

LICENSE AGREEMENT
City Shooting Range

This License Agreement (hereinafter "Agreement") is made and entered into by and between the City of Napa, a California charter city (hereinafter "City"), and the Napa County Probation Department (hereinafter "Licensee") is effective as of the date last signed by the City, which is identified on the signature page as the "Effective Date." City and Licensee may be collectively referred to herein as the "Parties."

RECITALS

A. The City is the owner of that certain real property located at 2295 Monticello Road in Napa, California, consisting of 4.3 acres of land located on Assessor's Parcel Number (APN) 049-010-014-000, which the City operates as a shooting range for use by City employees.

B. The Licensee has requested permission from the City to use the Premises for the purposes of firearms training and qualification for employees of Licensee's personnel located in the Napa area office in accordance with the terms of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions identified herein, the parties hereby agree as follows:

1. GRANT OF LICENSE. The City hereby grants Licensee (including its officers, employees, and agents) a non-exclusive, revocable license ("License") to use the Premises in its "As Is" condition without representation or warranty of any kind, including, without limitation, the suitability or safety of the Premises or any facilities or equipment on the Premises, for the sole purpose of providing firearms training and qualification to employees of Licensee's Probation Department ("Training") in accordance with the terms of this Agreement.

2. TERM OF AGREEMENT. The term of this Agreement shall commence on July 1, 2024, and conclude on June 30, 2025, unless earlier terminated pursuant to the terms hereof.

3. LICENSE FEE. Licensee shall pay City a License fee of Two Thousand Dollars (\$2,000) per month to be invoiced semi-annually in arrears in the amount of Twenty-four Thousand Dollars (\$24,000). Licensee shall pay the invoiced amount to the City within thirty (30) days of receipt of the invoice.

4. AUTHORIZED REPRESENTATIVES. Licensee hereby assigns Chief Probation Officer Amanda Gibbs to serve as the Licensee's authorized representative ("Licensee's Authorized Representative") to serve as the primary point of contact for all matters pertaining to this Agreement. City hereby assigns the Police Chief to serve as the City's authorized representative ("City's Authorized Representative") to serve as the primary point of contact for all matters pertaining to this Agreement.

5. LIMITATIONS ON LICENSEE'S USE OF CITY PROPERTY.

5.1. The City's permission to Licensee to use the Premises in accordance with this Agreement shall not create any right, title, or interest in the Premises.

5.2. Notwithstanding anything to the contrary in this Agreement, Licensee's rights to use the Premises hereunder shall be subject and subordinate to the City's use of the Premises for the City's operations. In no case shall Licensee's use of the Premises interfere with those City uses or operations, as determined by the City in its sole and absolute discretion. City retains the right to use the Premises in any manner that does not unreasonably interfere with Licensee's activities hereunder.

5.3. Licensee may use the Premises up to three (3) days per month, including two (2) night shoots per fiscal year. Licensee shall schedule its use of the Premises with City at least fourteen (14) business days in advance by contacting the City's Authorized Representative. At a minimum, or as mutually agreed upon by both parties, the Napa County Probation Department will utilize the range on the second Tuesday and Wednesday of each month. Specific days and dates may be changed by mutual agreement of the parties during the term of this Agreement.

5.4. The Licensee shall, at its sole cost and expense, repair any damage arising out of Licensee's use of the Premises, and Licensee shall restore the Premises to a condition equal to or better than the condition which existed prior to Licensee's entry on the Premises. Licensee shall reimburse the City for any costs incurred to cure a breach of Licensee's obligations under this Agreement.

5.5 The Licensee shall use frangible ammunition as stated in Exhibit A, when conducting live-fire training on the Premises. Frangible ammunition is not made from lead and is designed to break into small pieces upon contact with harder objects or surfaces.

5.6 The Licensee shall comply with posted instructions or rules governing use of the Premises.

5.7 As part of this Agreement, Licensee installed a shed/convex ("Shed") for the storage of supplies on the site of the Premises. The shed is approximately 8 feet by 10 feet in area. At the end of the term of this Agreement the Shed, as a fixture, will become the property of the City.

6. RIGHT TO TERMINATE. Either party may terminate this Agreement for convenience (with or without cause) by providing written notice of termination to the other party, effective upon the date stated in the notice. Upon termination, the Licensee shall pay to the City all outstanding amounts due to the City in accordance with Section 3.

7. RELATIONSHIP BETWEEN THE PARTIES. Licensee is, and at all times shall remain, an independent contractor solely responsible for all acts of its employees, agents, or contractors, including any negligent acts or omissions. Licensee is not City's agent and shall have no authority to act on behalf of the City or to bind the City to any obligation whatsoever.

8. PERMITS, LICENSES, AND COMPLIANCE WITH LAW.

8.1. Permits and Licenses. The Licensee shall, at the Licensee's expense, obtain and maintain all necessary permits and licenses for the performance of the Training.

8.2. Compliance with Law. The Licensee shall comply with all applicable legal requirements including all federal, state, and local laws (including ordinances, resolutions and any shooting range safety rules or regulations), whether or not said laws are expressly stated in this Agreement.

9. PUBLIC SAFETY. Licensee shall use and exercise due care, caution, skill, and expertise in performing the Training on the Premises, including appropriate and necessary supervision of Training participants by qualified professionals, and shall take all reasonable steps to safeguard Training areas, including without limitation existing facilities and property with full regard to the public safety. Licensee is aware that the licensed premises covered under this Agreement is situated in a rural residential area. Due to the rural nature of the location, there may be wildlife present on or around the Premises. This wildlife may include but is not limited to bears, mountain lions, rattlesnakes, and other potentially dangerous animals.

10. INSURANCE. Without limiting Licensee's indemnification provided herein, Licensee shall take out and maintain, throughout the period of this Agreement, the following policies of insurance placed with insurers (if other than the State Compensation Fund) with a current A.M. Bests rating of no less than A:VII or its equivalent against injury/death to persons or damage to property which may arise from or in connection with the activities hereunder of Licensee, its agents, employees or subcontractors:

10.1. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), in an amount of \$2,000,000.00 per occurrence per occurrence for bodily injury, personal injury and property damage. If Commercial General Insurance or other form with a general aggregate limit shall be twice the required occurrence limit. Said policy shall contain, or be endorsed with, the following provisions:

10.1.1. The City, its officers, employees, and agents, are covered as insureds for liability arising out of the operations performed by or on behalf of Licensee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, agents and employees.

10.1.2. The policy shall not be canceled or materially reduced in coverage without thirty (30) days prior written notice ten (10) days for non-payment of premium to City by certified mail.

10.1.3. Automobile liability insurance with coverage at least as broad as ISO Form numbers CA 0001 06 92, Code 1 (any auto), for vehicles used in the performance of this Agreement with minimum coverage of not less than \$1,000,000 per accident combined single limit (CSL). Such policy shall contain or be endorsed with the provision that coverage shall not be canceled or materially reduced in coverage without thirty (30) days prior written notice ten (10) days for non-payment of premium to City by certified mail.

10.1.4. Worker's Compensation insurance meeting statutory limits of the California Labor Code which policy shall [contain or be endorsed to contain a waiver of subrogation against City, its officers, agents, and employees and] provide for thirty (30) days prior written notice to City in the event of cancellation. If Licensee has no employees, Licensee may submit a Request for Waiver, Workers Compensation Insurance Requirement form in lieu of insurance:

10.1.5. Licensee shall furnish City with certificates and original endorsements effecting the required coverage prior to execution of this Agreement by City. The endorsements shall be on forms provided by City or as approved by City Attorney. Any deductible or self-insured retention over \$100,000.00 shall be disclosed to and approved by City. If Licensee does not keep all required insurance policies in full force and effect, City may, in addition to other remedies under this Agreement, terminate or suspend this Agreement.

11. REPORTING DAMAGES. If any damage (including death, personal injury or property damage) occurs in connection with the performance of this Agreement, Licensee shall immediately notify the City's Range Master by telephone at 707-257-9514, or 707-257-9671 and Licensee shall promptly submit to the Range Master and the City's Authorized Representative a written report (in a form acceptable to City) with the following information:

11.1. A detailed description of the damage (including the name and address of the injured or deceased person(s) and a description of damaged property;

11.2. Name and address of witnesses; and

11.3. Name and address of any potential insurance companies.

12. WAIVER OF CLAIMS.

12.1. Neither the City nor any of its officers, agents or employees shall be liable for any damage to the property of Licensee, its officers, agents, employees, invitees, or Training participants, or for any bodily injury or death to such persons, or for any other loss, resulting or arising from the condition of the Premises or Licensee's use thereof, including any injury or death resulting from exposure to lead or other cancer-causing chemicals described in Section 14 below.

12.2. Licensee fully releases, waives and discharges forever any and all claims, demands, rights, and causes of action against, and covenants not to sue the City, its officials, officers, employees, or agents, under any present or future laws, statutes, or regulations for any claim or event relating to the condition of the Premises or Licensee's use thereof, including any injury or death resulting from exposure to lead or other cancer-causing chemicals described in Section 14 below.

13. INDEMNIFICATION. To the full extent permitted by law, Licensee shall indemnify, hold harmless, release and defend City, its elected and appointed officials, officers, employees, and agents, from and against any and all actions, claims, demands, damages, disability, losses, expenses including attorney's fees and other defense costs and liabilities of any nature (collectively, "Liability") that may be asserted by any person or entity including Licensee, in whole or in part, of any nature, arising out of, pertaining to, or relating to (a) Licensee's acts or omissions under this Agreement, including the acts or omissions of other persons employed or utilized by Licensee in the performance of this Agreement; (b) the Training; (c) Licensee's use of the Premises; or (d) exposure to lead or other cancer-causing chemicals described in Section 14 below, excepting liabilities due to the admitted or adjudicated sole negligence or willful misconduct of City. If the adjudicated or admitted sole negligence or willful misconduct of City has contributed to a loss, Licensee shall not be obligated to indemnify City for the proportionate share of such loss caused by such sole negligence or willful misconduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for Licensee under Worker's Compensation, disability or other employee benefit acts or the terms, applicability or limitations of any insurance held or provided by Licensee. Licensee's indemnification obligation pursuant to this Section shall survive the expiration or termination of this Agreement.

14. LEAD DISCLOSURE. Licensee acknowledges and agrees that (i) lead and other chemicals known to the State of California to cause cancer, reproductive harm, birth defects and developmental harm are present on the Premises; (ii) exposure to lead may occur through inhalation of lead vapors and dust or incidental ingestion from hand to mouth contact and (iii) entering the Premises can expose Licensee, its employees and agents to chemicals known to the State of California to cause cancer, reproductive harm, birth defects and developmental harm. To minimize risk of exposure to lead and other cancer-causing chemicals located on the Premises, Licensee, shall cause its employees and agents to wash their hands immediately after shooting, cleaning firearms, picking up spent casing (brass) or being present on the Premises; wash their hands, forearms, and face before eating, drinking, smoking or being in contact with other people; change their clothes and shoes before leaving the Premises; wash their clothes or uniforms worn while on the Premises separately from other clothing; and comply with any and all other City lead safety procedures currently in place on the Premises or which may be established by the City in the future. Additionally, Licensee will ensure that all employees and/or agents of Licensee have completed any CalOSHA required trainings pursuant to General Safety Order [§5198](#).

In addition, prior to entrance onto the Premises by any employee or agent of Licensee, Licensee shall cause each such employee or agent to execute a waiver in the form attached hereto as Attachment 1A and incorporated herein by reference ("Waiver") releasing and discharging the City from any all liability related to potential exposure to lead or other cancer causing chemicals present on the Premises and shall provide such executed waiver to the City. Licensee's failure to obtain an executed Waiver from each employee or agent of Licensee who enters the Premises or to provide the Waivers to the City shall be a material default under this Agreement.

Due to the potential reproductive harm lead may cause to unborn children as determined by the Center's for Disease Control (CDC) Licensee shall prohibit any pregnant employees from entering the Premises and shall notify all employees that pregnant women are not permitted on the Premises.

15. ASSIGNMENT AND DELEGATION. This Agreement, and any portion thereof, shall not be assigned or transferred without the prior written consent of the City. Any attempt to assign or transfer this Agreement without the written consent of the City shall be void and of no force or effect. A consent by the City to one assignment shall not be deemed to be a consent to any subsequent assignment.

16. WAIVERS. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

17. NOTICES. All notices required or contemplated by this Agreement shall be in writing and shall be delivered to the respective party as set forth in this section. Communications shall be deemed to be effective upon the first to occur of:

17.1. Actual receipt by a party's Authorized Representative, or

17.2. Actual receipt at the address designated below, or

17.2 Three working days following deposit in the United States Mail of registered or certified mail sent to the address designated below.

The Authorized Representative of either party may modify their respective contact information identified in this section by providing notice to the other party.

TO CITY: POLICE DEPARTMENT
CITY OF NAPA
1539 First Street
Napa, CA 94559
Attn: Police Chief
jgonzalez@cityofnapa.org

TO LICENSEE: PROBATION DEPARTMENT
NAPA COUNTY
212 Walnut Street
Napa, CA 94559
Attn: Amanda Gibbs
amanda.gibbs@countyofnapa.org

18. GENERAL PROVISIONS.

18.1. Headings. The heading titles for each paragraph of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.

18.2. Severability. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall

be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.

18.3. Governing Law, Jurisdiction, and Venue. The interpretation, validity, and enforcement of this Agreement shall be governed and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the Napa County.

18.4. Attorney's Fees. In the event any legal action is commenced to enforce or interpret this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred, whether or not such action proceeds to judgment.

18.5. Modifications. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.

18.6. Each Parties' Role in Drafting the Agreement. Each party to this Agreement has had an opportunity to review the Agreement, confer with legal counsel regarding the meaning of the Agreement, and negotiate revisions to the Agreement. Accordingly, neither party shall rely upon Civil Code Section 1654 in order to interpret any uncertainty in the meaning of the Agreement.

[Signature page follows]

18.7. Signatures; Electronic Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Contractor and the City. The parties agree that this Agreement may be executed and transmitted electronically and that electronic signatures shall have the same force and effect as original signatures in accordance with the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq.; the California Uniform Electronic Transactions Act, Civil Code Section 1633.1 et seq. and California Government Code Section 16.5.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date written below.

CITY:
CITY OF NAPA, a California charter city

By: _____
Jennifer Gonzalez, Police Chief

Date: _____
("Effective Date")

COUNTERSIGNED:

Erika Leahy, City Auditor

APPROVED AS TO FORM:

Sabrina S. Wolfson, Interim City Attorney

LICENSEE:
County of Napa, a political subdivision of the State of California

By: _____
Joelle Gallagher, Chair
Board of Supervisors

APPROVED AS TO FORM Office of County Counsel By: <u>Douglas Parker (via e-sign)</u> Deputy County Counsel Date: <u>June 24, 2024</u>	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: _____ Processed By: _____ Deputy Clerk of the Board	ATTEST: NEHA HOSKINS Clerk of the Board of Supervisors By: _____
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Name of Participant: _____ (“Participant”).

I am employed by the Napa County and have requested the opportunity to participate in firearms training and qualification designed, administered, and provided by the County of Napa to be held on City of Napa (“City”) property located at 2295 Monticello Road in Napa, California (Assessor’s Parcel Number 049-010-014-000) (the “Premises”).

My presence on the Premises, participation in the firearms training and qualification, and use of any City facilities and equipment on the Premises shall be hereafter defined as the “Training.”

I know that the Training involves inherently dangerous activities, which carry the risk of serious injury or death.

I fully understand that the Training is designed, provided, and administered by the Napa County, not the City, and that the City has no involvement whatsoever in the Training other than allowing the Napa County to use the City’s Premises for the Training.

I fully understand that:

1. Lead and other chemicals known to the State of California to cause cancer, reproductive harm, birth defects and developmental harm are present on the Premises
2. Exposure to lead may occur through inhalation of lead vapors and dust or incidental ingestion from hand to mouth contact
3. Entering the Premises can expose me to chemicals known to the State of California to cause cancer, reproductive harm, birth defects and developmental harm.
4. I am only permitted to use frangible ammunition during Training at the premises.

I fully understand that I should not enter the Premises if I am pregnant because of the reproductive harm that lead present on the Premises may cause to my unborn children.

To minimize risk of exposure to lead and other cancer-causing chemicals located on the Premises, I agree to:

1. Wash my hands immediately after shooting, cleaning firearms, picking up spent casing (brass) or being present on the Premises
2. Wash my hands, forearms, and face before eating, drinking, smoking or being in contact with other people
3. Change my clothes and shoes before leaving the Premises
4. Wash my clothes or uniforms worn while on the Premises separately from other clothing
5. Comply with any and all other City lead safety procedures currently in place on the Premises or which may be established by the City in the future.

I fully understand the risks inherent in the Training, including the potential for exposure to lead and other chemicals known by the State of California to cause cancer. I hereby assume all risk associated with my participation in the Training, including risk of personal injury and death and risk of exposure to lead and other cancer-causing chemicals.

In return for being allowed to participate in the Training provided by Napa County on the Premises, I hereby forever waive, release and discharge the City of Napa, its elected and appointed officials, officers, employees, agents and volunteers (“City”) from any and all liability, claims, demands and causes of action, including without limitation, for death, personal injury, disability, property damage or injury or damage of any kind (collectively, “Claims”) arising out of or related to, directly or indirectly, my presence on the Premises and my participation in the Training, including any Claims related to exposure to lead or other cancer-causing chemicals present on the Premises. THIS RELEASE AND WAIVER IS INTENDED TO BE AS BROAD AS PERMITTED BY LAW, AND APPLIES TO, WITHOUT LIMITATION, CLAIMS FOR INJURY TO ME ARISING FROM THE SOLE ACTIVE NEGLIGENCE OF THE CITY, A DANGEROUS CONDITION OF CITY PROPERTY, OR NEGLIGENCE OF THIRD PARTIES, including CHP or other participants in the Training.

I hereby indemnify and hold harmless the City from any Claim which may be made by any other person against the City, arising out of or relating to my presence on the Premises or participation in the Training, including any Claim related to exposure to lead or other cancer-causing chemicals on the Premises.

This waiver, release, and grant of rights applies to me and my family, heirs, executors, administrators, and assigns.

NOTICE: THIS DOCUMENT IS A LEGAL INSTRUMENT THAT WAIVES AND RELEASES LIABILITY.
READ CAREFULLY BEFORE SIGNING.

PARTICIPANT SIGNATURE: _____ DATE: _____

Prevent pooling water.

- If pooling water is present onsite notify Range Master

Suppress dust.

- If dust clouds are present during usage, mist with hose provided or notify Range Master

Prevent unauthorized vehicle access and parking.

- Do not allow vehicles to drive past posted signs. Parking is located at the site entrance.

Prevent accidental ingestion of lead.

- Use handwashing facilities after firearm maintenance and firing activities.
- Use the changing room to change clothing after range usage.
- Do not eat or drink near shooting area or firearms maintenance area.
- Vacuum Classroom with HEPA vacuum after all usage

Reduce ricochet risk.

- Watch for large rocks/boulders in shooting area and remove them or report their presence to the range master.

Complete any required tracking sheets.

- Rounds Fired Tracking Sheet
- Maintenance Tracking Sheet
- Cleaning Tracking Sheet
- Range Inspection Tracking
- Maintain Mist Application for Dust Suppression Documentation