

INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

THIS INDEMNIFICATION AND HOLD HARMLESS AGREEMENT ("Agreement") is made and entered into this first day of July 2018, ("Effective Date") by and between the CITY OF WESTMINSTER (the "City"), and The City of Huntington Beach Indemnitor") (collectively referred to as the "Parties").

RECITALS

A. WHEREAS, the City is the owner of Westminster Police Range and Safety Training Center located at 7351 Hazard Ave., Westminster, CA 92683 (hereinafter, this facility, including its MAT room is referred to as "Training Center"); and

B. WHEREAS, Indemnitor desires to have its police officers use the Training Center for Purposes of meeting training and qualification requirements; and

C. WHEREAS, the City grants permission to Indemnitor to use the City's Training Center, subject to the fees and certain conditions set forth in this Agreement.

NOW, THEREFORE, the Parties hereto agree as follows:

1. **Right to Use the Training Center & Fee for Use.** Subject to the terms of this Agreement, Indemnitor and its police officers may use the Training Center and its MAT room, subject to reasonable availability and thirty (30) days advanced notice for scheduling. Indemnitor's anticipated use of the Training Center is for firearms training and qualification. Indemnitor agrees to pay the City in accordance with the fee schedule set forth in Exhibit "A," attached hereto and made a part of this Agreement (the "Fee Schedule").

2. **Method of Billing.** Indemnitor shall pay City's invoice within forty five (45) days from the date the Indemnitor receives said invoice. Said invoices shall be based on the total amount of activities and time spent at the Training Center.

3. **Compliance with all Laws.** Indemnitor, at its sole cost and expense, shall comply with all of the requirements of all municipal, state and federal laws, regulations and authorities now in force, or which may hereafter be in force pertaining to the use of the Training Center. Indemnitor and each of its police officers agree to fully obey and to comply with all posted rules, regulations and all orders of the Westminster Rangemaster and Range Staff as well as the Westminster Police Range and Safety Training Center Policy (the "Training Center Policy") as more fully described in Exhibit "B", attached hereto and made a part of this Agreement. Indemnitor and each its police officers understand that they may be excluded from the Training Center for failure to fully obey and to comply with all posted rules, regulations, all orders of the Westminster Rangemaster and Range Staff and Training Center Policy, without any liability to the City, its officials, police officers, employees, volunteers, attorneys, assigns or anyone else acting on the City's behalf.

4. **Indemnification of City.** Indemnitor, as a material part of the consideration to be rendered to City under this Agreement, hereby waives any and all claims against City for damage to equipment or other personal property, in, upon, or about the Training Center, and hereby waives any and all claims for bodily injury (including death), liability, damages, lawsuits, expenses (including, but not limited to, medical expenses and attorneys' fees) and any other liability to

Indemnitor's Police Officers and/or other employees of Indemnitor who are authorized by Indemnitor's Police Chief to use the subject Training Center (hereinafter collectively referred to as "HBPD Patrons"). Indemnitor further agrees to indemnify the City, its elected and appointed officials, police officers, agents, volunteers, employees, and attorneys, and anyone else acting on the City's behalf (hereinafter collectively referred to as "Released Parties"), against and shall hold and save them and each of them harmless from any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions, or liabilities (herein "Claims or Liabilities") that may be asserted, arise from active or passive negligence, and are claimed by a third party in connection with the use of the Training Center by HBPD Patrons, whether or not there is concurrent passive negligence on the part of the Released Parties in connection herewith:

Indemnitor shall defend any action or actions filed in connection with any of said Claims or Liabilities and shall pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

Indemnitor shall promptly pay any judgment rendered against the Released Parties for any such Claims or Liabilities arising out of or in connection with the performance of or failure to perform under this Agreement; and Indemnitor agrees to save and to hold the Released Parties harmless there from;

In the event that the City, its elected or appointed officials, police officers, agents, employees, volunteers, attorneys, or anyone acting on their behalf, is made a party to any actions or proceeding filed or prosecuted against Indemnitor for such damages or other claims arising out of or in connection with Indemnitor's performance under this Agreement, Indemnitor agrees to pay to the City, its officials, police officers, agents, volunteers, attorneys or employees, any and all costs and expenses incurred by them in such action or proceeding, including, but not limited to, legal costs and attorneys' fees;

The Parties further expressly agree that this indemnification provision is intended to be as broad and inclusive as is permitted by the law of the State of California and that if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full force and effect.

In furtherance of this duty of indemnification, Indemnitor represents that it is self-insured in the amount of \$1,000,000. In addition to this self-insurance, Indemnitor will be required to maintain an insurance policy for personal injury and property damage in the amount of \$1,000,000.

5. **Release.** Indemnitor hereby releases and forever discharges the Released Parties, and each and every one of them, from and against any and all Claims or Liabilities, including, but not limited to, any demands, actions claimed by HBPD Patrons. This is a complete and final release and shall be binding upon Indemnitor and covers claims arising out of or connected with Indemnitor's presence and/or the use of all or any portion of the Training Center by HBPD Patrons.

6. **Waiver of Civil Code Section 1542.** The Parties expressly agree to waive and relinquish all rights and benefits that it may have under Section 1542 of the Civil Code of the State of California. That section reads as follows:

"§ 1542. [General release; extent] A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

7. **Term.** This Agreement shall commence on the Effective Date and continue for a period of two (2) year(s), ending on June 30, 2020, unless previously terminated as provided herein or as otherwise agreed in writing by the parties.

8. **Termination.** Either party has a right to terminate this Agreement with or without cause. Termination shall occur only with thirty (30) days advance written notice to the Chief of Police of the respective department.

In the event of termination, Indemnitor shall pay City for time spent at the Training Center up until the date of the written notice of termination.

9. **Waiver.** The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

10. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

11. **Notices.** Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO INDEMNITOR:

HBPD
Police Chief's Office
200 Main St.
Huntington Beach, CA 92648

Tel: 714-536-5902
Fax:
Attn: Police Chief

IF TO CITY:

Professional Standards Unit
Westminster Police Depart.
City of Westminster
8200 Westminster Blvd.
Westminster, CA 92683
Tel: 714-898-3315
Fax: 714-898-5932
Attn: PSU Commander

12. **Severability**. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance.

13. **Governing Law**. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

14. **Attorneys' Fees**. In the event that litigation is brought by any party in connection with this Agreement, each side will bear their own costs and expenses, including reasonable attorneys' fees, incurred by the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

15. **Costs**. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

16. **Knowing and Voluntary**. This Agreement is an important legal document and in all respects has been voluntarily and knowingly executed by the Parties hereto. The Parties specifically represent that prior to signing this Agreement they have been provided a reasonable period of time within which to consider whether to accept this Agreement. The Parties further represent that they have each carefully read and fully understand all of the provisions of this Agreement, and that they are voluntarily, knowingly, and without coercion entering into this Agreement based upon their own judgment. The Parties further specifically represent that prior to signing this Agreement they have conferred with their counsel to the extent desired concerning the legal effect of this Agreement.

17. **Cooperation**. In the event any claim or action is brought against the City relating to this Agreement, Indemnitor shall render any reasonable assistance and cooperation which the City might require.

18. **Amendments**. Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

19. **No Third Party Beneficiary Rights**. This Agreement is entered into for the sole benefit of City and Indemnitor and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

20. **Headings**. Paragraphs and subparagraph headings contained in this Agreement included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.


21. **Construction**. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

22. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one Agreement.

23. **Corporate Authority.** The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

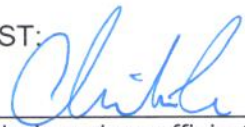
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF WESTMINSTER,
A municipal corporation
California



Eddie Manfro, City Manager

ATTEST:



City Clerk and ex-officio Clerk
of the City of Westminster

CITY OF HUNTINGTON BEACH,
a municipal corporation of the State of

Mayor

City Clerk

REVIEWED AND APPROVED:

City Manager

INITIATED AND APPROVED:

Police Chief

APPROVED AS TO FORM:



City Attorney