

LICENSE AGREEMENT FOR CONTRA COSTA COUNTY FIRE PROTECTION DISTRICT
USE OF CONTRA COSTA COUNTY FLOOD CONTROL AND WATER CONSERVATION
DISTRICT PROPERTY

This License Agreement is made and entered into as of December 13, 2011 (this "License Agreement"), by and between Contra Costa County Flood Control and Water Conservation District, a body corporate and politic ("Licensor"), and the Contra Costa County Fire Protection District, a fire protection district existing under the laws of the State of California ("Licensee").

RECITALS

- A. Licensor possesses various property rights over and across the areas designated as FC District Property in Exhibit A, attached hereto and incorporated herein (the "Property").
- B. The Property's characteristics include certain structures described as follows: earth channels, concrete channels, concrete vehicle ramps, rock slope protection (aka riprap), vehicular and walking access roads, fences, gates, bollards, cable railing and other appurtenant drainage facility features within the Property (collectively, "Structures").
- C. Licensee wishes to use the Property and Structures for water rescue training purposes.

NOW, THEREFORE, in consideration of the mutual promises and undertakings set forth in this License Agreement and other good and valuable consideration, the sufficiency of which is acknowledged, Licensor and Licensee agree as follows:

AGREEMENT

- 1. Grant of License. Licensor grants to Licensee a revocable, nonexclusive license to enter and use the Property and the Structures as follows:
 - a. Training. For training Licensee's personnel in water rescue techniques, which may include, without limitation, the physical practice of rescue procedures with personnel and equipment and the installation of equipment pursuant to **Section 4** below, and other similar activities beyond those involved in Inspections (as defined below) (the foregoing activities being referred to herein as "Training"). Subject to the requirements of **Section 3(a)**, Licensee may use the Property and Structures for Training between the hours of 8:30 a.m. and 5:30 p.m. each day of the week after providing notice to Licensor and the requisite passage of time pursuant to **Section 8**, and at any other time with the prior written consent of one of Licensor's Designated Representatives (as defined in **Section 8** below).
 - b. Inspections. To enter the Property (i) with personnel and without vehicles to: examine the Property and Structures to ensure the ability of equipment to get past Structures; examine flow conditions during storms; examine previous

modifications and equipment installed pursuant to **Section 4**; increase Licensee's familiarity with Property, Structures, and Licensee equipment installed pursuant to **Section 4**; and verbal (not physical) rehearsal of rescue procedures (the foregoing activities being referred to herein as "Inspections") at any time; and (ii) with personnel and, subject to the restrictions set forth in subsection (c) below, vehicles for Inspections when the access roads are not wet in the opinion of Licensor. Licensee must contact Licensor's Maintenance Division at (925) 313-7000 to coordinate Inspections with Licensor's maintenance activities to avoid operational or safety conflicts and for assistance in locating access points to Property.

- c. Equipment on Property. Licensee shall not drive any fire trucks or fire engines on any part of the Property except for utility vehicles or rescue trucks that weigh less than 8,000 pounds. Licensee will promptly repair any damage caused by any vehicle used on the Property, including without limitation, damage caused to Facilities (as defined in **Section 6** below) installed by Third Party Users (as defined in **Section 6** below).
- d. Termination. This License Agreement may be terminated at any time by Licensor or Licensee upon thirty days written notice to the other party; *provided*, that if Licensor determines that Licensee has violated the terms of this License Agreement, Licensor may terminate this License Agreement immediately by written notice to Licensee. Licensee shall acquire no interest or estate in the Property under this license.

- 2. Term of License. The term of this License Agreement begins on the date first set forth above, and expires on the date upon which this License Agreement is terminated pursuant to **Section 1(d)** above (the "Term").

- 3. Restricted Right to Enter Ramps and Concrete Lined Channels.

- a. Permission Request. Licensee may not enter ramps to access the bottoms of concrete channels on the Property with personnel or vehicles unless Licensee makes a specific written request to Licensor for permission to access the channels and Licensor provides express written consent for access to the channel at a specific time and at a specific location. The restriction set forth in this **Section 3(a)** is for the protection of the channel bottoms from damage by heavy equipment.

- b. Channel Hazards. If allowed to enter concrete channel with light vehicles and/or personnel, Licensee acknowledges the hazards of driving or walking on channel bottoms, which may be slippery or difficult to access, drive, or walk on when wet or inundated, may be covered with algae, vegetation or debris, may have depressions filled with and/or hidden by water, or may have other unforeseen hazards.

- 4. Right to Modify Structures and Install Equipment. In addition to its rights to use the Property and Structures for Training, Licensee shall have the following rights, but only

after receiving a Licensor issued Flood Control Encroachment Permit, executed by Licensor and Licensee (each, a "Permit"), the issuance of which shall not be unreasonably withheld: (a) the right to modify the Structures in order to enhance emergency accessibility for Training and for emergency response purposes; and (b) the right to install rope connection hardware, including but not limited to adding anchors for rescue rope systems, on the Property for Training. No Structures shall be modified or installations made on the Property until Licensee has fulfilled all requirements of such Permit, including without limitation, submitting plans for such modifications and/or installations to Licensor, and Licensor and/or the appropriate department of Contra Costa County has reviewed and approved the same. When Licensor and Licensee deem it appropriate due to significant time and/or financial commitments that Licensor may incur in connection with Licensee's modifications of the Structures or installations on the Property, Licensee will provide a work order number to which Licensor can charge its time when it provides in-field assistance, CAD or GIS mapping services, review of proposed modifications to Structures and or proposed equipment installations and meetings.

5. Primary Use of Property. The Property is primarily used for flood control purposes. Underground utility facilities may already be in place and may be installed on the Property in the future. Any and all rights granted or implied by this License Agreement are expressly subordinated to the foregoing uses, as well as to all other uses of the Property made or permitted by Licensor.
6. Third Party Licenses, Easements and Rights of Use. Licensee acknowledges and agrees that: (a) Licensor has granted licenses, easements and other rights of use over parts of the Property, some of which may be exclusive (the "Third Party User Rights") to other entities ("Third Party Users"); (b) the license granted to Licensee under this License Agreement is subordinate to the Third Party User Rights; and (c) certain Third Party Users may possess the right to exclude Licensee from certain parts of the Property. Facilities installed and operated by Third Party Users include asphalt and concrete paths or roads, shoulders, equestrian trails, signs, drainage facilities, fencing, walls, landscaping, bridges, and utilities such as poles, wires, underground pipes, and underground conduits ("Facilities"). Licensee is responsible for ensuring Licensee personnel and any contractor working for Licensee avoid damages to Facilities and call Underground Service Alert (USA) at (800) 227-2600 with the appropriate lead time when installing equipment requiring in-ground installation or ground penetration.
7. Release and Indemnity.
 - a. Licensor is not liable for any loss, damage, injury or death to the Property or the Structures, or to any Licensee officers, employees, or agents, arising out of Licensee's use of the Property and Structures during the Term. Licensee shall indemnify, defend, protect and hold harmless Licensor from all claims, costs and liability for any loss, damage, injury or death to the Property or the Structures, or to any person, including but not limited to employees of Licensor, Licensee's officers, employees, or agents, caused by Licensee's use of the Property and the Structures during the Term, including any loss,

damage, injury or death occurring after the Term if caused by Licensee's use of the Property and Structures during the Term. Licensee's obligations under this subsection (a) shall not apply to any claim, cost, or liability caused by the negligence or willful misconduct of Licensor. This indemnity provision shall survive the termination of this License Agreement.

b. Licensee shall not be liable and shall not have any indemnification obligation under **Section 7(a)**, for any loss, damage, injury or death to any persons or property occurring after the Term, unless such loss, damage, injury or death to any persons or property was caused by Licensee's use of the Property and the Structures during the Term.

8. Notices. All notices provided for in this License Agreement shall be made in person, by telephone conversation (not voicemail), by electronic mail (e-mail) only when there is a positive reply from the intended e-mail recipient, or by facsimile. Except in the case of concrete channel ramp access, which is governed by the provisions of **Section 3(a)** and which is not subject to the unexpected water flow exception set forth below, Licensee shall give one of Licensor's Designated Representatives at least twenty-four (24) hours notice prior to entering and using the Property for Training, unless the presence of significant unexpected water flow results in desirable conditions for more immediate rescue training, in which case, Licensee shall give one of Licensor's Designated Representatives notice as soon as practicable prior to entering and using the Property for Training.

The below-listed officers are employees of Licensee and, as of the date of this License Agreement, hold the position titles next to their name and can be contacted directly or through Licensee's main number: (925) 941-3300 and via fax at (925) 941-3309, with such fax identifying the names or positions of the individuals to whom the fax is to be distributed. Notwithstanding that the positions listed below may be held by officers other than those listed below, notices and consents must be obtained from the officer holding the designated title. Licensee agrees to use its best efforts to notify Licensor of any changes in the officers holding the positions listed below, but a failure to so notify is not a breach of this License Agreement.

Chief of Operations — John Ross
Battalion Chief — Alan Hartford
Swiftwater Rescue Functional Supervisor — Engineer John Lefevre
Swiftwater Rescue Assistant — Firefighter Brent Boling

The below listed position titles are positions held by employees of Contra Costa County ("Licensor's Designated Representatives") and can be contacted directly or through Licensor's main number: (925) 313-2000 and via fax at (925) 313-2333:

Director of Public Works – ex officio Chief Engineer of Licensor
Deputy Director of Public Works
Assistant Public Works Director

Sr. Civil Engineer in the Flood Control Division
Sr. Hydrologist in the Flood Control Division
Assistant Public Works Director over Maintenance Division
Sr. Civil Engineer in the Maintenance Division
Assistant Field Operations Manager in Maintenance Division

9. Assignment. Licensee shall not assign or sublicense any of Licensee's rights under this License Agreement. Any purported assignment or sublicense of any of Licensee's rights under this License Agreement is void and without effect.
10. Entire Agreement. This License Agreement contains the entire agreement between the parties and all prior understandings or agreements, oral or written, regarding this matter are superseded. This License Agreement shall not be modified except by written mutual agreement signed by the parties.
11. Representations and Warranties. Nothing in this License Agreement shall be construed as a representation or warranty by Licensor that the Property is suitable for Training.
12. Emergency purposes. Nothing in this License Agreement shall be construed to restrict Licensee's right to enter the premises for emergency fire and medical response services.
13. Restoration of Property, Structures, and Removal of Equipment. Within 120 days of the termination or expiration of this License Agreement, Licensee will remove modifications and equipment installed pursuant to **Section 4** and restore the Property to the condition existing prior to the installation of such modifications or equipment to the satisfaction of Licensor. A request by Licensee to leave some or all such modifications or equipment in place after termination of this License Agreement shall not be unreasonably denied by Licensor after consideration of the effect of the modifications and equipment on Licensor's and Third Party User's operations on the Property.
14. Revisions to and Errors in Exhibit A. The description of the Property on Exhibit A, as of the date of this License Agreement, was created using data that is updated and corrected from time to time. Licensor may update Exhibit A at any time as its property rights are revised or when errors in the description of the Property rights data are discovered. Any time Exhibit A is updated by Licensor to reflect revisions to the Property, an updated Exhibit A executed by the Director of Public Works – ex officio Chief Engineer of Licensor or Deputy Director of Public Works of Licensor with the date printed thereon will be sent to Licensee with a cover memo signed by the Director of Public Works – ex officio Chief Engineer of Licensor or Deputy Director of Public Works of Licensor indicating revisions and any known conflicts with Licensee activities. Each updated Exhibit A will be countersigned by Licensee's Chief of Operations and returned to Licensor and such updated Exhibit A will then become part of this License Agreement and replace the immediately preceding version of Exhibit A.

In any event, Licensor's knowledge of rights of way will govern Licensee's rights under this Agreement. If in the process of carrying out the activities covered under this License

Agreement, an error in Exhibit A is discovered that reduces the area of properties shown on Exhibit A, upon notice by Licensor in any form, Licensee shall cease licensed activities on those properties found to not be areas where Licensor has property rights, and restore the Property as called for under **Section 13** with the appropriate permissions of the true property rights holder.

15. Governing Law. This License Agreement is made and will be performed in the State of California, and as such California substantive and procedural law shall apply.
16. Severability. If any one or more of the terms, provisions, promises, covenants, or conditions of this License Agreement were, to any extent, adjudged invalid, unenforceable, void, or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants, and conditions of this License Agreement shall not be affected and shall be valid and enforceable to the fullest extent permitted by law.

The parties hereto have executed this License Agreement as of the date first set forth above.

LICENSOR:

CONTRA COSTA COUNTY
FLOOD CONTROL AND WATER
CONSERVATION DISTRICT,
a body corporate and politic

By: _____

Name: _____

Title: _____

LICENSEE:

CONTRA COSTA COUNTY
FIRE PROTECTION DISTRICT,
a fire protection district existing
under the laws of the State of California

By: _____

Name: _____

Title: _____

Approved as to form:

Sharon Anderson,
Contra Costa County Counsel

By: 
Deputy County Counsel

EXHIBIT A

FC DISTRICT PROPERTY

See attached.

