

**SITE USE AGREEMENT BETWEEN NAPA COUNTY AND
DR CREEK-LOKOYA VOLUNTEER FIRE DEPARTMENT
FOR USE OF THE FIRE STATION**

This Site Use Agreement ("Agreement") is made between the DRY CREEK-LOKOYA VOLUNTEER FIRE DEPARTMENT, hereinafter referred to as "DRY CREEK-LOKOYA" and NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY."

RECITALS

This Agreement is made with reference to the following facts and objectives:

- (a) COUNTY has entered into a Memorandum of Agreement with DRY CREEK-LOKOYA for the provision of volunteer firefighting services.
- (b) COUNTY desires to enter into Site Use Agreement with DRY CREEK-LOKOYA for the use of a volunteer fire station facility.

Section 1. DEFINITIONS

DRY CREEK-LOKOYA: This refers to the non-profit corporation, DRY CREEK-LOKOYA Volunteer Fire Department. This corporation is an independent non-profit public benefit organization that collects monies through donations, fundraising, grants, etc., for the purpose of supporting DRY CREEK-LOKOYA Volunteer Fire Company. This corporation and its activities have no direct affiliation with Napa County Fire Department or the COUNTY.

COMPANY: This refers to a Volunteer Fire Company operating within the Napa County Fire Department per Memorandum of Agreement, Napa County Agreement No. 8065 ("MOA"). DRY CREEK-LOKOYA Volunteer Fire Company is one (1) of nine (9) such companies and is operating under a Memorandum of Agreement.

COUNTY: This refers to Napa County, which administers the Napa County Fire Department.

PREMISES: This refers to the properties located at:

- (a) The building located at 5900 Dry Creek Road, Napa, CA 94558 (APN 027-310-026-000). The property upon which a two (2) bay garage, kitchen, training room, storage shed, and restroom are situated is owned by COUNTY. This shall be referred to individually in this Agreement as the "DRY CREEK PREMISES."
- (b) The building located at 3104 Mt. Veeder Road, Napa 94558 (APN 034-080-003-000). The property upon which a garage is situated is owned by Fred, Michele, and Aaron

Smith.

Section 2. PREMISES

DRY CREEK-LOKOYA owns and hereby agrees to allow the COUNTY to utilize the PREMISES, in Napa County for the purpose of a Volunteer Fire Station for COMPANY.

Section 3. TERM

3.1 The term of this Agreement shall coincide with the terms of the MOA with DRY CREEK-LOKOYA. If the MOA is terminated by either party, this Agreement shall also terminate on the same date that the MOA is terminated.

3.2 COUNTY or DRY CREEK-LOKOYA may terminate this Agreement without cause with ninety (90) days written notice to the other party.

Section 4. COUNTY'S PAYMENT OBLIGATIONS

4.1 DRY CREEK-LOKOYA shall not charge COUNTY rental fees for the PREMISES for the term of this Agreement.

4.2 The following will be paid by COUNTY for the term of this Agreement:

- a. All charges for electricity at the DRY CREEK PREMISES.
- b. All charges for propane at the DRY CREEK PREMISES.
- c. All charges for garbage at the DRY CREEK PREMISES.
- d. Monthly charges for telephone/fax line at the DRY CREEK PREMISES. .
- e. Monthly charges for internet service at the DRY CREEK PREMISES. All COUNTY internet use policies shall be followed.
- f. All charges for fire extinguisher service, repair, and replacement at the PREMISES.
- g. Property and liability insurance under COUNTY insurance plan at the PREMISES.
- h. All charges for water and sewage services at the at the DRY CREEK PREMISES.
- i. All bills for the COUNTY sent from the vendor directly to the Napa County Fire Department at 1125 3rd St. Napa, CA. 94558, Attn: County Finance.

Section 5. USE OF PREMISES

5.1. COUNTY may use and occupy the PREMISES for the purpose of operating a Volunteer Fire Station for use by COMPANY, storing COUNTY owned and issued fire apparatus and equipment, conducting Napa County Fire Department business, and related incidental uses.

5.2 The PREMISES shall be used for no other purpose by COUNTY without the written consent of DRY CREEK-LOKOYA. Other COUNTY business may be conducted at the discretion of DRY CREEK-LOKOYA and shall be requested in writing three (3) days in advance.

5.3 COUNTY shall have access to the PREMISES with a standard key or lock box with keys in it. COUNTY shall make a reasonable attempt to provide a (1) day courtesy notice prior to entering PREMISES in non-emergency situations. COUNTY shall have immediate access to the PREMISES in emergency situations.

Section 6. MAINTENANCE AND REPAIRS

6.1 DRY CREEK-LOKOYA's Obligations. DRY CREEK-LOKOYA SHALL:

- a. During the term of this Agreement or any extension of the term, provide and maintain in good repair and tenantable condition, at DRY CREEK-LOKOYA's sole cost and expense, the interior and exterior of the PREMISES, including but not limited to the following: building structural integrity, paving, parking lots, roof, exterior walls, doors, windows, and other outside elements of the PREMISES.
- b. Be responsible for facilitating and paying the costs of ordinary and routine building maintenance. Maintenance of building shall include but is not limited to plumbing, heating, electrical systems, lighting, and ventilation.
- c. Be responsible for compliance with the American with Disabilities Act (42 USC sec 12101) and its related regulations, and the Fair Employment and Housing Act (Government Code section 12940), and California Code of Regulations, title 24. DRY CREEK-LOKOYA may request COUNTY assistance in completing repairs and maintenance required for compliance as defined in Section 7: Alterations to Premises.

6.2 COUNTY's Obligations. COUNTY SHALL:

- a. Give DRY CREEK-LOKOYA prompt notice of any damages to or defective conditions located in any part of the PREMISES.
- b. Not be allowed to re-key any locks serving the PREMISES.
- c. Ensure that the COMPANY operating under COUNTY keeps the PREMISES clean and safe and shall be responsible for normal wear and tear.

Section 7. ALTERATIONS TO PREMISES

7.1 COUNTY, with DRY CREEK-LOKOYA's written consent, may make alterations to the PREMISES as the COUNTY deems appropriate and necessary or as reasonably requested by DRY CREEK-LOKOYA and approved by the COUNTY through the budgeting process. The party responsible for regular maintenance costs associated with alterations made to the PREMISES shall be agreed upon by COUNTY and DRY CREEK-LOKOYA and documented in writing signed by both parties prior to the alterations being made. Upon termination of this Agreement, all improvements made by COUNTY shall automatically become the property of COUNTY unless otherwise agreed to in writing between COUNTY and DRY

CREEK-LOKOYA. COUNTY shall be responsible to repair all damages resulting from the installation of funded improvements.

7.2 DRY CREEK-LOKOYA agrees to allow COUNTY to install signage, an exterior 911 phone, and an active station exterior light on the PREMISES at COUNTY's expense. The signage will identify Napa County Fire Department and COMPANY as the occupants of the PREMISES.

Section 8. ASSIGNMENT AND SUBLETTING

8.1 DRY CREEK-LOKOYA's Consent Required. COUNTY shall not assign this Agreement, or any interest therein, and shall not lease or sublet said PREMISES, or any part thereof, or any right or privilege appurtenant thereto, without the written consent of DRY CREEK-LOKOYA with the exception of use of the station by COMPANY. DRY CREEK-LOKOYA's consent shall not be unreasonably withheld, conditioned, or delayed. Unless such consent has been obtained, any assignment or transfer, or attempted assignment or transfer, of this Agreement, or of any interest therein, or subletting, either by voluntary or involuntary act of COUNTY, or by operation of law or otherwise, shall, at the option of DRY CREEK-LOKOYA, terminate this Agreement. Any such purported assignment, transfer, or subletting without such consent shall be null and void.

8.2 Release of COUNTY. In the event of an assignment of this Agreement, which is approved by DRY CREEK-LOKOYA, whereby such successor in interest agrees to be bound by all the terms, covenants, and conditions of the agreement, COUNTY shall be relieved from all obligations and liabilities occurring thereafter on the part of the new tenant.

Section 9. INDEMNIFICATION

9.1 DRY CREEK-LOKOYA shall indemnify and hold COUNTY harmless from and defend COUNTY against any and all claims of liability for any injury, death, or damage to any person or property occurring in, on, or about the PREMISES when such injury, death, or damage is caused in part or in whole by the neglect, fault, or omission of any duty with respect to the same by DRY CREEK-LOKOYA, its agents, contractors, volunteers, or employees. DRY CREEK-LOKOYA shall further indemnify and hold COUNTY harmless from and against any and all claims arising from any breach or default in the performance of any obligation on DRY CREEK-LOKOYA's part to be performed under the terms of this Agreement, or arising from any negligence or wrongdoing of DRY CREEK-LOKOYA, or any of its agents, contractors, volunteers, or employees and from and against all costs, attorney's fees (including fees of County Counsel), expenses, and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon. If an action or proceeding is brought against COUNTY by reason of any such claim, DRY CREEK-LOKOYA, upon notice from COUNTY, shall defend the same at DRY CREEK-LOKOYA's expense provided, however, that DRY CREEK-LOKOYA shall not be liable for damage or injury occasioned by the active or passive negligence or intentional acts of COUNTY or its agents, contractors, volunteers, or employees. COUNTY

shall be required to provide notice to DRY CREEK-LOKOYA within ten (10) days of receipt or notice of any claim.

9.2 COUNTY shall indemnify and hold DRY CREEK-LOKOYA harmless from and defend DRY CREEK-LOKOYA against any and all claims of liability for any injury, death, or damage to any person or property occurring in or on the PREMISES when such injury, death, or damage is caused in part or in whole by the neglect, fault, or omission of any duty with respect to the same by COUNTY, its agents, contractors, volunteers, or employees. COUNTY shall further indemnify and hold DRY CREEK-LOKOYA harmless from and against any and all claims arising from any breach or default in the performance of any obligation on COUNTY's part to be performed under the terms of this Agreement, or arising from any negligence or wrongdoing of COUNTY or any of its agents, contractors, volunteers, or employees and from and against all costs, attorney's fees, expenses, and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon. If an action or proceeding is brought against DRY CREEK-LOKOYA by reason of any such claim, COUNTY, upon notice from DRY CREEK-LOKOYA, shall defend the same at COUNTY's expense provided, however, that COUNTY shall not be required to defend nor be liable for damage, injury, or death occasioned by the active or passive negligence or intentional acts of DRY CREEK-LOKOYA or its agents, contractors, volunteers, or employees. DRY CREEK-LOKOYA shall provide notice to COUNTY within ten (10) days of receipt or notice of any claim.

Section 10. INSURANCE COVERAGE

10.1 COUNTY shall obtain and maintain "all risk" property coverage and casualty and excess liability policies to cover any first-party or third-party claims for damages by or against the COUNTY resulting from the operation of the PREMISES as a Volunteer Fire Station including use by COMPANY for COUNTY fire department operations. This liability insurance will also cover COUNTY sponsored non-fire related activities. Any deductibles associated with COUNTY provided coverage will be paid by the COUNTY. At DRY CREEK-LOKOYA 's discretion, the PREMISES may be used by individuals or organizations for DRY CREEK-LOKOYA, non-COUNTY related COMPANY events, and for public gatherings. Any other organizations or individuals requesting use of the building with DRY CREEK-LOKOYA's permission shall provide any general liability policy deemed necessary by the Napa County Risk Manager prior to holding any such event or gathering. Said certificate must name the Napa County, its officers, agents, and employees as additional insured.

10.2 For COMPANY or DRY CREEK-LOKOYA fundraisers, events, and uses not related directly to the operation of the PREMISES as a Volunteer Fire Station or third parties using the facility as described in Section 5.1, above, DRY CREEK-LOKOYA shall obtain liability insurance with a minimum of one million dollars (\$1,000,000) of liability coverage to cover such events. Such coverage shall be subject to the reasonable approval of COUNTY's Risk Manager and verified by certificates of coverage. The COUNTY shall be named as an additional insured for any such insurance coverage.

10.3 Vehicles owned by COUNTY for Napa County Fire Department operations will be insured and maintained by COUNTY.

10.4 COUNTY will provide all maintenance and repairs needed to all fire/rescue equipment owned and insured by the COUNTY for fire/rescue use.

Section 11. DAMAGE OR DESTRUCTION

11.1 In the event of any damage to or destruction of the PREMISES not caused by COUNTY or COMPANY, DRY CREEK-LOKOYA shall make good faith and diligent efforts to repair or replace facilities on the original site, provided that DRY CREEK-LOKOYA has sufficient funds for repair or replacement from insurance proceeds or other funding sources. If DRY CREEK-LOKOYA does not have sufficient funds for the repair or replacement of the PREMISES, then DRY CREEK-LOKOYA shall not be obligated to repair or replace PREMISES and this Agreement shall terminate.

11.2 Within one hundred twenty (120) days following the damage or destruction of PREMISES, DRY CREEK-LOKOYA shall notify COUNTY as to whether it will replace the facility, or whether it lacks sufficient funds for the repair or replacement thereof.

Section 12. DEFAULT

If either DRY CREEK-LOKOYA or COUNTY fails to comply with any of the material provisions of this Agreement, written notice of such default shall be served on the defaulting party pursuant to the notice provisions of Section 13, below, and the defaulting party shall have fifteen (15) days from deposit in the mail of the notice to cure said breach. In the event the default is not cured within the fifteen (15) day period, the noticing party may terminate the Agreement.

Section 13. NOTICES

All notices required by law or by this Agreement to be given to either party shall be in writing and may be given personally or by certified mail, postage prepaid, and addressed to either party as set forth below.

COUNTY:

Napa County Fire Department
1125 Third Street, Second Flr
Napa, CA 94559

DRY CREEK-LOKOYA:

Dry Creek-Lokoya Volunteer Fire Department
5900 Dry Creek Road
Napa, CA 94558

Section 14. GOVERNING LAW

All questions with respect to construction of this Agreement and the rights and liabilities of the parties hereto shall be governed by the laws of the State of California. Any dispute arising hereunder or relating to this Agreement shall be litigated in the State of California and venue shall lie in the Napa County.

Section 15. INUREMENT

Subject to the restrictions on assignments as herein contained, this Agreement shall inure to the benefit of, and shall be binding upon the assigns, successors in interest, personal representatives, and heirs of the respective parties hereto.

Section 16. ENTIRE AGREEMENT

This instrument along with any exhibits or attachments hereto constitutes the entire Agreement between DRY CREEK-LOKOYA and COUNTY relative to the PREMISES. This Agreement and any exhibits or attachments may be altered, amended, or revoked only by an instrument in writing signed by both DRY CREEK-LOKOYA and COUNTY. DRY CREEK-LOKOYA and COUNTY agree that all prior or contemporaneous oral agreements between their agents or representatives relative to the agreement of the PREMISES are written into or revoked by this Agreement. If any provision contained in an exhibit or attachment to this Agreement is inconsistent with any other provision herein, the provision contained in the exhibit or attachment shall control, unless otherwise provided in the exhibit or attachment.

Section 17. ATTORNEY'S FEES

If any legal action is brought by either party for the enforcement or interpretation of this Agreement, for remedy due to its breach, for recovery of the PREMISES, or in any other way arising from the terms of this Agreement, the prevailing party shall be entitled to recovery reasonable attorney fees (including fees of County Counsel), costs, and other litigation expenses which shall become a part of any judgment in the action.

IN WITNESS WHEREOF, COUNTY and DRY CREEK-LOKOYA have executed this Agreement on the day and year set forth below. By their signatures below, each signatory represents that they have the authority to execute this Agreement and to bind the party on whose behalf their execution is made.

DRY CREEK-LOKOYA:

DRY CREEK-LOKOYA VOLUNTEER
FIRE DEPARTMENT

Dated: 3/28/2023

By: Kenneth Van Oeveren
KENNETH VAN OEVEREN
FIRE CHIEF

Dated: 3/28/23

By: Joe Nordlinger
JOE NORDLINGER
Chair of the Board of Directors

COUNTY:

NAPA COUNTY

Dated: _____

By: Belia Ramos Joelle Gallagher
Chair, Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors

Reviewed as to Substance
by County Fire Chief:
Fire Administrator

Approved as to Form
County Counsel:

David B. Shaw 1-26-24
County Fire Chief/ Department Director
Fire Administrator - David Shaw

Shana A. Bagley
Deputy County Counsel

11/28/2023