 Notice of Claims and Suit

Lessee shall give District prompt and timely written notice of any personal injury or other accident claims, and of any lawsuit coming to its knowledge when either such claim or lawsuit arises out of or is in any way connected with the Leased Premises, the operations of Lessee hereunder, which in any way, directly, indirectly, contingently or otherwise, might reasonably affect the parties' relationship under this Agreement.

Such notice shall be deemed prompt and timely if given within thirty (30) calendar days following the date of receipt of such claim by an officer, agent, or employee of either party, and if given within ten (10) calendar days following the date of service of process upon either party with respect to any such lawsuit.

3.27 Nuisance and Waste

Lessee shall not erect, nor permit to be erected, any nuisance on the Leased Premises, or permit any waste thereof. Lessee shall not permit any trash or garbage to accumulate on or about the Leased Premises.

3.28 Prohibition of Liens

Lessee shall pay promptly, as due, all persons supplying labor and materials for any alteration of, or improvement to, the Leased Premises, and shall permit no lien or claim to be filed or prosecuted against District on account of such labor and materials furnished.

3.29 Peaceable Use and Enjoyment

Lessee shall, upon payment of the fees and charges as herein required, and subject to performance and compliance by Lessee of the covenants, conditions and agreements on the

part of Lessee to be performed and complied with herein, peaceably have and enjoy the rights, uses and privileges of the Leased Premises.

3.30 Release of Liability

District shall not be liable for, and is hereby released from any and all liability to Lessee, to Lessee's insurance carrier or to anyone claiming under or through Lessee, for any loss or damage whatsoever to the property or effects of Lessee resulting from the discharge of water or other substance from pipes, sprinklers, conduits, containers, appurtenances thereof, or fixtures thereto; or from any damage resulting from the discharge or failure of electric current, regardless of cause or origin, except the active negligence, sole negligence, or willful misconduct of District, its employees or agents.

3.31 Removal of Lessee's Property

If Lessee is not in default as to the payment of any rent, fee, or other charge payable to District herein, Lessee may remove its inventory, Trade Fixtures and furnishings from the Leased Premises upon expiration or sooner termination of this Agreement. If Lessee does not elect, or otherwise fails to remove the same, or any part thereof, within thirty (30) days following District's regaining possession of the Leased Premises, District may, at its option, either require such removal at Lessee's sole cost and expense, or keep such property, in which latter event, title to the same shall vest in District without any obligation to pay Lessee with respect thereto.

3.32 Reports and Reports

Lessee shall prepare and maintain an adequate set of records, in a format and detail acceptable to the District, documenting all of Lessee's Gross Revenues. Lessee shall also provide District with any other reasonable financial or statistical reports which the Chief may, from time to time, request by written notice to Lessee.

All such reports required of Lessee shall be prepared in accordance with generally accepted accounting principles and reported on a cash basis.

A. Monthly Report

Lessee shall submit a Monthly Report concurrent with each monthly submittal of Percentage Rent payments to the District Accounting Division at the following address:

Metro Fire Accounting
10545 Armstrong Ave, Suite 200
Mather, CA 95655
Frye.Jeff@metrofire.ca.gov

Lessee shall submit a written report and an electronic Monthly Report, in a format and detail as required by the District, of all Lessee's Gross Revenues at the Leased Premises under this Agreement during the preceding calendar month. Such report shall show Gross Revenues and shall include a summary of all activities of the previous month. Both the written and electronic Monthly Reports shall be submitted no later than the fifteenth (15th) day of the following month in which such Gross Revenues were generated at the Leased Premises.

B. Annual Report

Lessee shall submit to the District at the address specified for Metro Fire Accounting above, for the approval of the District, an Annual Report for each Lease

Year throughout the Term of this Agreement, not later than sixty (60) calendar days following the last day of each Lease Year.

Said Annual Report shall be prepared by an independent CPA and shall be in a format and in detail satisfactory to the District. This Annual Report shall serve as a certified annual financial statement setting forth all business transacted at the Leased Premises by Lessee under the terms of this Agreement during the preceding Lease Year. Such Annual Report shall include, but not necessarily be limited to, Lessee's Gross Revenues, Rent and other payments due to the District, the CPA's audit and examination of source documents from which Monthly Reports are based, and a certified opinion as to the accuracy of Lessee's submitted Monthly Reports. Lessee shall bear the entire cost of such reports.

C. Delinquent Annual Report

If Lessee is delinquent for ten (10) days or more in furnishing to the District any annual report required under this Agreement, Lessee shall pay the District a One Hundred Dollars and 00/100ths (\$100.00) late fee for each month, or partial month, that the annual report is delinquent, as liquidated damages for the additional administrative costs incurred by the District in processing, reviewing, and demanding the delinquent annual report. The parties have agreed that this is a fair and reasonable estimate of the District's costs incurred in processing a delinquent annual report. Imposition of such a late fee shall not constitute a waiver of any other remedies available to the District due to Lessee's failure to timely provide the monthly or annual reports or pay the report late fee.

D. Delinquent Monthly Report

If Lessee is delinquent in furnishing to the District any monthly report required under this Agreement, Lessee shall pay the District a Ten Dollars and 00/100ths (\$10.00) late fee for day, that the monthly report is delinquent, as liquidated damages for the additional administrative costs incurred by the District in processing, reviewing, and demanding the delinquent monthly report. The parties have agreed that this is a fair and reasonable estimate of the District's costs incurred in processing a delinquent monthly report. Imposition of such a late fee shall not constitute a waiver of any other remedies available to the District due to Lessee's failure to timely provide the monthly reports or pay the report late fee.

3.33 Retention of Records

Lessee shall retain all its books, records of account, and supporting documents pertaining to the uses permitted under this Agreement for not less than four (4) calendar years following expiration or sooner termination of this Agreement. Lessee shall retain all such books, records of account, and supporting documents at a location within the County of Sacramento, and shall keep and maintain the same in accordance with accepted professional accounting principles.

3.34 Right of Entry

The Chief shall have the right, throughout the Term of this Agreement, to enter the Leased Premises for any lawful purpose, including the purpose of determining whether Lessee is complying with its obligations herein. Lessee shall normally be given twenty-four (24) hours' notice prior to exercise of such right, except in the event entry is necessary for safety or environmental purposes. Such entry by District shall not be deemed to excuse Lessee's

performance of any promise, term, condition, or covenant required of it by this Agreement, and shall not be deemed to constitute waiver thereof by District.

3.35 Risk Reduction

Lessee shall neither use nor permit the use of the Leased Premises in such a manner as to increase the risk which would affect the rate of insurance thereon in excess of that in existence at the commencement of the Term hereof.

3.36 Successors and Assigns

The provisions of this Agreement shall be binding upon and inure to the benefit of the respective successors, assigns, heirs, and personal representatives of the parties hereto.

3.37 Surrender of Leased Premises

District is not required to give Lessee any notice to quit possession of the Leased Premises upon expiration or sooner termination of this Agreement. Lessee shall peaceably surrender possession of the Leased Premises upon expiration or sooner termination of this Agreement in as good order and condition as when received, excepting reasonable wear, destruction by lightning or other natural causes, or fire not caused by the acts or omissions of Lessee, its officers, agents, employees, subcontractors, customers, invitees, or other persons doing business with Lessee or on the Leased Premises with the consent of Lessee.

3.38 Taxes

Lessee shall, at its sole cost and expense, pay any and all taxes for which it is responsible, or which may be assessed against it.

A. Possessory Interest and Property Taxation

Under this Agreement a possessory interest subject to property taxation may be created. Pursuant to California Revenue and Taxation Code Section 107.6 and Government Code Section 53340.1, notice is hereby given that such possessory interest may be subject to property taxation and special taxation pursuant to Chapter 25, Division 2 of the Government Code (Mello Roos Community Facilities Act of 1982), and that the party in whom the possessory interest is vested may be subject to the payment of property taxes and special taxes levied on such interest.

Lessee shall pay any and all taxes, assessments, and other charges of whatsoever character that may be levied or charged upon Lessee's interest as herein may be created, improvements, operations, or right to use the Leased Premises.

B. Right to Contest Taxes

Nothing within this Section 3.51 shall be deemed to limit any of Lessee's rights to appeal the amount, applicability or validity of any such taxes, assessment, or charges in accordance with the rules, regulations, statutes or ordinances governing the appeal process of the authorities making such levies or assessments; and provided, further, that if Lessee contests any assessment made by the Assessor of District, such contest shall not be initiated in the name of the District, and District shall not be obligated to cooperate therewith.

If at any time payment of any tax or assessment becomes necessary to prevent any forfeiture or loss, Lessee shall pay such tax or assessment to prevent such forfeiture or loss.

3.39 Time is of the Essence

Time is of the essence in the performance of this Agreement.

3.40 Title to the Leased Premises

Title to the Leased Premises is and shall remain vested in the District.

3.41 Title to Leasehold Improvements

Title to all Leasehold Improvements made by Lessee shall at all times during the Term remain in Lessee. Upon expiration or sooner termination of this Lease, title to all such Leasehold Improvements shall, at the written election of the Chief, vest in the District without payment of any further consideration to Lessee; except that in lieu of taking title to such Leasehold Improvements, the Chief shall have the option to require Lessee to remove any or all of such Leasehold Improvements, at Lessee's sole cost, within sixty (60) days after such expiration or termination. Chief shall exercise the District's option to require Lessee to remove any or all of such Leasehold Improvements, at Lessee's sole cost, by providing notice to Lessee within sixty (60) days of expiration of this Lease. In the event of sooner termination pursuant to this Lease, said exercise of such option shall not be required and Chief may designate the disposition of the Leasehold improvements.

3.42 Trash and Garbage

Lessee shall be responsible for the proper collection, transportation and placement of garbage, trash, and refuse associated with their operation in the furnished receptacle(s).

At the sole discretion of the Chief, Lessee may be required, at its sole cost and expense, to provide a complete and proper arrangement for the adequate sanitary handling and disposal away from the Leased Premises of all trash, garbage, and other refuse resulting from, or in any way associated with, Lessee's operations herein. Such arrangements shall include, but not be limited to, the use of suitable covered metal receptacles at the Leased Premises for such garbage, trash and other refuse. Lessee shall be given thirty (30) days written notice of such requirement.

3.43 Vehicular and Equipment Parking

Vehicular and equipment parking by Lessee, its employees, agents, licenses, suppliers, subcontractors, customers, guests or invitees shall be restricted to the parking lot on the Leased Premises.

3.44 Execution of Agreement

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year fully executed by all parties, but effective as of the date set forth in Article 2.01.

Sacramento Metropolitan Fire District

By: _____

Print Name: _____

Title: _____

Date: _____

Sacramento Regional Fire/EMS Communications Center

By: _____

Print Name: _____

Title: _____

Date: _____