

COLLEGE OF THE SEQUOIAS COMMUNITY COLLEGE DISTRICT
Board of Trustees Meeting
June 7, 2021

CONSENT CALENDAR

7

Contract between the Visalia Police Association and the College of the Sequoias Tulare-Kings Counties Basic Police Academy (Intensive and Extended) for Use of the Weapons Firing Range

Status: **Action**

Presented by: Tom Wilson
 Director, Police Academy and Training Programs

Issue

This agreement is by and between the COS Tulare-Kings Counties Basic Police Academy and the Visalia Police Association to use the weapons firing range owned and operated by the Visalia Police Officers Association. The use of said range shall be limited to those personnel and/or students currently employed by and /or enrolled with the COS Tulare-Kings Counties Basic Police Academy (Intensive and Extended))

The Agreement shall commence July 1, 2021 and expire at midnight, June 30, 2022, subject to the termination provision of the agreement. The Agreement is renewable on mutual agreement.

Background

COS has maintained a contractual relationship with the Visalia Police Officers Association for firing range use over the past several decades. Under this agreement, COS is charged an annual flat rate for two Intensive Academy classes, one Extended Academy and onsite secured storage for range equipment. The contract amount for 2021/22 is \$6,250.00, which is an increase of \$500.00 from the 2020/21 contract. Per the agreement, It will continue to cover all range use for both Intensive and Extended Academies and will include the ongoing use of one onsite storeroom.

Recommended Action

It is recommended that the Board of Trustees approve the Weapons firing Range Agreement by and between the COS Tulare-Kings Counties Basic Police Academy and the Visalia Police Officers Association.

**WEAPONS FIRING RANGE
LICENSE AGREEMENT**

This Weapons Firing Range License Agreement (“Agreement”), made and entered into effective July 1, 2021 (“Effective Date”), is by and between **Visalia Police Association** (“Licensor”), a California nonprofit corporation, and **College of the Sequoias/Public Safety Department** (“Licensee”). This Agreement includes: the **Tulare-Kings Counties Intensive Police Academy** and the **Tulare-Kings Counties Extended Police Academy**. Licensor and Licensee are sometimes referred to herein individually as a “party” or, collectively, as the “parties.”

RECITALS

- A.** Licensor owns and operates a weapons firing range and related facilities (collectively, “the Range”) located at 7400 Avenue 328, in the County of Tulare, State of California.
- B.** Licensee desires to contract with Licensor for, and Licensor desires to provide to Licensee, on a non-exclusive basis, use of the Range on the terms and conditions hereinafter set forth.
- C.** The parties desire to enter into this Agreement in order to provide a full statement of their respective rights and responsibilities in connection with use of the Range by Licensee during the Term (as defined below) of this Agreement.

THEREFORE, in consideration of the licensing fee, the foregoing recitals and the covenants and conditions hereinafter set forth, and for other good and valuable consideration, the parties agree as follows:

- 1. No Exclusivity.** This Agreement does not constitute a license for the exclusive use of the Range by Licensee. Licensee acknowledges that Licensor and others use the Range.
- 2. Relationship of the Parties.** The parties acknowledge that, in using the Range, (i) they are in the position of licensor and licensee with respect to each other; (ii) this Agreement is not a lease or other interest in real property and Licensee acknowledges that, by the use or occupancy of the Range, Licensee has not acquired and will not acquire hereafter any rights or interest in or to the Range nor shall Licensee obtain any right or claim to the continued use of the Range beyond that specifically given in this Agreement; (iii) this Agreement is not a contract of employment within the meaning of California Labor Code § 2750, and (iv) Licensee and Licensee’s employees are not employees of Licensor for any purpose. Nothing contained in this Agreement shall be construed to create a partnership, agency or joint venture between Licensor and Licensee or to authorize Licensor or Licensee, or either of them, to act as a general or special agent of the other party in any respect, except as may be specifically set forth in this Agreement.

3. **Use.** The Range shall be use for the sole purpose of a firearms training and for no other purpose without the express written consent of Licensor, which consent may be withheld.

4. **Term.** When fully executed by both parties, the term (“Term“) of this Agreement shall commence on July 1, 2021 and expire at midnight on June 30, 2022, subject to the termination provisions of this Agreement. This Agreement is renewable on mutual agreement.

5. **Price Adjustment.** Licensor may reasonably adjust the Fees in Renewal Agreements if operational costs increase with mutual agreement of both parties.

6. **Termination.**

A. Notwithstanding any provision herein to the contrary, this Agreement may be terminated without cause by either party by giving the other party thirty (30) days written notice prior to the effective date of such termination.

B. In the event of a material breach of its terms by the other party, this Agreement may be terminated, provided, however, that no such termination shall occur unless the party who desires to terminate gives the other party at least ten (10) days’ written notice of such material breach, and such breach is not cured within said ten (10) days. Such notice shall specify with reasonable certainty the nature and extent of the material breach.

7. **Fees.**

Range and Clubhouse. Licensee shall pay a fee to Licensor, in arrears upon receipt of an invoice for use of the Range, a sum of **\$6,250.00** which will cover all range use for the COS Intensive and Extensive Police Academy, and will include the use of one (1) storeroom.

8. **Conditions of Use.** Licensor, by the granting of this license, hereby authorizes the College of the Sequoias/Public Safety Training Department to use the Range subject to the following conditions:

A. A qualified firearms instructor, provided by and at the sole cost and expense of Licensee, shall be present at all times that said range is being used by Licensee and shall personally supervise and control the course of training and Licensee’s personnel at the range. Said qualified firearms instructor (i) shall have successfully completed a California Peace Officer Standards and Training (P.O.S.T.) approved (or equivalent) firearms instructor course and (ii) shall be subject to oversight and approval of Licensor’s Rangemaster and/or Range Safety Officer.

B. Range use shall take place during normal Range operating hours, at times and dates specified by Licensor’s Rangemaster. Reservations for the range are on first come first served basis beginning January 1st of each year. Licensor reserves the right, in its sole and absolute

discretion, to grant first choice of dates and times for use of the Range to the Visalia Police Department.

C. The use of the Range by Licensee shall be limited to those personnel and/or students currently employed by and/or enrolled with the College of the Sequoias/Public Safety Training Department at the time the Range is used.

D. Licensee agrees that all personnel and students of the College of the Sequoias/Public Safety Training Department who use the Range shall be subject to Range safety rules established by Licensor and all orders of Licensor while exercising the privileges of this agreement. The current safety rules in effect are attached as Exhibit "A" and incorporated by the reference. As said rules are amended from time to time, Exhibit "A" shall be revised or replaced to reflect the then current rules.

E. Licensee shall ensure that all Licensee's personnel utilizing the Range are knowledgeable with regard to the proper use of Range facilities.

F. All participants shall conduct themselves in accordance with Range Rules and Regulations, as detailed in Exhibit A attached hereto and incorporated herein by reference.

G. Violations of Range rules and regulations may result in immediate termination of Licensee's Range privileges.

H. Licensee shall provide and bear the cost of (i) all supplies and/or equipment necessary for shoots and/or training and (ii) all ammunition and weapons necessary for shoots and/or training.

I. All expended (empty) shell casings resulting from the Licensee's personnel shooting at the Range shall be the property of Licensee. It shall be the responsibility of Licensee to ensure that, upon each use of the Range, Licensee's personnel dispose of the empty cartridges and pick up all trash from the Range, including emptying the trashcans into the dumpster, prior to leaving and securing the facility.

J. Licensee is responsible for picking up from, and returning range keys to, the Visalia Police Department. Licensee is strictly prohibited from duplicating keys or providing the range house alarm code to a third party.

9. Indemnification.

A. To the fullest extent permitted by law, Licensee shall indemnify and hold harmless the City of Visalia and Licensor, their officers, directors, agents, employees and assigns, from and against any and all claims, liabilities, damages, losses, injury (as defined by California Government Code § 810.39), costs, and expenses, including but not necessarily limited to amounts paid in satisfaction of judgments, compromises, and settlements, fines, penalties, attorney's fees and costs, and expenses of investigating or defending against any claim or alleged

claim of any nature whatsoever, known or unknown, liquidated or unliquidated, that are incurred by the City of Visalia or Licensor and arise out of any act or omission of Licensee or any of its employees, agents, instructors, members, students, or anyone acting under Licensee's direction or control or on its behalf, during, in connection with, or incident to or arising out of the performance of this Agreement or any of the activities in connection therewith. The provisions of this section shall survive the expiration or termination of this Agreement.

B. It is the intent of the parties that Licensee will indemnify, defend, and hold harmless, as set forth in Subsection A, above, of this Section 8, regardless of the existence or degree of fault or negligence, whether active or passive, sole or concurrent, on the part of the City of Visalia or of anyone active under its direction or control or on its behalf.

C. This indemnity and hold harmless provision, insofar as it may be adjudged to be against public policy, shall be unenforceable and void only to the minimum extent necessary so that the remaining terms of this indemnity and hold harmless provision may be within public policy and enforceable.

10. Insurance.

A. Licensee shall purchase and maintain, at its sole cost and expense, during the entire term of this Agreement, a policy of comprehensive general liability insurance with a combined single limit of no less than **Two Million Dollars (\$2,000,000)** per occurrence for bodily injury, personal injury and property damage.

B. All insurance shall (i) name the City of Visalia, Licensor (the Visalia Police Association), their elected and appointed officials, officers, employees and agents as additional insureds; and (ii) be primary with respect to any insurance or self-insurance programs maintained by the City of Visalia; and (iii) contain standard cross-liability provisions.

C. Licensee shall furnish properly executed certificates of insurance to the City of Visalia prior to entering into this Agreement. Such certificates shall (i) clearly evidence all coverage required above including specific wording evidencing the City of Visalia and Licensee (the Visalia Police Association) as additional insureds; (ii) indicate whether coverage provided is on a claims made or occurrence basis, and; (iii) provide that such insurance shall not be materially changed, terminated or allowed to expire except on at least ten (10) days prior written notice to the City of Visalia.

11. Notices. Whenever, under the terms of this Agreement, written notice is required or permitted to be given by any party to any other party, such notice shall be deemed to have been sufficiently given upon personal delivery to the party or an authorized agent thereof or to the City of Visalia or an authorized agent thereof, evidenced by a written receipt from such party or its authorized agent, or forty-eight (48) hours after deposit in the United States mail in a properly stamped envelope, certified or registered mail, return receipt requested, or by other reputable delivery service such as Federal Express, addressed to the party to whom it is to be given, at the address hereinafter set forth:

If to LICENSOR: Visalia Police Association
Attn: Ron Epp, Treasurer
303 South Johnson
Visalia, California 93291

If to LICENSEE: College of the Sequoias
Public Safety Training Department
Attn: Tom Wilson, Director
925 13th Avenue
Hanford, California 93230

If to CITY OF VISALIA: City of Visalia
Attn: Risk Management
707 West Acequia
Visalia, California 93291-6127

Each party or other person or entity named above may change its address and that of its representative for notice by the giving of notice thereof in the manner provided in this Section.

12. Waiver. Any delay or failure to require performance, or failure to insist upon strict compliance with any of the terms, covenants, conditions or provisions of this Agreement shall not constitute or be deemed a waiver of such term, covenant, condition or provision, nor shall any waiver or relinquishment of any right or power hereunder at any one time or more times be deemed a waiver or relinquishment of such right or power at any other time or times. Any waiver granted by a party must be in writing to be effective and shall apply solely to the specific instance expressly stated.

13. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If for any reason any provision of this Agreement shall be deemed by a court of competent jurisdiction to be legally invalid or unenforceable in any respect, the validity and enforceability of the remainder of the Agreement shall not be affected and such provision shall be deemed modified to the minimum extent necessary to make such provision consistent with applicable law and, in its modified form, such provision shall then be enforceable and enforced.

14. Assignment. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and assigns; provided, however, that Licensee may not voluntarily or by operation of law assign or otherwise transfer or encumber this Agreement or any part thereof, without the prior written consent of Licensor, which consent may be withheld.

15. No Third-Party Beneficiary Rights. The parties do not intend to confer and this

Agreement shall not be construed to confer any rights or benefits to any person or entity other than the parties to this Agreement.

16. Compliance with Laws. Licensee shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. In the event of any changes in the law, ordinances, codes or regulations applicable to this Agreement, the parties shall use all reasonable efforts to revise this Agreement to conform and comply with such changes.

17. Amendment. This Agreement may be modified or amended only by mutual written agreement signed by all the parties.

18. Headings. The division of this Agreement into sections, and the use of headings in connection therewith, are solely for convenience of reference, are not intended to govern, limit, amplify, modify, or otherwise affect the meanings of the sections and shall be given no legal effect in the construction or interpretation of any provision of this Agreement.

19. Force Majeure. Neither party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement or other interruption of service deemed to result, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, strikes or other work interruptions by either party's employees, or any other similar cause beyond the reasonable control of either party unless such delay or failure in performance is expressly addressed elsewhere in this Agreement.

20. Exhibits. Any exhibits or agreements referred to in this Agreement and attached hereto, now or in the future, together with all documents incorporated by reference therein, form an integral part of this Agreement and are hereby incorporated into this Agreement wherever reference is made to them, to the same extent as if they were set out in full.

21. Applicable Law; Venue. The validity, performance, construction and interpretation of this Agreement and all disputes hereunder shall be governed by the laws of the State of California with respect to agreements entered into and to be performed entirely within the State of California, excluding any laws that direct the application of another jurisdiction's laws. The Superior Court of the State of California for the County of Tulare, Visalia Division, shall be the exclusive venue for all disputes between the parties arising under this Agreement and in any action in which suit thereon is filed.

22. Attorneys' Fees; Costs. If any legal action at law or in equity, or any arbitration proceeding, is brought for the interpretation or enforcement of this Agreement or any part hereof, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs incurred in that action or arbitration proceeding, in addition to any other relief to which it may be entitled.

23. Entire Agreement. This Agreement, together with any and all Exhibits and Agreements attached hereto, constitutes the sole and entire Agreement between Licensor and Licensee regarding the subject matter hereof. This Agreement supersedes any and all prior understandings of whatsoever kind or nature, whether written or oral, existing between or among the parties regarding the subject matter hereof. No oral statements, representations, or prior written materials shall be of any force or effect, except as they may be specifically set forth herein. All prior or concurrent negotiations, agreements, and understandings, whether oral or written, regarding the subject matter of this Agreement are hereby revoked, canceled and rescinded, and are all merged herein and suspended hereby.

24. Interpretation. Neither party shall be deemed the drafter of this Agreement. If this Agreement is ever interpreted or construed by a court of law, such court shall not construe this Agreement or any provision hereof against either party as drafter.

25. Execution in Counterparts. This Agreement may be executed in one or more counterparts, including by facsimile or other electronically transmitted counterparts, and each such counterpart shall for all purposes be deemed to be an original, and all such counterparts shall together constitute one and the same instrument.

26. Ability to Enter into Agreement. Each signatory represents that he/she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind the party on whose behalf the signature is proffered. Each party has caused this Agreement to be executed by its respective duly authorized representative.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the date first written above.

LICENSOR: VISALIA POLICE ASSOCIATION

By: _____
Ron Epp
Its: Treasurer

**LICENSEE: COLLEGE OF THE SEQUOIAS
COMMUNITY COLLEGE DISTRICT**

By: _____
Brent Calvin
Its: Superintendent – President

By: Thomas Wilson
Tom Wilson, Director
Public Safety Training Department