

**COMMERCIAL AVIATION GROUND LEASE**

**AND FACILITIES USE AGREEMENT**

**BETWEEN**

**CITY OF HAYWARD**

**&**

**CHABOT – LAS POSITAS**

**COMMUNITY COLLEGE DISTRICT**

**August 1, 2019**

## **GROUND LEASE AND FACILITIES USE AGREEMENT**

This Ground Lease and Facilities Use Agreement (“Agreement”) is made and entered into this 1st day of August, 2019 (“Agreement Date”), between Chabot–Las Positas Community College District (“District”) and the City of Hayward (“City”). The District and the City are collectively referred to in this Agreement as the Parties. This Agreement is made with reference to the following recitals, each of which are incorporated into this Agreement and deemed a material part of this Agreement.

### **RECITALS**

**WHEREAS**, the real property upon which the Fire Station is situated is adjacent to the Hayward Municipal Airport (“Airport”) and a part of the parcel of real property upon which the Airport is situated.

**WHEREAS**, the United States government conveyed the real property upon which the Airport and Fire Station are located to the City by a Quitclaim Deed dated April 16, 1947; the Quitclaim Deed incorporates restrictions and covenants applicable to use and occupancy of the Premises, as more particularly described herein.

**WHEREAS**, the District is a community college district organized and existing under California law; Chabot College, located in Hayward, California is a college of the District.

**WHEREAS**, Chabot College offers a Fire Technology Program which provides training for fire- fighting and related emergency services (“Chabot Fire Technology Program”).

**WHEREAS**, the City is organized and existing as a charter city under California law.

**WHEREAS**, the City provides fire-fighting and related emergency services through the City Fire Department.

**WHEREAS**, the City Fire Department maintains Fire Stations at various locations throughout the City, including a Fire Station #6 on West Winton Avenue (“Winton Fire Station”).

**WHEREAS**, the City Fire Department intends to demolish the existing Winton Fire Station and to construct, on the Winton Fire Station site, a new Winton Fire Station (“Fire Station”) along with a new fire training center (“Fire Training Center”).

**WHEREAS**, the Fire Training Center will consist of a number of separate facilities and improvements, including: Outdoor Classroom, Apparatus Building, Hanger Building and related site and infrastructure improvements supporting those facilities; the foregoing portions of the Fire Training Center are referred to herein as the (“District Training Center”).

**WHEREAS**, other facilities of the Fire Training Center include a burn building, training tower and USAR/BART Station and infrastructure support for those facilities; the foregoing portions of the Fire Training Center are referred to herein as the “Hayward Training Center”.

**WHEREAS**, the improvements planned by the City for the Fire Station include facilities for fire-fighting equipment storage, Winton Fire Station personnel housing, classroom-training/office spaces, parking lot adjacent to the Fire Station for use in connection with the classroom-training/office spaces and related facilities; all of the foregoing are referred to herein as “Fire Station Facilities” and the classroom-training/office spaces along with the parking lot adjacent to the Fire Station are collectively referred to herein as “Classrooms”.

**WHEREAS**, the District and the City intend to establish terms and conditions for the City’s ground lease to the District of the Premises which consists of portions of the real property upon which the District Training Center and Classrooms will be constructed through District and City mutual financial contributions and terms/conditions for maintenance, operation and joint use of the District Training Center, the Hayward Training Facilities and the Classrooms, maintenance, and operation of said Fire Station and Fire Training Center improvements.

**WHEREAS**, the Parties acknowledge that development, construction and use of the improvements contemplated by this Agreement mutually benefit the Parties by increased opportunities for instruction and training for the Chabot Fire Technology Program and City Fire Department personnel.

**NOW THEREFORE**, for good and valuable consideration, the receipt and adequacy of which is acknowledged by the Parties, and each of them, the Parties agree as follows.

**ARTICLE 1. GROUND LEASE**

1.1. General. For and in consideration of the covenants and agreements contained herein and other valuable consideration, City hereby leases to District and District hereby leases from City the Premises, as described herein upon the covenants, terms and conditions set forth in this Agreement. The above Recitals are hereby incorporated into this Agreement.

1.2. Fundamental Lease Terms. For the purpose of this Agreement, the following terms, words and phrases shall have the following meaning:

City	City of Hayward 777 B Street Hayward, California 94541-5007 Attn: City Manager
District	Chabot-Las Positas Community College District 7600 Dublin Avenue Dublin, California 94568 Attn: Chancellor
Lease Commencement Date	TBD by mutual agreement pursuant to Paragraph 1.7.1 of this Agreement
Initial Term	Thirty (30) years
Extended Terms	Two (2) options of Tenant/Lessee to extend Initial Term, each for an Extended Term of ten (10) years
Premises	Portions of the Fire Station as more particularly described in Exhibits A and B to this Agreement

1.3. Premises. The City hereby ground leases portions of the Fire Station and the Fire Training Center upon which the Classrooms and District Training Center are situated to the District and the District hereby ground leases the Premises from the City, upon the terms and conditions set forth in this Agreement. The Premises consists of real property situated in the City of Hayward, County of Alameda, State of California, more particularly identified on Exhibit A, which is attached hereto and incorporated herein. A plot map of the Premises is depicted on Exhibit B.

1.3.1. Classrooms. The Classrooms portion of the Premises is identified in the cross-hatched portion of Exhibit A hereto (“Fire Station; Classrooms Description”).

1.3.2. District Training Center. The District Training Facilities portion of the Premises consists of three (3) separate areas within the Fire Training Center as identified in the cross-hatched portions of Exhibit B-1 (Outdoor Classroom), Exhibit B-2 (Apparatus Building) and Exhibit B-3 (Hanger Building). The Classrooms and District Training Center are collectively referred to herein as “District Facilities”.

- 1.4. “As Is” Condition of Premises. City makes no warranties as to the nature, condition, or suitability of the Premises for any purpose. Subject to the foregoing and the City’s completing construction of the District Facilities, the District ground leases the Premises from the City in the “as is” condition.
- 1.5. Use of Hayward Airport Facilities. The District acknowledges that the Fire Station and Fire Training Center are situated on property immediately adjacent to the property upon which the Hayward Airport is situated. The District and its invitees, employees, agents and representatives shall not access any portion of the Hayward Airport without prior consent of the City which may be granted, conditioned or denied in the reasonable discretion of the City.
- 1.6. City Representations. The City warrants and represents to the District the following: (i) fee title to the Premises is held by the City free and clear of claims, liens or encumbrances; and (ii) subject to approval and/or ratification of this Agreement by the City’s Council, the City has the full right, power and authority to enter into this Agreement and to ground lease the Premises to the District upon the terms and conditions set forth herein.
- 1.7. Principal Lease Term.
  - 1.7.1. Initial Term. The Initial Term of this Agreement shall be thirty (30) years. The Commencement Date and Termination Date of the Initial Term will be established by mutual agreement of the Parties within thirty (30) days after the commencement of construction of the District Facilities in a written amendment to this Agreement duly approved by the City Council and the District Board of Trustees.
  - 1.7.2. Extended Terms. City grants to the District two (2) options to extend the Initial Term (“Extension Options”), each for an additional ten (10) years (“Extended Terms”) upon the following conditions: (i) the Extension Options are personal to District and may not be transferred, assigned or exercised by an assignee or subtenant of District; (ii) the Extension Options shall be exercised by District’s written notice to the City (“Extension Notice”) delivered to the City not more than one (1) year and not less than six (6) months prior to expiration of the Initial Term or an Extended Term, as applicable; (iii) District is not in default of a material obligation of the District under this Agreement as of the date of an Extension Notice; and (iv) all terms, conditions and covenants of this Agreement (including modifications or amendments hereto effective prior to the commencement of an Extended Term) shall be applicable during an Extended Term.
- 1.8. Site Plan. As a material inducement to City and District to enter into this Agreement, City and District have agreed that the Premises shall be improved by City as shown on the proposed Site Development Plan set forth in Exhibit D, which is attached hereto and incorporated by reference herein and that the District will make a financial contribution of twenty million dollars (\$20,000,000) to the design and construction of the District Facilities on the Premises.

## **ARTICLE 2. DISTRICT FACILITIES DESIGN AND CONSTRUCTION**

- 2.1. General. The District and City acknowledge that design and construction of the District Facilities will be completed concurrently with the City’s design and construction of other facilities and improvements at Fire Station and Fire Training Center, all of which are collectively referred to herein as “the Project.” Except as otherwise provided in this Agreement, the City will serve as the lead agency responsible for completing design and construction of the Project.
- 2.2. Development Entitlements. The City shall, at its sole cost and expense, obtain all necessary entitlements and comply with all development requirements of any Governmental Authority with jurisdiction over any portion of the Project, including without limitation, compliance with the California Environmental Quality Act (CEQA). The District will cooperate with the City in obtaining development entitlements for the District Facilities, provided that the City shall

reimburse the District for all direct costs incurred by the District and reasonable costs of the District's administrative personnel.

2.3. District Facilities. The District Facilities are generally described as follows:

2.3.1. Classrooms. The Classrooms consist of approximately ten thousand seven hundred (10,700) square feet and designed to accommodate at least three (3) approximately one thousand (1,000) square foot classrooms along with two offices, workstations, conference rooms and ancillary spaces. Classrooms include exterior site work which will include at least ninety (90) automobile parking spaces, landscaping, hardscaping and related improvements.

2.3.2. District Training Facilities.

2.3.2.1. Apparatus Building. The Apparatus Building will be an approximately seven thousand eight hundred (7,800) square foot building which incorporates an approximately six hundred fifty (650) square foot classroom, men's and women's locker-rooms, shop, break room, large vehicle storage and other related areas.

2.3.2.2. Outdoor Classroom. The Outdoor Classroom will be an approximately one thousand five hundred (1,500) square foot facility incorporating an approximately nine hundred (900) square foot outdoor classroom, restrooms and an enclosed interior area for Chabot Fire Technology Program equipment storage.

2.3.2.3. Hanger Building. The Hanger Building will be an approximately one thousand five hundred (1,500) square foot facility with interior improvements suitable for storage of Chabot Fire Technology Program equipment.

2.4. Project Design. The City has retained Ross Drulis Cusenbery Architecture ("Architect") to prepare plans, specifications and other related documents ("Design Documents") for the Project and to provide other related design professional services for obtaining regulatory approval to construct the Project and during construction of the Project.

2.4.1. Division of State Architect. The City acknowledges that design and construction of the District Facilities is subject to the jurisdiction of the Division of State Architect ("DSA") and DSA building standards. The District acknowledges that as of the date of this Agreement, the Architect prepared Design Documents for the District Facilities portions of the Project which are described as September 21, 2018 Permit Submittal Set. The City and District agree that Design Documents for the District Facilities shall be completed by the Architect in accordance with DSA building standards. The City will require the Architect to provide all written communications between the Architect and DSA relating to the District Facilities to the District.

2.4.2. District Review and Acceptance of Design Documents. The City shall require the Architect to submit Design Documents for the District Facilities to the District for review and acceptance at the following intervals: (i) DSA review comments and responses; (ii) DSA backcheck review comments and responses; (iii) DSA approved Design Documents; (iv) Design Documents issued for bidding and all addenda amendments thereto; and (v) Post-Bid phase conformed set of Design Documents incorporating all bid phase addenda. Upon the Architect's submittal of Design Documents to the District, the District shall be afforded fifteen (15) days to review and return notes, comments and modifications for incorporation into the Design Documents.

- 2.4.3. DSA Construction Permit. On behalf of the District, the Architect will submit Design Documents for the District Facilities to DSA for review and issuance of a construction permit therefor. The District will cooperate with the Architect as necessary to complete DSA reviews and construction permit issuance for the District Facilities. The District shall be responsible for payment of DSA fees and charges associated with review of Design Documents for the District Facilities.
- 2.5. Project Construction. Subject to the terms of this Agreement, the City is responsible for completing construction of the Project.
- 2.5.1. Construction Services. The City shall procure and manage construction services (“Contractor”) necessary for completion of the Project, including the District Training Facilities. Procurement of the Contractor will be in accordance with: (i) legal requirements applicable to the City and (ii) the City’s procurement policies and procedures.
- 2.5.2. Contractor Proposals. The City’s procurement of the Contractor shall require bidders to provide price breakdowns for the District Facilities. Selection of the Contractor awarded the contract for Project construction shall be by the City, subject to the District’s prior approval of the pricing proposed by the City’s selected Contractor for conformity to the District Financial Contribution to construction of the District Facilities as described below.
- 2.5.3. Construction Phase. Construction of the District Facilities will be concurrently completed with, and as part of, construction of the Fire Station and Fire Training Center. Construction of the District Facilities is subject to DSA jurisdiction; the City will require the Architect and Contractor to complete and comply with DSA procedures and requirements for the District Facilities, including DSA Verified Reports, DSA materials testing and Project Inspector requirements. The City will require, as a material obligation of the Architect and the Contractor, to obtain DSA Certification of the District Facilities upon completion of construction.
- 2.5.4. DSA Project Inspector; Materials Tests. Construction of the District Facilities is subject to continuous observation of a DSA Project Inspector and designated materials are subject to compliance with DSA Materials Tests standards. The City will require the Contractor’s compliance with the DSA Project Inspector and complete construction with materials conforming to DSA Materials Tests standards. The District shall be responsible for retaining the DSA Project Inspector and DSA Materials Tests services.
- 2.5.5. Construction Administration. Management and oversight of Project construction will be by the City, provided that the City will provide the District with notices, communications and other materials which relate to construction of the District Facilities. Notwithstanding City management and oversight of Project construction, the City shall consult with the District for matters relating to the District Facilities. The District may direct or authorize actions relating to construction of the District Facilities.
- 2.5.6. District Facilities Construction Costs. The City will require the Contractor to prepare a detailed schedule of values for the District Facilities for review and acceptance by the District. The District Financial Contribution for construction of the District Facilities will be limited to costs established in the District accepted schedule of values. Disbursements of the District Contribution for construction of the District Facilities shall be in accordance with the District accepted schedule of values. The District shall have sole discretion to direct or accept changes to the DSA approved Design Documents for the District Facilities.

- 2.5.7. Performance Bond; Labor & Materials Payment Bond. Prior to commencing construction of the Fire Station and Fire Training Facility, the City shall require the Contractor to obtain a Performance Bond and a Labor & Materials Payment Bond, each in a penal sum equal to one hundred percent (100%) of the price due from the City to such Contractor under the contract between the City and such Contractor.
- 2.5.8. Design and Construction Phase Insurance Requirements. The City shall require the Architect and Contractor to obtain the policies of insurance in the minimum coverage amount set forth herein. The City shall deliver the Contractor's and Architect's Certificates of Insurance to the District evidencing each of the following policies of insurance.
- 2.5.8.1. Workers Compensation and Employers Liability Insurance. The Architect and Contractor shall obtain: (i) Workers Compensation Insurance with coverage amount in accordance with the Laws; and (ii) Employers Liability Insurance with coverage amount of at least One Million Dollars (\$1,000,000). The Employers Liability Insurance may be by a separate policy of insurance or as an additional coverage endorsement under the Workers Compensation Insurance policy.
- 2.5.8.2. Architect Professional Liability Insurance. The Architect shall obtain Professional Liability Insurance issued on a "claims made" basis with minimum coverage amounts of not less than One Million Dollars (\$1,000,000) per claim.
- 2.5.8.3. General Liability Insurance. The Architect and Contractor shall each obtain policies of General Liability Insurance covering: (i) claims for damages because of bodily injury, sickness or disease or death of any person other than their employees; (ii) claims for damages insured by usual personal injury liability coverage which are sustained: (a) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor or Architect, or (b) by another person; (iii) claims for damages, other than to the Project, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (iv) claims for damages because of bodily injury, death of a person or property damages arising out of ownership, maintenance or use of a motor vehicle; (v) contractor's pollution liability; (vi) contractual liability; and (vii) completed operations. Coverage amounts under each policy of General Liability Insurance obtained by the Contractor and Architect shall be not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate.
- 2.5.8.4. Builders Risk Insurance. The City or the Contractor shall procure and shall maintain "all-risks" builder's risk insurance including coverage for vandalism and malicious mischief, but excluding seismic and flood coverages which cover improvements in place and all material and equipment at the jobsite furnished under contract, but excluding tools and equipment of the Contractor and property owned by the Contractor's employees. Such policy coverage shall be equal to at least 100% of the insurable value of the Project.
- 2.5.8.5. District Additional Insured. Except for the Workers Compensation and Employers Liability policies of insurance required hereinabove, the District shall be an Additional Insured to each of the foregoing policies of insurance.

2.5.8.6. Insurer Requirements. Each insurer issuing a policy of insurance required by the foregoing shall be authorized to issue such policy of insurance under the Laws and to the reasonable satisfaction of the District.

2.5.9. “As-Built” Design Documents. The City shall require the Architect to provide the District with the “As-Built” Design Documents for the District Facilities.

2.6. District Financial Contribution. The District will contribute funds for design, construction and furnishing of the District Facilities (“District Financial Contribution”) in the amount of Twenty Million Dollars (\$20,000,000).

2.6.1. Allocation of District Financial Contribution. The District Financial Contribution is allocated to specific design and construction costs as follows:

<b>Project Activity</b>	<b>District Financial Contribution</b>	
Design costs incurred prior to Effective Date	\$1,600,000	
DSA permit fee	\$252,750	
DSA Project Inspector	\$300,000	
DSA Materials Tests	\$250,000	
Construction phase design services	\$400,000	
District Facilities construction costs	Classrooms	\$4,920,995
	Apparatus Building	\$686,561
	Outdoor Classroom	\$4,794,072
	Hanger Building	\$1,457,184
	Sitework/Infrastructure	\$3,957,184
	Contingency	\$1,381,254

2.6.2. Contractor Schedule of Values. The City will require the Contractor to prepare a detailed schedule of values for the District Facilities for review and acceptance by the District. Subject to the limitations for various Project Activities noted herein above, the District Financial Contribution for construction of the District Facilities will be limited to costs established in the District accepted schedule of values for the District Facilities. Adjustments to the District accepted schedule of values during Project construction is subject to District acceptance. The City will require that Contractor billings include breakdowns and specific allocations of payments requested for District Facilities.

2.6.3. Fixed and Estimated Costs. Except for the costs allocated to “Design costs incurred prior to Effective Date” in the foregoing, all costs are estimates. The District and City agree that the costs allocated in the foregoing for “Design costs incurred prior to Effective Date” are fixed for costs and fees to complete Design Documents sufficient for submittal to DSA for review and issuance of the construction permit for the District Facilities.

2.6.4. Disbursement of District Financial Contribution. Portions of District Financial Contribution will be disbursed and paid to the City as follows:

Design costs incurred prior to Effective Date	Within thirty (30) days of Effective Date
Construction phase design services	Within thirty (30) days of District acceptance of Architect billings
District Facilities construction costs	Within thirty (30) days of District acceptance of Contractor billings

Portions of the District Financial Contribution allocated to DSA permit fee, DSA Project Materials Tests and the DSA Project Inspector shall be paid and disbursed by the District

as billed. The District is solely responsible for the payments due for the DSA permit fee, DSA Project Materials Tests and the DSA Project Inspector. The District will maintain costs and billing records for the DSA permit fee, DSA Project Materials Tests and the DSA Project Inspector.

- 2.6.5. Reconciliation of District Financial Contribution. The District and City acknowledge that except for the “Design costs incurred prior to Effective Date” the allocation of the District Financial Contribution set forth in Paragraph 2.6.1 above is subject to adjustment for actual costs. Within thirty (30) days after completion of Project construction, the City and District shall meet and confer to reconcile payments and disbursements of the District Financial Contribution. If upon such reconciliation, the aggregate payments and disbursements of the District Financial Contribution is less than Twenty Million Dollars (\$20,000,000), the District shall make payment of such difference to the City within thirty (30) days of the completion of the reconciliation. If upon such reconciliation, the aggregate payments and disbursements of the District Financial Contribution is more than Twenty Million Dollars (\$20,000,000), the City shall make payment of such difference to the District within thirty (30) days of the completion of the reconciliation.
- 2.6.6. Reimbursement of District Financial Contribution. If at any time in the three hundred sixty (360) months after completion of Project construction, the City elects to use the real property upon which the Project is situated for purposes other than a fire station or fire training center and such other City use of the real property materially impairs the District’s use of the District Facilities for the intended purposes, the City shall reimburse the District for the pro-rata portion of the District Financial Contribution based on the number of months after completion of Project construction the City elects to change use of the real property divided by three hundred sixty (360).

### **ARTICLE 3. RENT**

- 3.1. Rent. Rent due for the Initial and Extended Terms (“Rent”) is One Dollar (\$1.00) per year and shall be paid in advance, in the amount of Thirty Dollars (\$30.00) for the Initial Term, payable at the commencement of the Initial Term, and Ten Dollars (\$10.00) for each Extended Term, payable at the commencement of an Extended Term, if an Extension Option is exercised by District pursuant to Paragraph 1.7.2 above. Payment by District to the City shall be made without offset, deduction, notice, bill or demand.
- 3.2. Taxes and Assessments. District shall be responsible for payment of all taxes and general and special assessments of every description which may be levied upon or assessed against the Premises, the District Facilities (possessory interest or otherwise) and the FFE therein. Such taxes and assessments shall not reduce other payments due from the District to the City under this Agreement.

### **ARTICLE 4. USE AND OCCUPANCY OF DISTRICT FACILITIES**

- 4.1. District Use and Occupancy of District Facilities. Upon completing construction of the District Facilities, the District will have the rights of use and occupancy of the District Facilities in accordance with the following.
- 4.1.1. District Facilities. The District shall have exclusive rights to use and occupy the District Facilities. The District right of use and occupancy of the District Facilities shall be subject to all: (i) the terms of this Agreement, including amendments hereto; (ii) rules, regulations, laws, ordinances, and directives now existing or thereafter promulgated by the City (“City Enactments”) or any government agency with jurisdiction over the Premises. The foregoing notwithstanding: (i) City Enactments shall not be selectively directed to the District, the District Facilities or this Agreement and (ii) City Enactments

affecting the District Facilities, District use of the District Facilities or the rights/obligations under this Agreement are based on a demonstrated compelling purpose that is narrowly tailored to address the compelling purpose and which is least restrictive on District use of District Facilities. If City Enactments materially impair the District's use of District Facilities, the District shall have the right to terminate this Agreement upon not less than sixty (60) days advance written notice to the City. If the District terminates Agreement pursuant to the foregoing prior to expiration of the Initial Term, the City shall reimburse the District for a portion of the District Financial Contribution based on the number of months after completion of Project construction and the date of the District's notice of termination, divided by three hundred sixty (360). The District shall have the right to grant the use of the District Facilities to parties other than the City provided that use of the District Facilities by others does not materially impair, disrupt, constitute waste, nuisance, unreasonable annoyance, or disturb Fire Station activities.

- 4.1.2. Limitations on Use. The District's use of the Premises shall be in accordance with the following limitations. The District shall not use the Premises:
  - 4.1.2.1. In any manner which will constitute waste, nuisance, or unreasonable annoyance (including, without limitation, the use of loudspeakers or sound or light apparatus that can be heard or seen outside the Premises) to owners or occupants of adjacent properties; or
  - 4.1.2.2. For residential purposes, nor the preparation, manufacture, or mixing of anything that might emit any odor or objectionable noises or lights onto adjacent properties;
  - 4.1.2.3. Allow the Premises to be used for any unlawful purposes; or
  - 4.1.2.4. Cause or permit any other act or thing which may disturb the quiet enjoyment of any other lessee at the Airport.
- 4.1.3. District Facilities Utility Services. The City will secure and pay for electrical power, domestic water, sewer and trash disposal services sufficient for the intended uses and occupancy of the District Facilities. The District is responsible for securing and paying for voice/data telecommunications services necessary for the District's use and occupancy of the District Facilities.
- 4.1.4. District Facilities Custodial. This City is responsible for providing routine and regular custodial services for the District Facilities; custodial services will conform to and be consistent with the custodial services provided by the City for the Fire Station or Fire Training Center, as applicable. Costs for such custodial services shall be borne by the City.
- 4.1.5. Building and Building Equipment/Systems Maintenance. The City will maintain, repair and keep in the intended operational condition the electrical/mechanical equipment, electrical/mechanical/plumbing systems; structural components and building roofs of the District Facilities. The foregoing notwithstanding, the District is responsible for costs of repair/replacement of building equipment or building systems resulting from District negligent or intentional conduct.
- 4.1.6. Classrooms Furniture, Furnishings and Equipment ("FFE"). The District is responsible for providing FFE items necessary for use of the Classrooms for education, training and instructional purposes. The District will have the sole and exclusive discretion to determine the nature, quantity, quality and other criteria relating to Classroom FFE. Costs to procure and install Classrooms FFE for use of the Classrooms upon completing construction thereof ("Initial Classrooms FFE") are included in the District Financial

Contribution. During the Term of this Agreement, additions, changes or other modifications to Initial Classroom FFE shall be at the sole discretion of the District. Costs for such additions, changes or modifications to Initial Classroom FFE will generally be the responsibility of the District, provided, however, that if the City requests specific additions, changes or modifications to the Initial Classroom FFE, the District may require the City's financial contribution to such City requested additions, changes or modifications. Regardless of the funding source for Classrooms FFE, the City and District use of Classrooms FFE shall be without charge, cost or expense.

4.1.7. District Training Center FFE. District shall provide, at its sole cost and expense, FFE necessary for the District's use of the District Training Center.

4.1.8. Safety and Security. The City will be generally responsible for implementing measures necessary for safety and security of persons using the District Facilities and security of the District Facilities. The foregoing notwithstanding, the District will be responsible for security of District owned personal property items situated in the District Facilities.

#### 4.2. Third Party Use of Classrooms.

4.2.1. General. The District will have the right to permit third parties to use the District Facilities and District owned FFE items situated in the District Facilities for training/education relating to fire-fighting or emergency public safety services. Unless prior consent is granted by the City, third party use of the District Facilities is generally limited to training/education relating to fire-fighting or emergency public safety services. Third party use of the Classrooms will not interfere with or disrupt City Fire Department Use of the Fire Station Facilities for City Fire Department purposes.

4.2.2. District Facilities Use Charges. Third party use of the Classrooms will be subject to use charges the District is authorized to impose pursuant to the Civic Center Act, Education Code §82537 et seq. Funds collected by the District for third party Classroom use where charges are limited to "direct costs" (as that term is used and defined in Education Code §82542(b)) will be transferred from the District to the City. All such "direct costs" funds will be used by the City solely and exclusively for routine maintenance, repair, restoration or refurbishment of the District Facilities. Funds collected by the District for third party Classroom use where charges are based on "fair rental value" (as that term is used and defined in Education Code §82542(f)) will be transferred to the City. The City use of such "fair rental value" proceeds shall be first allocated to direct costs of routine maintenance, repair, restoration or refurbishment of the District Facilities resulting from third party use thereof and all remaining "fair rental value" proceeds shall be allocated to a City fund account exclusively dedicated to pay for costs to maintain or replace District Facilities building systems or building equipment. The City shall maintain books and records accounting for District Facilities Use Charges transferred by the District to the City and the City's use(s) thereof. Such books and records shall be contemporaneously maintained in accordance with generally accepted accounting practices applied in a consistent manner and shall be available for District review and/or reproduction upon reasonable advance notice and request of the District.

4.3. Third Party Use of District Training Center. Upon consent of the City, the District may permit third party use of the District Training Center or portions thereof for purposes generally consistent with the District's use and occupancy of the District Training Center. Consent of the City shall not be unreasonably withheld. All revenue and/or other consideration for third party use of the District Training Center is the sole property of the District.

4.4. Alterations. The District shall not modify or alter the Classrooms, nor permit construction or installation of Alterations to the Classrooms without the City's prior written consent of the City

which may be granted, conditioned or denied in the reasonable discretion of the City. The District may modify or alter the facilities forming a part of the District Training Center in the sole discretion of the District, provided that such modifications: (i) do not materially alter or impair the intended use of the District Training Center; and (ii) are in compliance with applicable legal and regulatory requirements. All fees, costs, expenses and other charges necessary to plan, develop, design and construct the modifications or alterations to the District Training Center shall be borne solely and exclusively by the District. In addition to the District's indemnity obligations set forth in this Agreement, the District shall defend, indemnify and hold harmless the City from and against any claim, demand, liability or responsibility for payment of any fees, costs, expenses or other charges relating to or arising out of the planning, development, design or construction of such modifications or alterations.

- 4.5. Personnel. The District is responsible for retaining employees, staff and/or faculty (whether employed, independent contractor or otherwise) in connection with the District use of the District Facilities.

## **ARTICLE 5. COVENANTS**

- 5.1. Airport Federal Grant Agreement; Restrictive Covenants. The District acknowledges that the City is subject to Federal Grant Agreement obligations as a condition precedent to funds granted to the City for improvement of the Airport and the Quitclaim Deed from the United States of America to the Lessor dated April 16, 1947, and amendments thereto, and, accordingly agrees to, and agrees to be bound by, the following covenants provided by the Federal Aviation Administration, as said covenants may apply to Lessee:
- 5.2. Department of Transportation Services or Benefits. The District, for itself, its successors-in-interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the Premises for a purpose for which a Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, the District shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- 5.3. District Covenants. The District, for itself, successors-in-interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land, that:
- 5.3.1. No person on the grounds of race, color, or national origin shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises;
- 5.3.2. In the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination;
- 5.3.3. The District shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended;

- 5.3.4. That in the event of breach of any of the above non-discrimination covenants, the City shall have the right to terminate this Agreement, and to re-enter and repossess said land and the facilities thereon, and hold the same as if this Agreement had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights; and
- 5.3.5. The District shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service.
- 5.4. Breach of Covenants; Termination. Non-compliance with the conditions set forth in Paragraph 5.3 shall constitute a material breach thereof and in the event of such non-compliance the City shall have the right to terminate this Agreement and the estate hereby created without liability therefore or at the election of the City; the City shall have the right to judicially enforce provisions. The foregoing notwithstanding, the District shall not be deemed in material breach of obligations hereunder and the City shall not have the right to terminate this Agreement if the District's compliance with any of the Paragraph 5.3 conditions is prohibited, restricted or otherwise limited by laws, codes, regulations or appellate judicial opinions applicable to the District.
- 5.5. City Airport Improvements. The Lessor reserves the right to further develop or improve the landing areas of the Airport as it sees fit, regardless of the desires or views of Lessee, provided that such improvements do not impair, restrict, limit, interfere with or hinder the District's use and occupancy of the Premises.
- 5.6. City Maintenance and Repair of Airport Landing Area and Publicly Owned Airport Facilities. The Lessor reserves the right, but shall not be obligated to Lessee, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport, together with the right to direct and control all activities of Lessee relating to use or access to the Landing Area and other publicly owned buildings/facilities utilized by the District.
- 5.7. Subordination of Agreement. This Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between the City and the United States, relative to the development, operation, or maintenance of the Airport. The City warrants and represents to the District that as of the date of this Agreement, there are no agreements between the City and the United States of America relating to development, operation or maintenance of the Airport. If, after the date of this Agreement, the City enters into an agreement with the United States of America which contemplates development, operations or maintenance operations in a manner which impairs, restricts, limits, interferes with or hinders the District's use and occupancy of the Premises, the District may terminate this Agreement upon thirty (30) days advance written notice to the City. In such event, the City shall reimburse the District for the District Financial Contribution.
- 5.8. Aircraft Airspace Reservation of Rights. There is hereby reserved to the City, its successors and assigns, for the use and benefit of the public, a right of flight for passage of aircraft in the airspace above the surface of the Premises. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from, or operating on the Airport.
- 5.9. Alterations Compliance With Federal Aviation Regulations. The District agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event any future structure or building is planned for the Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Premises. The City warrants and represents that the Project Design described in Paragraph

4.1 above complies with and conforms to requirements of Part 77 of the Federal Aviation Regulations.

- 5.10. Improvements Height Restriction. The District, by accepting this Agreement, expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Premises above the mean sea level elevation applicable to the most critical area of the Premises in accordance with Part 77 of the Federal Aviation Regulations. In the event the aforesaid covenants are breached, the City reserves the right to enter upon the Premises and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the District.
- 5.11. Prohibition on Interference with Aircraft Take-Off/Landing. The District ,by accepting this Agreement, agrees for itself, its successors and assigns that it will not use the Premises in any manner which interferes with the landing and taking off of aircraft from the Airport or otherwise constitute an aircraft hazard. In the event the aforesaid covenant is breached, the City reserves the right to enter upon the Premises and cause the abatement of such interference at the expense of the District.
- 5.12. No Exclusive Rights. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1349a).
- 5.13. United States Government National Emergency or War Rights. This Agreement and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or nonexclusive use of the Airport by the United States during the time of war or national emergency.

## **ARTICLE 6. OWNERSHIP OF THE DISTRICT FACILITIES**

- 6.1. Ownership. Ownership of the District Facilities shall be solely vested in the District during the Initial Term and any Extended Terms of this Agreement. Upon the expiration of the Initial Term, the Extended Terms of this Agreement or the earlier termination hereof, ownership of the District Facilities shall be conveyed and transferred to the City in accordance with the terms of this Agreement.

## **ARTICLE 7. JOINT USE AND OCCUPANCY OF DISTRICT FACILITIES AND HAYWARD TRAINING CENTER**

- 7.1. City and District Joint Use of Classrooms. The City and the District agree that subject to the terms of this Agreement, the City shall jointly use and occupy the Classrooms. Except in the event of damage or destruction to District Facilities caused by the intentional or negligent actions of the City or the City's invitees to the Classrooms, there shall be no fee, cost, expense or other charge to the City for the City's use and occupancy of the Classrooms.
  - 7.1.1. City Use of Classrooms. The City shall have the right to use the Classrooms for conducting education/training classes, programs or meetings relating to public safety, provided that the District shall have priority use of the Classrooms for purposes of the Chabot Fire Technology Program. The City and District will mutually cooperate with the other to schedule District and City use of the Classrooms.
  - 7.1.2. City Exclusive Use of Classrooms. Notwithstanding any other provision of this Agreement, the City Fire Department will have exclusive use and occupancy of the following portions of the Classrooms: (i) Room 210 (Fire Department Office Suite) and (ii) Room 202 (Backup Dispatch and Races) which are more particularly identified in Exhibit C (City Exclusive Classroom Areas).

7.2. City and District Joint Use of Hayward Training Center and District Training Center. The City and the District agree that subject to the terms of this Agreement, the City may use and occupy the District Training Center or portions thereof and the District may use and occupy the Hayward Training Center or portions thereof.

7.2.1. Joint Use Charges. There shall be no fee, cost, expense or other charge to the City for City use of the District Training Center and there shall be no fee, cost, expense or other charge to the District for District use of the Hayward Training Center.

7.2.2. City and District Responsibility for Damage or Destruction. The City is responsible for repair, replacement or correction of damage or destruction to the District Training Center or any portion thereof arising out of City use or occupancy of the District Training Center. The District is responsible for repair, replacement or correction of damage or destruction to the Hayward Training Center or any portion thereof arising out of District use or occupancy of the Hayward Training Center.

7.2.3. Exclusive Use Areas. Notwithstanding the mutual right of the District and the City to use and occupy the Fire Training Center and the District Training Center, from time-to-time, the City may designate specific areas of the Fire Training Center for exclusive use by the City and not subject to the joint use provisions hereof and from time-to-time, the District may designate specific areas of the District Training Center for exclusive use by the District and not subject to the joint use provisions hereof.

7.2.4. Joint Use Scheduling. The City and District will establish processes coordinating and scheduling the City's use of District Training Center and scheduling the District's use of Fire Training Center. Coordination and scheduling the City and District use of the District Training Center and the Fire Training Center shall be based on the following:

The District will have priority use of the District Training Center.

The City will have priority use of the Fire Training Center, except for the portions of the Fire Training Center which constitute the District Training Center.

The District's use of the Fire Training Center is limited to uses relating to the Chabot Fire Technology Program.

The City's use of the District Training Center is limited to uses related to the City Fire Department training and education.

7.3. Right to Enter (Inspection of Premises and Improvements). The City shall have the right by its officers, employees, agents, servants and contractors, to enter into and upon the Premises at any and all reasonable times, with twenty-four (24) hour prior written notice to the District (but without notice in emergencies at all times):

7.3.1. To make any inspection the City's Airport Manager in his or her sole discretion may deem expedient or desirable for the proper enforcement of the covenants, conditions, restrictions, limitations and provisions of this Agreement, or any other matter relevant to this Agreement;

7.3.2. To maintain the Premises, or to do repair, maintenance, alteration, clean-up, or removal under the conditions set forth herein;

7.3.3. To post notices of non-responsibility for Improvements, alterations or repairs, if and when the City shall desire to do so; provided that the City acts reasonably to minimize any interference to District's use or occupancy of the Premises, all without abatement of rent to Lessee for any loss of occupancy or quiet enjoyment of the Premises or said buildings, works and Improvements, and without liability on the part of the City, its officers, agents, employees or contractors for loss or damage that may be sustained by The District thereby, provided that the City acts reasonably to minimize any interference to the

District's use or occupancy of the Premises. The City shall provide at least five calendar days advance written notice, under most circumstances, prior to the inspection discussed herein. No advance notice is required under exigent or emergency circumstances. Upon the time set for inspection, or an emergency inspection, the parties agree that the City may use all reasonable means to effect entry into any structure, or onto any portion of the Premises, and that furthermore, any damage or cost to repair arising by virtue of such entry shall be borne by the District, and not the City, should the District fail to appear and cooperate in arranging entry and inspection as provided for. If any repair, maintenance, alteration, clean-up, or removal required under the terms of this Agreement to be done by the District is deemed by the Airport Manager to be necessary, the Airport Manager may demand by written notice that the District do the same forthwith; and if the District fails, refuses or neglects to commence and complete the same or cause same to be performed with reasonable diligence, then the City may (but shall have no obligation to) reenter the Premises and cause such repair, maintenance, alteration or removal to be done; and the District agrees to pay to the City on demand the cost thereof. The notice provisions relating to inspections, above, shall apply to this section.

- 7.4. Prevention of Trespass. The District agrees to use the District's best efforts to prevent unauthorized persons from gaining access to the Hayward Airport through the Premises by not granting access to unknown persons.
- 7.5. Damage or Destruction. If the District Facilities or Hayward Facilities are damaged or destroyed during the Term, the District Facilities or Hayward Facilities shall be restored or this Agreement terminated as set forth herein. For purposes of this Paragraph 7.5, Hayward Facilities consist of: the Fire Station and the Hayward Training Center.
  - 7.5.1. Total Destruction Without Fault or Neglect. If the District Facilities or Hayward Facilities are totally destroyed by no fault or neglect of the District or the City, the Agreement shall terminate as of the date of the total destruction.
  - 7.5.2. Total Destruction Caused by Fault or Neglect. If the District Facilities or Hayward Facilities are totally destroyed by fault or neglect of the District or the City, the Party responsible for such total destruction shall restore and be responsible for all costs to restore the District Facilities or the Hayward Facilities, as applicable, to the condition existing immediately prior to the event of total destruction.
  - 7.5.3. Partial Damage or Destruction Without Fault or Neglect. If the District Facilities are partially damaged or destroyed through no fault or neglect of the District or the City, the District shall restore and be responsible for all costs to restore the District Facilities to the condition existing immediately prior to the event of damage or destruction or this Agreement. If the Hayward Facilities are damaged or destroyed through no fault or neglect of the District or the City during the Term, the City shall restore and be responsible for all costs to restore the Hayward Facilities to the condition existing immediately prior to the event of damage or destruction or this Agreement. The obligation to restore the District Facilities or the Hayward Facilities pursuant to the foregoing is without regard to the extent of available insurance proceeds.
  - 7.5.4. Partial Damage or Destruction Caused by Fault or Neglect. If the District Facilities are damaged or destroyed through fault or neglect of the City during the Term, the City shall restore and be responsible for all costs to restore the District Facilities to the condition existing immediately prior to the event of damage or destruction or this Agreement. If the Hayward Facilities are damaged or destroyed through fault or neglect of the District during the Term, the District shall restore and be responsible for all costs to restore the Hayward Facilities to the condition existing immediately prior to the event of damage or

destruction or this Agreement. The obligation to restore the District Facilities or the Hayward Facilities pursuant to the foregoing is without regard to the extent of available insurance proceeds.

7.6. Hazardous Materials.

7.6.1. Hazardous Materials Defined. For purposes of this Agreement, the term “Hazardous Materials” shall mean any and all: (i) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws (defined below), and (ii) any materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (iii) any substance, product, by-product, waste or any other material which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational, health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

7.6.2. Environmental Laws Defined. The term “Environmental Laws” shall mean and include all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state lien or environmental clean-up statutes.

7.6.3. Existing Hazardous Materials. As of the date of execution of this Agreement, City shall provide to District any reports, assessments and similar materials pertaining to Hazardous Materials review and assessment of the Premises (“Hazardous Materials Reports”), provided that the Hazardous Materials Reports are: (i) limited to those known to the City and in the possession and custody of the City as of the date of this Agreement at the Premises; and (ii) for information only, the District acknowledging that its decision to enter into this Agreement is not based on the Hazardous Materials Report.

7.6.4. Prohibition on Hazardous Materials. City and District agree that neither of them will cause or permit the use, storage, generation or otherwise place Hazardous Materials on the Premises, except as permitted by the Laws. The City and District shall defend, indemnify and hold harmless the other from any loss, claim, or expense resulting from the negligent or intentional violation of the foregoing.

**ARTICLE 8. MISCELLANEOUS PROVISIONS**

8.1. Right to Amend. In the event that the FAA requires modifications or changes in this Agreement as a condition precedent to the granting of funds for the Improvement of the Airport or lands and improvements, the District agrees to consent to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions or requirements of this Agreement as may be reasonably required to obtain such funds. The Parties shall mutually agree upon any amended language and terms, prior to becoming attached hereto. If, in the sole reasonable determination of the District that any FAA required modification or change to

the terms of this Agreement impair, restrict, limit, interfere with or hinder the District's use or occupancy of the Premises, the District may terminate this Agreement upon thirty (30) advance written notice to the City. In such event, the City shall reimburse the District with a portion of the District Contribution calculated as follows: number of months after the Commencement Date that the District's termination notice is issued divided by three hundred sixty multiplied by the actual District Contribution. The City shall make full payment of the reimbursement due the District within thirty (30) days of the termination of this Agreement.

## 8.2. Condemnation.

- 8.2.1. No Voluntary Conveyance. During the Initial Term or any Extended Term of this Agreement, neither the District nor the City will voluntarily convey any interest in the Premises or the Ground Lease under this Agreement to any agency, authority or public utility under threat of a taking in lieu of formal proceedings in eminent domain, without the prior written consent of the other Party, including the allocation of condemnation proceeds. For purposes of this Paragraph, all amounts paid pursuant to any agreement with any condemning authority which has been made in settlement of or under threat of any condemnation or other eminent domain proceeding affecting the Premises shall be deemed to constitute an award made in such proceeding and subject to the provisions of this Paragraph.
- 8.2.2. Total Taking. If there is a total taking of the Premises, this Agreement shall terminate on the date of the taking and District shall not be entitled to any refund of any money previously paid by the District to the City pursuant to this Agreement.
- 8.2.3. Substantial Taking. If there is a substantial taking of the Premises rendering the remainder of the Premises unusable by District for the purposes contemplated by this Agreement, the District shall have the right to terminate this Agreement, provided that the District notifies City in writing within thirty (30) days of such substantial taking of the District's intention to terminate the Agreement. In such event, the District shall not be entitled to any refund of any money previously paid by the District to the City pursuant to this Agreement.
- 8.2.4. Partial Taking. If there is a partial and insubstantial taking of the Premises, this Agreement shall remain in full force and effect with respect to portions of the Premises not taken. The City and the District shall in good faith negotiate and execute a written Amendment to this Agreement which provides for an appropriate modification of the terms based on the partial taking.
- 8.2.5. Condemnation Proceeds. Any proceeds of the condemnation award, whether total, substantial or partial, shall be pro-rated between the District and the City in proportion to the respective values of the District Facilities and Alterations completed at the District's cost under this Agreement.
- 8.2.6. Temporary Taking. If all or any portion of the Premises is taken by any competent authority other than the City for temporary use or occupancy, this Agreement shall continue in full force and effect, provided that the District and City will negotiate in good faith to execute a written Amendment to this Agreement which provides for an appropriate modification of its terms taking into account such temporary taking.

## **ARTICLE 9. INSURANCE AND INDEMNITY**

### 9.1. Insurance.

- 9.1.1. Liability Insurance. The District and City shall each maintain self-insurance and/or obtain a general liability insurance policy with minimum coverage limits of one million dollars

(\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate in connection with their respective use and occupancy of the District Facilities or Hayward Facilities which covers claims arising out of their use and occupancy of District Facilities or Hayward Facilities, including coverage for claims or damages due to bodily injury, death and damage/destruction to tangible property. The District and City shall provide the other with reasonably satisfactory evidence of the liability insurance required hereunder.

- 9.1.2. Workers Compensation Insurance. The District and City shall each maintain Workers Compensation insurance with coverage limits in accordance with applicable law.
- 9.1.3. Property Insurance. At all times during the Term, the District shall procure and maintain, at its sole expense, special form ("all risk") property insurance, in an amount not less than one hundred percent (100%) of the replacement cost, covering the District Facilities (including all improvements and alterations), the contents thereof, (collectively, the "Property Insurance"). At all times during the Term, the City shall procure and maintain, at its sole expense, special form ("all risk") property insurance, in an amount not less than one hundred percent (100%) of the replacement cost, covering the City Facilities (including all improvements and alterations), the contents thereof, (collectively, the "Property Insurance").
- 9.1.4. Property Insurance Proceeds. If property covered by a policy of Property Insurance is damaged or destroyed, all proceeds of the Property Insurance shall be used to repair, replace or restore the damaged/destroyed property to the condition existing immediately prior to the event of damage/destruction.
- 9.1.5. Adjustment of Insurance Requirements. Notwithstanding the foregoing description of specific policies of insurance and minimum coverage amounts for each specified policy of insurance, the District and the City shall meet and confer at the times noted below to assess: (i) adjustments to minimum coverage limits under each of the policies of insurance the District and City are required to maintain under this Agreement; and (ii) different or additional policies of insurance the City or District is required to maintain under this Agreement. The City and District shall meet and confer at the following times: (i) on the tenth (10th) anniversary of the Commencement Date; (ii) on the twentieth (20th) anniversary of the Commencement Date and (iii) if the District exercises options for the Extended Terms, sixty (60) days prior to the Commencement Date of each Extended Term. Adjustments, if any, to minimum coverage limits and/or different or additional policies of insurance shall be based on mutual agreement of the City and the District, taking into factors, including without limitation the then current insurance practices for intergovernmental agencies lease of real property and facilities from the other.

## 9.2. Indemnity.

- 9.2.1. District Indemnity of City. The District shall indemnify, defend and hold harmless the City and as applicable, the City's employees, agents, representatives, officers, and City Council from all claims, demands, liabilities, actions or causes of actions, whether in law or in equity, which arise out of or are related to negligent, grossly negligent or willful conduct of the District or the employees, agents, representatives or officers of the District.
- 9.2.2. City Indemnity of District. The City shall indemnify, defend and hold harmless the District and as applicable, the District's employees, agents, representatives, officers, and the District Board of Trustees from all claims, demands, liabilities, actions or causes of actions, whether in law or in equity, which arise out of or are related to negligent, grossly

negligent or willful conduct of the City or the employees, agents, representatives or officers of the City.

## **ARTICLE 10. TERMINATION**

- 10.1. Termination. Upon termination of this Agreement, title to District Facilities shall be transferred to the City subject to the following provisions. The City shall cooperate with the District to effectuate conveyance of ownership interests to the City.
- 10.2. Termination For Default. Either the District or the City may terminate this Agreement upon the default by the other party in its performance of a material obligation under this Agreement. Termination of this Agreement pursuant to the foregoing shall be initiated by written notice of the non-defaulting party to the defaulting party setting forth the material obligations which are in default, measures required to cure the default and the time for completing the cure of defaults (“the Termination for Default Notice”). If the defaulting party shall not thereafter immediately commence cure actions and diligently prosecute the same to completion, without further action of either the City or the District, this Agreement shall terminate thirty (30) days after the defaulting party’s receipt of the Termination for Default Notice. If the defaulting party shall immediately commence cure actions and thereafter diligently prosecute the same to completion, this Agreement shall remain in full force and effect except that, regardless of whether any cure action is diligently prosecuted, the time to complete any cure action shall not take more than one hundred eighty (180) days. If the default results in termination, Paragraph 10.1 applies.
- 10.3. Termination By Mutual Agreement. District or City may, at any time after the Initial Term, upon forty-five (45) days advance written notice to the other party, terminate this Agreement hereunder by mutual consent and without fault, neglect or default on the part of the other party. In such event, the Agreement shall be deemed terminated at such time as the District and County may mutually agree upon. In the event of termination, Paragraph 10.1 applies.

## **ARTICLE 11. GENERAL**

- 11.1. Marginal Headings; Captions. The titles of the various Articles of this Agreement are for convenience of reference only and are not intended to and shall in no way enlarge or diminish the rights or obligations of City and District hereunder.
- 11.2. Cumulative Rights; No Waiver. Duties and obligations imposed by this Agreement and rights and obligations hereunder are in addition to and not in lieu of any imposed by or available at law or in equity. No action or failure to act by District or City hereunder shall be deemed a waiver of any right or remedy afforded hereunder or acquiescence or approval of any breach or default by the other.
- 11.3. Books and Records. The City shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges or expenditures and disbursements charged to the District for a minimum period of three (3) years, or for any longer period required by the Laws, from the date of accrual of such charges or expenditures. Any records or documents required to be maintained by the City pursuant to this Agreement shall be promptly made available by the City for inspection or audit at no cost to District, upon written request by District.
- 11.4. Notices. Notices that either City or District are required or desire to serve on the other shall be valid only if addressed to the other as set forth below or as modified by notice to the Party. Notices shall be effective only if transmitted by personal delivery requiring signature acknowledging receipt or by United States Mail, Certified, Return Receipt Requested, First Class, and postage fully pre-paid.

Notices to the District shall be addressed as follows:

To: Chabot-Las Positas Community College District  
7600 Dublin Boulevard, 3rd Floor  
Dublin, CA 94568  
ATTN: Chancellor

Notices to the City shall be addressed as follows:

To: City of Hayward  
777 B Street  
Hayward, CA 94541  
ATTN: Airport Manager

Copy to: City of Hayward  
777 B Street, 4th Floor  
Hayward, CA 94541-5007  
ATTN: City Manager

All such notices hereunder shall be deemed to have been given on the date personally delivered or the date marked on the return receipt, unless delivery is refused or cannot be made, in which case the date of postmark shall be deemed the date notice has been given.

- 11.5. Relationship of the Parties. Under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture or employment between the District and the City. Each Party acknowledges and agrees that it neither has, nor will give the appearance or impression of having, any legal authority to bind or commit the other Party in any way.
- 11.6. Severability. If any provision of this Agreement is deemed illegal, invalid, unenforceable or void by any court of competent jurisdiction, such provision shall be deemed stricken and deleted herefrom, but all remaining provisions will remain and continue in full force and effect.
- 11.7. Modifications. No provision of this Agreement shall be modified except by written instrument duly executed by the City and District. No modification to this Agreement shall be valid, binding or enforceable unless such modification is reflected in a written instrument duly executed by the City and the District.
- 11.8. Negotiated Document. This Agreement is a negotiated document and shall not be interpreted for or against any party by reason of the fact that such party may have drafted this Agreement or any of its provisions.
- 11.9. No Third-Party Rights. The parties do not intend to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement. Nor do the parties intend to create any duty, covenant, obligation, or undertaking in any third party by entering into this Agreement.
- 11.10. Mandatory Mediation. All claims, disputes and other matters in controversy between the District and City arising out of or pertaining to this Agreement shall be submitted for resolution by non-binding mediation. The parties agree to share the costs of mediation equally. The commencement and completion of mediation proceedings pursuant to the foregoing is a condition precedent to the commencement of a legal proceeding or arbitration proceedings pursuant to Paragraph 11.11 below.
- 11.11. Arbitration. If mediation is unsuccessful, the unresolved claims, disputes or other matters in controversy shall be resolved by binding Arbitration, as described herein. The arbitration process shall be one mutually selected by the parties. In the event the parties are unable or unwilling to select a suitable arbitrator or arbitration entity, then any party may apply, ex parte, to the supervising judge of the Alameda County Superior Court, Hayward branch, for an order compelling arbitration, including the setting of an appropriate arbitrator or arbitration entity.

The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, any person or entity not a party to this Agreement.

Each party agrees to execute any and all documents as may be necessary to carry out the purposes of this Paragraph 11.11. The cost of any arbitration hereunder shall be initially paid equally by the Parties to this Agreement, but the prevailing party shall recover costs of arbitration proceedings from the non-prevailing party. Attorney fees, witnesses' fees, and other fees and expenses, shall be governed by Paragraph 11.14 of this Agreement. The agreement of the parties to arbitrate claims and disputes shall be specifically enforceable under the prevailing arbitration law. Pending final decision of the arbitrator, the Parties shall proceed diligently with the performance of all obligations as provided in this Agreement.

11.12. Governing Law. This Agreement, and all matters relating to this Agreement, shall be governed by and interpreted in accordance with the laws of the State of California, in force at the time any need for interpretation of this Agreement or any decision or holding concerning this Agreement arises.

11.13. Choice of Venue. The Parties to this Agreement expressly agree that this Agreement was entered into in Hayward, California. Jurisdiction for any judicial proceeding relating to or arising out of this Agreement shall be the Alameda County Superior Court and venue shall be the Hayward Hall of Justice. Nothing in this provision shall be interpreted as a waiver of the arbitration clause.

11.14. Attorney's Fees and Costs. In the event that either Party shall commence any legal action or proceedings against the other party concerning the Premises, this Agreement, or the rights and duties of either in relation to the Agreement, the party prevailing in that action or proceeding shall be entitled to recover, in addition to any other relief that may be granted in the litigation, all fees, expenses, costs (including costs and expenses of expert witnesses), court costs and reasonable attorneys' fees (to be determined by the court, including an arbitrator if applicable, in that litigation or in a separate action brought for that purpose). Such recovery shall include court costs and attorneys' fees on appeal, if any. In the event of a proceeding in which the City is the prevailing party, the City shall be entitled to attorneys' fees in an amount or sum not less than the prevailing market rate for attorneys with experience comparable to that of the City's attorneys. The court (or arbitrator) will determine who the "prevailing party" is, whether or not the suit proceeds to final judgment. However, if an action (including arbitration) is voluntarily dismissed (or terminated), or dismissed (or terminated) pursuant to a settlement of the case, neither party shall be entitled to recover its attorneys' fees. The City hereby waives the benefit of the provisions of Section 1161 of the California Code of Civil Procedure.

11.15. Entire Agreement. This Agreement and the following exhibits constitute the entire agreement and understanding between the Parties concerning the subject matter hereof. The provisions of this Agreement supersede and replace all prior agreements, understandings and negotiations regarding the subject matter hereof.

Exhibit A Legal Description of the Premises

Exhibit B Plot Map

Exhibit B-1 Outdoor Classroom

Exhibit B-2 Apparatus Building

Exhibit B-3 Hanger Building

Exhibit C City Exclusive Classroom Areas

Exhibit D Site Development Plan

IN WITNESS WHEREOF, CITY and DISTRICT have executed this Agreement as of the date set forth above.

LESSOR, CITY OF HAYWARD, A MUNICIPAL CORPORATION:

By: \_\_\_\_\_  
Doug McNeeley, Airport Manager Date

By: \_\_\_\_\_  
Alex Ameri, Director of Public Works Date

By: \_\_\_\_\_  
Kelly McAdoo, City Manager Date

Approved as to form:

By: \_\_\_\_\_  
Michael S. Lawson, City Attorney Date  
Joseph Brick, Assistant City Attorney

Attest: \_\_\_\_\_  
Miriam Lens, City Clerk Date

LESSEE, CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT

By: \_\_\_\_\_  
Ronald P. Gerhard Date  
Interim Chancellor