

**EMERGENCY FUEL FACILITY USE AGREEMENT  
BETWEEN THE SAN MATEO CONSOLIDATED FIRE DEPARTMENT AND  
THE CITY OF SAN MATEO**

This Fuel Facility Use Agreement (“Agreement”) is entered into as of \_\_\_\_\_, by and between the City of San Mateo, a California municipal corporation (“Owner”), and the San Mateo Consolidated Fire Department, a Joint Powers Authority (“Department”). Owner and Department may be referred to herein individually as a “Party” or collectively as the “Parties”.

**RECITALS**

- A. On November 22, 2017, the City of San Mateo, City of Foster City/Estero Municipal Improvement District, and the Belmont Fire Protection District (collectively, the “Member Agencies”) entered into a Joint Powers Agreement establishing the Department, and that agreement was subsequently amended by the Member Agencies on September 11, 2018 (“JPA Agreement”).
- B. Owner is a Member Agency participating in the JPA that comprises the Department and receives fire protection, prevention, and emergency response services from the Department.
- C. To carry out its functions, it is necessary that the Department have access to gas and diesel fueling facilities during emergencies to continue operating its fire apparatus and support vehicles.
- D. As a Member Agency, Owner seeks to provide the Department with access to Owner’s gas and diesel fuel facilities in the event of an emergency that prevents the Department from obtaining fuel from a gas station or fuel delivery service.

NOW, THEREFORE, in consideration of the provision of fire service and the recitals and the mutual promises contained herein, Owner and Department agree as follows:

**ARTICLE 1  
GRANT OF LICENSE**

**1.1 Premises.** Owner owns or controls gas and diesel fueling facilities located at the San Mateo City Corporation Yard (the “Property”) and Department is authorized to access a portion of the Property, shown in Exhibit A to this Agreement (the “Premises”), in order to obtain fuel.

**1.2 Grant.** Owner hereby grants to Department employees a non-exclusive license to enter and use the Premises for the purpose of obtaining gas and diesel fuel for Department vehicles in the event of an emergency that prevents the Department from obtaining fuel from a gas station or fuel delivery service..

**1.3 Authorized Uses of Premises.** Department may use Owner-issued devices to access the Premises to obtain gas and diesel fuel for Department vehicles, apparatus, or equipment under the circumstances set forth in Section 1.2 above. Department is authorized to park motor vehicles and equipment on the Premises for purposes of fueling under the circumstances set forth in Section 1.2 above. All vehicles must be attended at all times by Department employees.

**1.4 Time of Use.** Department is authorized to use the premises at any time and on any day unless City has notified Department that the Premises or equipment are not available or operational.

**ARTICLE 2  
TERM AND TERMINATION**

**2.1 Effective Date.** This Agreement is effective (‘‘Effective Date’’).

**2.2 Term.** The term of this Agreement shall be coterminous with the Joint Powers Agreement, unless terminated earlier or extended consistent with the provisions of this Agreement.

**2.3 Termination.** This Agreement shall remain in effect until the earliest of the following:

- a) The Expiration and non-renewal of the Agreement’s Term;
- b) The Agreement is Terminated by either Party upon written notice to the other Party or by written mutual agreement of the Parties;
- c) A Party materially defaults on the terms of the Agreement and fails to timely cure the default after being given written notice;
- d) Owner elects to make improvements to the Property and provides Department with 90 days’ written notice;
- e) Owner elects to eliminate the availability of gas and diesel fuel on the Property; or
- f) Owner withdraws from the JPA comprising the Department, consistent with the terms of the JPA Agreement between the participating agencies, as amended.

**ARTICLE 3  
CONSIDERATION AND TAXES.**

**3.1 Consideration.** As total consideration for its use of the Premises, Department shall pay Owner for fuel utilized by the Department for use in Department vehicles and equipment at Owner’s cost, including any reasonable and related administration costs as determined by the City consistent with Owner’s inter-departmental charges, and applicable taxes, fees, or other expenses. Department will use Owner’s fuel tracking system to measure fuel usage and Owner will invoice Department.

**3.2 Timing of Payment.** Department’s payments made to Owner pursuant to this Agreement shall be due within 30 days of receipt of invoice.

**3.3 Taxes.** Department agrees that any and all taxes, duties, fees, surcharges, or other similar charges, now or hereafter imposed by any federal, state, or local government unit upon, measured by, or incident to, the sale or transfer of the fuel that is sold by Owner to Department hereunder (‘‘Taxes’’) shall be the sole liability and responsibility of Department, and in the event Owner is ever obligated to pay any such Taxes, Department shall promptly reimburse Owner for all such Taxes paid by Owner.

**ARTICLE 4  
OBLIGATIONS**

**4.1 Owner’s Obligations.** Owner shall comply with all laws and regulations applicable to the storage of fuel and operation of the Premises and shall keep the Premises free of dangerous conditions. Owner does not represent or warrant a sufficient supply of gas and diesel fuel on site at all times to meet Department’s

needs. Owner reserves the right to prioritize use of Owner's available gas and diesel fuel.

**4.2 Department's Obligations.** Department shall comply with all laws and regulations applicable to its use of the Premises, and shall exercise industry standards for due care in its use of the Premises. Department shall adequately train any staff that may use the Premises in appropriate and safe use of the Premises and the requirements of this Agreement prior to allowing access to the Premises. Department shall be responsible for the repair of any damage directly caused by Department's use of the Premises. Department shall be responsible for and bear the entire cost of removal and disposal of any and all hazardous materials introduced to the Premises as a direct result of Department's use of the Premises. Department shall also be responsible for any clean-up and decontamination on or off the Premises necessitated due to the introduction by Department of such hazardous materials within the Premises. This obligation survives Termination of this Agreement.

**4.3 Hazardous Materials.** The Department will act with due care and abide by industry standards and all applicable laws and regulations to prevent the unintended release of hazardous materials when fueling Department vehicles or otherwise applicable to handling hazardous materials at the Premises, including but not limited to motor oil, gasoline, or diesel fuel.

## **ARTICLE 5 INDEMNIFICATION AND INSURANCE**

**5.1 Indemnification by Department.** Department shall indemnify, defend, and hold harmless Owner, its elected and appointed officials, officers, employees, agents, contractors, and attorneys from and against liability, claims, demands, losses, damages, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and the costs and expenses incurred in connection therewith, including reasonable attorneys' fees and costs of defense resulting from Department's use of the Premises pursuant to this Agreement, except to the extent arising from or caused by the sole negligence or willful misconduct of the Owner, its elected and appointed officials, officers, employees, agents, or contractors. Owner shall promptly notify Department of any claim, action or proceeding covered by this Section.

**5.2 Indemnification by Owner.** Owner shall indemnify, defend, and hold harmless Department, its elected and appointed officials, officers, employees, agents, contractors, and attorneys from and against liability, claims, demands, losses, damages, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and the costs and expenses incurred in connection therewith, including reasonable attorneys' fees and costs of defense resulting from Owner's obligations undertaken pursuant to this Agreement, except to the extent arising from or caused by the sole negligence or willful misconduct of the Department, its elected and appointed officials, officers, employees, agents, or contractors. Department shall promptly notify Department of any claim, action or proceeding covered by this Section.

**5.3 Insurance.** Department will satisfy the insurance requirements set forth in Exhibit A to this Agreement.

## **ARTICLE 6 DEFAULT**

**6.1 Default and Right to Cure.** Should either Party default in the performance of any obligation to be performed under this Agreement, the non-defaulting Party shall give written notice of such default and the defaulting Party shall have thirty (30) days from the date that notice is received to cure and correct such default. In the event of any default which continues for 30 days after notice, the non-defaulting Party may at its option pursue the Default Remedies contained in this Agreement.

**6.2 Default Remedies.** If a default shall occur and continue, then in addition to any other remedies available to the non-defaulting Party at law or in equity, the non-defaulting Party shall have the

immediate option to terminate this Agreement.

**ARTICLE 7  
MISCELLANEOUS PROVISIONS**

**7.1 Mediation.** Should any dispute arise out of this Agreement, either party may request that it be submitted to mediation. The parties shall meet in mediation within 30 days of a request. The mediator shall be agreed to by the mediating parties. In the absence of an agreement, the parties shall each submit one name from mediators listed by either the American Arbitration Association, the State Mediation and Conciliation Service, or other agreed-upon service. The mediator shall be selected by a blind draw. The cost of mediation shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the parties but not more than 60 days, unless the maximum time is extended by the parties.

**7.2 No Assignment.** This Agreement may not be assigned or transferred by Department. The fuel to be sold pursuant to this Agreement is for use only in Department's operations.

**7.3 Department's Obligations Upon Termination.** Upon termination of this Agreement, Department shall: (a) give Owner all keys or opening devices to the Premises; (b) vacate Premises and remove all Department persons, equipment, and vehicles from the Premises; and (c) repair or arrange for the repair of any damage directly caused by Department to the Premises.

**7.4 Force Majeure.** Neither Party shall be liable to the other Party for any loss or damage resulting from any delay or failure to make or accept deliveries caused by or arising out of acts of God or the elements, storms, wars, acts of terrorism, governmental proration or regulations, when raw materials or supplies are interrupted, unavailable, or in short supply, or any other cause beyond such Party's commercially reasonable control. Department specifically agrees that nothing contained in this Section shall ever be construed to relieve Department of its obligation to promptly pay City in full for fuel delivered to it, or to pay any other monetary obligation of Department.

**7.5 Notices.** All notices which shall or may be given pursuant to this Agreement shall be in writing and personally served or transmitted through first class United States mail, or by private delivery systems, postage prepaid, to the following address or such other address of which a party may give written notice. Any notice required or provided for under this Agreement shall be deemed served at the time of personal service. Mailed notices will be deemed served as of the day of receipt. Notice under this Agreement shall be given to:

Owner: City of San Mateo  
Attn: Director of Public Works  
330 W. 20<sup>th</sup> Avenue  
San Mateo, California 94063

Permittee: San Mateo Consolidated Fire Department  
Attn: Fire Chief

\_\_\_\_\_  
\_\_\_\_\_

**7.6 Attorneys' Fees.** If legal action is brought by either Party because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing Party is entitled to recover reasonable attorneys' fees and court costs in an amount not to exceed \$5,000. The above \$5,000 limit is the total of attorneys' fees recoverable whether in the trial court, appellate court, or otherwise, and regardless of the number of attorneys, trials, appeals, or actions. It is the intent of this provision that neither party shall have to pay the other more than \$5,000 for attorneys' fees arising out of an action, or actions, to enforce this Agreement.

**7.7 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives, successors, assigns and transferees.

**7.8 Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof. All prior and contemporaneous agreements, representations, negotiations, and understandings of the Parties, oral or written, relating to the subject matter hereof, are merged into and superseded by this Agreement. Any modification or amendment to this Agreement shall be of no force and effect unless it is in writing and signed by the parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit either Party to provide a waiver in the future except to the extent specifically set forth in writing. No waiver shall be binding unless executed in writing by the Party making the waiver.

**7.9 Severability.** If any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision or provisions shall be deemed separable from the remaining provisions of this Agreement and shall in no way affect the validity of the remaining portions of this Agreement.

**7.10 Governing Law.** This Agreement shall be interpreted and enforced according to, and the party's rights and obligations governed by, the domestic law of the State of California, without regard to its laws regarding choice of applicable law. Any proceeding or action to enforce this Agreement shall occur in the California Superior Court of San Mateo County for actions brought in state court, and the United States District Court for the Northern District of California if brought in federal court.

**7.11 Survival of Terms.** All of the terms and conditions in this Agreement related to payment, removal due to termination, indemnification, limits of liability, attorneys' fees and waiver shall survive termination of this Agreement.

**7.12 Captions and Paragraph Headings.** Captions and paragraph headings used herein are for convenience only. They are not a part of this Agreement and shall not be used in construing this Agreement.

**7.13 Drafting.** The Parties agree that this Agreement is the project of joint draftsmanship and that should any of the terms be determined by a court, or in any type of quasi-judicial or other proceeding, to be vague, ambiguous and/or unintelligible, that the same sentences, phrases, clauses or other wording or language of any kind shall not be construed against the drafting Party in accordance with California Civil Code Section 1654, and that each Party to this Agreement waives the effect of such statute.

**7.14 Authority to Execute This Agreement.** Each person or persons executing this Agreement on behalf of a party, warrants and represents that he or she has the full right, power, legal capacity and authority to execute this Agreement on behalf of such party and has the authority to bind such party to the performance of its obligations under this Agreement without the approval or consent of any other person or entity.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date stated in the introductory clause.

**CITY OF SAN MATEO**

**SAN MATEO CONSOLIDATED FIRE DEPARTMENT**

By: \_\_\_\_\_  
City Manager

By: \_\_\_\_\_  
Fire Chief

ATTEST:

ATTEST:

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Department Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

By: \_\_\_\_\_  
William D. Ross, Department Counsel



**EXHIBIT A:  
INSURANCE REQUIREMENTS FOR DEPARTMENT**

Department shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Department's access to and use of the City's fueling facility. The cost of such insurance shall be borne by the Department.

**MINIMUM SCOPE AND LIMIT OF INSURANCE**

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence and a general aggregate limit of no less than \$10,000,000, in addition to an excess liability policy of at least \$10,000,000 per occurrence and an annual aggregate of \$20,000,000.
2. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease. (for Departments with employees).

If the Department maintains broader coverage and/or higher limits than the minimums shown above, the Owner requires and shall be entitled to the broader coverage and/or higher limits maintained. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Owner.

**OTHER INSURANCE PROVISIONS**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. Additional Insured Status:

The Owner, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Department including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Department's insurance (at least as broad as ISO Form CG 20 10.)

2. Primary Coverage:

For any claims related to this contract, the Department's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the Owner, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Owner, its officers, officials, employees, or volunteers shall be excess of the Department's insurance and shall not contribute with it.

3. Notice of Cancellation:

No policy of insurance required to be maintained by the Department shall be cancelled or non-renewed without 30 days prior written notice to the Owner, except where cancellation is due to the non-payment of premiums, in which event, 10 days prior written notice shall be provided by Owner.

4. Waiver of Subrogation:

Department hereby grants to Owner a waiver of any right to subrogation which any insurer of said Department may acquire against the Owner by virtue of the payment of any loss under such insurance. Department agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Owner has received a waiver of subrogation endorsement from the insurer.

5. Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the Owner.

6. Self-Insured Retentions:

Self-insured retentions must be declared to and approved by the Owner. At the option of the Owner, either: the Department shall obtain coverage to reduce or eliminate such self-insured retentions as respects the Owner, its officers, officials, employees, and volunteers; or the Department shall provide a financial guarantee satisfactory to the Owner guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Owner.

7. Verification of Coverage:

Department shall furnish the Owner with original certificates and amendatory endorsements or copies of the applicable policy language providing the insurance coverage required above. All certificates and endorsements are to be received and approved by the Owner before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Department's obligation to provide them. The Owner reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.