

**AGREEMENT FOR ENTRY UPON PROPERTY AND  
RELEASE FOR USE OF PROPERTY AS A TRAINING SITE**

This agreement for entry upon property ("Agreement") is made and entered into this 8th day of October, 2019, by and between the SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT ("District") and the HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO ("Owner"), who are sometimes individually referred to herein as a Party and, together, as the "Parties."

**RECITALS**

A. **WHEREAS**, Owner is the fee owner of certain real property identified on Exhibit A and highlighted in green on Exhibit B (Collectively, the "Property"); and

B. **WHEREAS**, District desires to conduct certain public safety training exercises on the Property; and

C. **WHEREAS**, Owner desires to authorize District to conduct certain public safety training exercise on the Property.

**OPERATIVE PROVISIONS**

**NOW, THEREFORE**, in consideration of the foregoing Recitals, which Recitals are incorporated herein by this reference, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and for the mutual covenants contained herein, District and Owner hereby agree as follows:

**AGREEMENT**

1. License. Owner hereby grants to District and its employees a license to enter upon the Property for the sole purpose of conducting public safety personnel training (the "Training"). District shall provide to Owner a minimum of thirty (30) days prior written notice which notice shall contain at a minimum the following information: (1) dates of the requested use; (2) purpose of use; (3) types of Training exercises to be conducted; and (4) which portions of the Property will be used, to the extent they can be determined in advance, provided that the portions of the Property actually used by District shall be agreed by the Parties on or before the day of actual use. Following such notice to Owner, Owner and District shall use their good faith efforts to agree upon mutually acceptable dates and specific addresses for the Training and specific types of Training at the specific addresses. Owner, in its sole discretion, may prohibit Training, or specific types of Training, at one or more specific addresses located on the Property or may prohibit the Training entirely at the Property. Under no circumstances shall District be permitted

to conduct live fire, munitions, incendiaries, live burn or similar exercises on the identified portions of the Property. District shall not engage in Training activities likely to result in the destruction to the identified portions of the Property.

2. Term. The term of this Agreement shall commence on October 8, 2019 and end on October 7, 2020.

3. Authorization. District shall secure all authorizations and permits required to conduct the Training and will comply with all applicable federal, state, regional, and local laws, ordinances and regulations.

4. No Warranty. It is expressed understood and agreed that District accepts the use of the Property in its "as is" condition, and that Owner makes no representation, warranty or promise that the Property is fit for any particular use for which this Agreement was entered into, and District has not relied on any such representation, warranty or promise.

5. Condition of Property. Upon District's use of the Property, the same shall conclusively be deemed as acceptance by District that the Property is fit and proper for the purposes for which the same is hereby licensed and to be used. District acknowledges, and understands that District accepts the Property is provided in "AS IS" condition without any representations or warranties by Owner. District expressly waives and releases the Owner, and Owner's authorized agents, officers, volunteers and employees against any and all claims or actions, whether originating by subrogation or otherwise, for property damage and/or personal injury and/or death occurring in, on, and about any part of the Property, and for any costs or expenses incurred by the Owner and/or District and/or claims and/or actions arising therefrom. The District, notwithstanding the application of Section 1542 of the California Civil Code, which provides:

"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 the executed release which if known by him or her must have materially affected his or her settlement with the debtor."

expressly waives and relinquishes all rights and benefits afforded them by said Section 1542, and any and all similar laws of any State or territory of the United States. This Agreement shall act as a release of future claims that may arise from the above-mentioned damages, claims or actions, whether such claims are currently known, unknown, foreseen, or unforeseen. The District understands and acknowledges the

significance and consequences of such specific waiver of Section 1542 and hereby assumes full responsibility for any injuries, damages, losses, or liability that they or their personnel may hereafter incur.

6. Security, Disclaimer of Liability. District understands and agrees that the Owner is not required to provide, nor shall Owner provide any security for the personal property and/or the person of District or anyone using the Property. District shall provide at its sole cost sufficient administration and security personnel to secure the Property during each occurrence of Training. Owner is not liable for any claims, actions, loss, damages, liabilities, or injuries to the person or property of any person whomsoever at any time arising out of this Agreement from any cause whatsoever, including (without limitation) any acts, errors, or omissions of District, anyone claiming or holding by, through or under District or any other person, from the use of the Property, through, or under the District, or whether directly or indirectly from any state or condition of said Property during the term of this Agreement, and District waives and releases Owner from any such claims, actions, loss damages, liabilities, or injuries however arising.

7. Damage. District agrees to be responsible for any damage to the Property caused by any act or omission on the part of its employees, trainees, agents or affiliates (defined as any other individuals or entities participating in District's Training program). District shall immediately report to Owner any incidents and injuries that occur on the Property during Training. District shall promptly repair any damage to the Property to the satisfaction of Owner.

8. Fee. District shall not be required to pay any compensation to Owner for this Agreement or to conduct the Training.

9. Assignment. This Agreement is for the sole benefit of District and shall not be assigned or transferred, without the Owner's written approval of the assignment.

10. Termination. This Agreement may be terminated immediately in the sole discretion of Owner.

11. Hazardous Materials.

A. Definition. For purposes of this Agreement, the term "Hazardous Substance" means any (a) substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. ("RCRA"); Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq.; the Clean Water Act, 33 U.S.C. Sections 1251 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Sections 25100 et seq.; the California Hazardous Substance Account Act, Health and Safety Code Sections 25330 et seq.;

the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Sections 25249.5 et seq.; California Health and Safety Code Sections 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Sections 25170.1 et seq.; California Health and Safety Code Sections 25501 et seq. (Hazardous Materials Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code Sections 1300 et seq. all as amended, (the above-cited California state statutes are hereinafter collectively referred to as "the State Toxic Substances Laws") or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court, (c) petroleum or crude oil other than petroleum and petroleum products contained within regularly operated motor vehicles, and (d) asbestos.

B. In connection with the use of the Property by District, (a) District agrees and acknowledges that it has had an opportunity to investigate all of the Property and their environs for the presence of any hazardous substance; (b) any and all reports, studies, analyses, estimates, maps, drawings, materials, etc., if any, delivered by Owner to District preceding execution of this Agreement are delivered to District as an accommodation and not with the intent that such items be relied upon by District, except to the extent that District has independently confirmed the validity of such items; and (c) District's decision to enter into this Agreement is based upon the investigation, study and analysis of all of the Property and their environs made by District or its agents and/or independent contractors, and not upon oral or written statements or representations of Owner. It is expressly understood by District and Owner that all statements and representations made by Owner which are not included in this Agreement (a) are intended by Owner to be made as an accommodation to District in District's investigation and not in lieu of District's investigation; and (b) are not to be relied and acted upon by District.

C. District shall not permit, authorize, or suffer at any time herein relevant the presence, use, manufacture, handling, generation, storage, treatment, discharge, release, burial or disposal on, under or about the Property of any hazardous substance, or the transportation to or from the Property of any hazardous substance. Specifically, District shall not dispose nor allow the disposal of any materials,

including, but not limited to, tires and hazardous waste, including motor oil and other automotive fluids on the Property.

D. District agrees, in addition to those obligations imposed upon it pursuant to **Paragraph 12, INDEMNIFICATION**, herein, to indemnify, defend with counsel approved by Owner, protect and herein hold harmless Owner, its directors, officers, employees, agents, assigns, and any successor or successors to Owner's interest in the Property as it relates to Hazardous Substances as defined in **subparagraph A** from and against all claims, actual damages (including but not limited to special and consequential damages), punitive damages, injuries, costs, response costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses of any kind whatsoever paid, incurred or suffered by, or asserted against, the Property or any indemnified party directly or indirectly arising from or attributable to (a) any breach by the District of any of its agreements, warranties or representations set forth in this Agreement, or (b) any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan concerning any hazardous substance on, under or about the Property caused by District's use of the Property, regardless of whether undertaken due to governmental action. The foregoing indemnification shall apply regardless of the fault, active or passive negligence, breach of warranty or contract of District.

E. Without limiting the generality of this indemnity, this indemnity is intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364 to insure, protect, hold harmless and indemnify Owner for any liability arising out of District's use of the Property pursuant to such sections.

12. Indemnification. The District agrees to indemnify, defend (with counsel reasonably approved by Owner) and hold harmless the Owner and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the Owner on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault or indemnitees. The District's indemnification obligation applies to the Owner's "active" as well as "passive" negligence but does not apply to the Owner's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.

13. Insurance. District is a self-insured public entity and Owner is a member of a risk pool for purposes of general liability and workers' compensation insurance. Each Party hereto represents and

warrants to the other Party that it maintains sufficient liability coverage to meet its obligations under this Agreement.

14. Entire Agreement. This Agreement represents the entire agreement and understanding between the Parties and supersedes any and all prior oral or written agreements between the Parties relating to the subject matter hereof. No other agreement, statement or promise made by the Parties or to any employee, officer or agent of the Parties shall be binding, except a subsequent amendment to this Agreement, in writing, executed by the Parties.

15. Attorneys' Fees and Costs. If any legal action is instituted to enforce any party's rights hereunder, each Party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a Party hereto and payable under Indemnification and Insurance Requirements.

16. Notice. All notices required pursuant to this Agreement shall be communicated in writing, and shall be delivered in person, by commercial courier providing proof of delivery, or by certified mail, return receipt requested. ***All notices sent pursuant to this Agreement shall be addressed as follows:***

**If to Owner (HACSB):**

Rishad Mitha, Director of Operations  
Housing Authority of the County of San  
Bernardino  
715 E. Brier Drive  
San Bernardino, CA 92408-2841  
rmitha@hacsb.com

**If to District :**

Don Trapp, Interim Fire Chief/Fire Warden  
San Bernardino County Fire Department  
157 W. 5<sup>th</sup> Street, Second Floor  
San Bernardino, CA 92415  
909-387-5779

17. Survival. The obligations of the Parties that, by their nature, continue beyond the term of this Agreement, will survive the termination of this Agreement.

18. Amendment. Any amendment to this Agreement shall be in writing and executed by authorized representatives of the Parties.

19. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

20. Execution in Counterpart. This Agreement may be executed in counterparts, and all so executed shall constitute one agreement binding on both Parties hereto, notwithstanding that both Parties are not signatories to the original or the same counterpart.

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Agreement.

**SAN BERNARDINO COUNTY FIRE  
PROTECTION DISTRICT**

By: \_\_\_\_\_  
Curt Hagman  
Chairman, Board of Directors

Date: \_\_\_\_\_

SIGNED AND CERTIFIED THAT  
A COPY OF THIS DOCUMENT  
HAS BEEN DELIVERED TO THE  
CHAIRMAN OF THE BOARD

LYNNA MONELL, Secretary of the Board of  
Directors

By: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Legal Form:  
MICHELLE BLAKEMORE, County Counsel  
San Bernardino County, California

By: \_\_\_\_\_  
SCOTT RUNYAN  
Deputy County Counsel

Date: \_\_\_\_\_

**HOUSING AUTHORITY OF THE COUNTY  
OF SAN BERNARDINO**

By: \_\_\_\_\_  
Curt Hagman  
Chairman, Board of Governors

Date: \_\_\_\_\_

SIGNED AND CERTIFIED THAT  
A COPY OF THIS DOCUMENT  
HAS BEEN DELIVERED TO THE  
CHAIRMAN OF THE BOARD

LYNNA MONELL, Secretary of the Board of  
Governors

By: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Legal Form:  
MICHELLE BLAKEMORE, County Counsel  
San Bernardino County, California

By: \_\_\_\_\_  
JULIE J. SURBER  
Principal Assistant County Counsel

Date: \_\_\_\_\_

# EXHIBIT A

Demo Sequencing	Scope	Location	Stories	Bedroom Count	Sq Footages
Phase IV - Green Zone	Abatement & Demolition	371 E. Baseline, San Bernardino	1	3	984
Phase IV - Green Zone	Abatement & Demolition	373 E. Baseline, San Bernardino	1	3	984
Phase IV - Green Zone	Abatement & Demolition	352 E. Orange St., San Bernardino	1	2	837
Phase IV - Green Zone	Abatement & Demolition	354 E. Orange St., San Bernardino	1	2	837
Phase IV - Green Zone	Abatement & Demolition	362 E. Orange St., San Bernardino	1	2	837
Phase IV - Green Zone	Abatement & Demolition	364 E. Orange St., San Bernardino	1	2	837
Phase IV - Green Zone	Abatement & Demolition	386 E. Orange St., San Bernardino	2	2T	837
Phase IV - Green Zone	Abatement & Demolition	388 E. Orange St., San Bernardino	2	2T	837
Phase IV - Green Zone	Abatement & Demolition	392 E. Orange St., San Bernardino	2	2T	837
Phase IV - Green Zone	Abatement & Demolition	394 E. Orange St., San Bernardino	2	2T	837
Phase IV - Green Zone	Abatement & Demolition	406 E. Orange St., San Bernardino	1	3	984
Phase IV - Green Zone	Abatement & Demolition	408 E. Orange St., San Bernardino	1	3	984
Phase IV - Green Zone	Abatement & Demolition	426 E. Orange St., San Bernardino	1	3	984
Phase IV - Green Zone	Abatement & Demolition	428 E. Orange St., San Bernardino	1	3	984
Phase IV - Green Zone	Abatement & Demolition	440 E. Orange St., San Bernardino	2	2T	837
Phase IV - Green Zone	Abatement & Demolition	442 E. Orange St., San Bernardino	2	2T	837
Phase IV - Green Zone	Abatement & Demolition	444 E. Orange St., San Bernardino	2	2T	837
Phase IV - Green Zone	Abatement & Demolition	446 E. Orange St., San Bernardino	2	2T	837
Phase IV - Green Zone	Abatement & Demolition	459 E. Orange St., San Bernardino	1	4	1056
Phase IV - Green Zone	Abatement & Demolition	461 E. Orange St., San Bernardino	1	4	1056
Phase IV - Green Zone	Abatement & Demolition	462 E. Orange St., San Bernardino	1	3	984
Phase IV - Green Zone	Abatement & Demolition	464 E. Orange St., San Bernardino	1	3	984
Phase IV - Green Zone	Abatement & Demolition	473 E. Orange St., San Bernardino	1	4	1056
Phase IV - Green Zone	Abatement & Demolition	475 E. Orange St., San Bernardino	1	4	1056
Phase IV - Green Zone	Abatement & Demolition	476 E. Orange St., San Bernardino	1	3	984
Phase IV - Green Zone	Abatement & Demolition	478 E. Orange St., San Bernardino	1	3	984
Phase IV - Green Zone	Abatement & Demolition	1191 Alder St., San Bernardino	2	5T	1785
Phase IV - Green Zone	Abatement & Demolition	1193 Alder St., San Bernardino	2	5T	1785
Phase IV - Green Zone	Abatement & Demolition	361 E. Baseline, San Bernardino	1	3	984
Phase IV - Green Zone	Abatement & Demolition	363 E. Baseline, San Bernardino	1	3	984
30			30	30	29,646



EXHIBIT B

