

RESOLUTION NO. 19-7

**RESOLUTION OF THE
LOS ALTOS HILLS COUNTY FIRE DISTRICT
ADOPTING POLICY FOR USE
OF THE DISTRICT LOT**

WHEREAS, the Los Altos Hills County Fire District (“District”) is the owner of that certain real property commonly known as 27500 Arastradero Road, Los Altos Hills, California (“District Lot”); and

WHEREAS, the District Lot is a vacant parcel of land located within the Town of Los Altos Hills (“Town”); and

WHEREAS, the District has entered into a number of license agreements with contractors performing work in or near the Town that authorize the contractors to use of the District Lot as a staging area for a fee; and

WHEREAS the District anticipates that contractors will continue to desire to use the District Lot as a staging area while performing work on projects in or near the Town; and

WHEREAS, requests to use the District Lot as a staging area are usually brought to the District with less than one-month notice, making it difficult and untimely in most cases to place the request on the Agenda for District meetings for the District Board of Commissioners (“District Board”) to consider; and

WHEREAS, the District Board directed the General Manager and District Counsel to draft a proposed policy to address the difficulties in authoring issuance of license agreements for use of the District Lot; and

WHEREAS, the attached Policy for Use of the Los Altos Hills County Fire District Real Property Located at 27500 Arastradero Road, Los Altos Hills, California (“Policy”) attached hereto as Exhibit 1, addresses the difficulties identified by providing the District President, or its designee, with authority to issue license agreements for use of the District Lot, in accordance with the procedures set forth in the Policy; and

WHEREAS, the District’s General Manager studied the difficulties in authoring issuance of license agreements for use of the District Lot and the Policy, and provided recommendation to the District Board in her Memorandum Report dated March 19, 2019 (“Memorandum Report”); and

WHEREAS, the District Board reviewed and considered the Memorandum Report and Policy.

NOW, THEREFORE, the District Board does **RESOLVE** as follows:

1. Public interest and convenience require the District to adopt the Policy attached hereto as Exhibit 1 prescribing the authority for issuing license agreements to use the District Lot; and
2. The District hereby adopts the Policy attached hereto as Exhibit 1.

PASSED AND ADOPTED this 19th day of March 2019.

By:

Mark Warren, Board President

ATTEST:

District Clerk

EXHIBIT 1

Policy for Use of the Los Altos Hills County Fire District Real Property Located at 27500 Arastradero Road, Los Altos Hills, California

I. Policy

Objective. The intent of this policy (“Policy”) is to provide authority for the President of the Los Altos Hills County Fire District (“District”) to approve license agreements for use of the District’s real property located at 27500 Arastradero Road, Los Altos Hills, California (“District Lot”).

Principles.

1. The District Lot is a vacant parcel of land located within the Town of Los Altos Hills (“Town”).
2. Contractors performing work on behalf of the District, Town, and on behalf of other local agencies have requested to use the District Lot as a staging area for equipment while work is performed nearby.
3. Since acquiring ownership of the District Lot, the District has entered into a number of license agreements for use of the District Lot as a staging area.
4. The term of each license agreement varies, but has not exceeded six (6) months.
5. The current license fee for use of the District Lot is one-thousand five hundred dollars (\$1,500) per month.
6. The District anticipates that contractors will continue to desire to use the District Lot as a staging area while performing work on projects nearby.
7. Requests to use the District Lot as a staging area are usually brought to the District with less than one-month notice, making it difficult and untimely in most cases to place the request on the Agenda for District meetings for the District Board of Commissioners (“District Board”) to consider.
8. This Policy allows the District Board President to authorize execution of license agreements for use of the District Lot in accordance with the procedures set forth below, without the need for the District Board to approve each individual license agreement.

II. Procedures

1. Upon receipt of a request to use the District Lot as a staging area, the District’s General Manager or his/her designee shall gather the following information and provide it to the District President:
 - a. Name of the contractor;
 - b. Name of the agency or entity for which contractor is performing work;
 - c. Brief description of the work to be performed while the contractor uses the District Lot; and
 - d. Dates requested for use of the District Lot.
2. The District President, or her/his designee, may authorize use of the District Lot as a staging area if, in its sole discretion, they determine:
 - a. the work to be performed by contractor is for public safety services;
 - b. the contractor has agreed to payment of a license fee consistent with the license fee approved by the District for past license agreements;

EXHIBIT 1

- c. the anticipated use of the District Lot will not exceed six (6) months¹ and
 - d. the dates requested do not conflict with previously authorized or anticipated uses of the District Lot.
3. Before a contractor may use the District Lot, all the following must occur:
 - a. The District's General Manager must be in possession of a fully executed license agreement between the contractor and the District. The license agreement shall substantially conform with the terms of the Template License Agreement attached hereto as Exhibit A.
 - b. The contractor must submit a certificate of liability insurance and receive written confirmation from the District's General Manager that the contractor's insurance meets the requirements set forth in the insurance requirements set forth in the license agreement .
 - c. The contractor submits to the District payment of the fees as required in the license agreement.
4. If the District receives a request to extend the term of a license agreement previously authorized under this Policy, the District President, or his/her designee, may authorize execution of an amendment to the license agreement extending the term if:
 - a. The extension does not conflict with previously authorized or anticipated uses of the District Lot;
 - b. The contractor's insurance remains in compliance with the requirements set forth in the license agreement; and
 - c. The District's General Manager is in possession of a fully executed amendment to the license agreement substantially conforming with the Template Amendment attached hereto as Exhibit B.
5. The Template License Agreement (Exhibit A) and/or Template Amendment (Exhibit B) may be revised from time to time, without approval of the District Board of Commissioners, if the changes are to update the documents to be consistent with other District agreements previously approved by the District Board of Commissioners. The revised template will be incorporated into this Policy.

¹ If the anticipated use of the District Lot exceeds six (6) months the District Board of Commissioners must approve the proposed license.

EXHIBIT A

LICENSE AGREEMENT BETWEEN THE LOS ALTOS HILLS COUNTY FIRE DISTRICT AND [CONTRACTOR] FOR USE OF THE DISTRICT LOT

This License Agreement (“Agreement”) is entered into on this ___ day of _____ (“Effective Date”) by and between the **LOS ALTOS HILLS COUNTY FIRE DISTRICT** (“FIRE DISTRICT”) and **[CONTRACTOR]**. (“[CONTRACTOR]” OR “LICENSEE”) jointly known as “Parties”.

RECITALS

- A. WHEREAS, FIRE DISTRICT is the owner of that certain real property commonly known as 27500 Arastradero Road, Los Altos Hills, California (“District Lot”); and
- B. WHEREAS, [DESCRIPTION OF WORK TO BE PERFORMED]
- C. WHEREAS, [CONTRACTOR] desires to use the District Lot for a staging area, including, but not limited to storage of non-hazardous materials while [BRIEF DESCRIPTION OF WORK]; and
- D. WHEREAS, [PUBLIC SAFETY REASON FOR USE]; and
- E. WHEREAS, FIRE DISTRICT desires to grant [CONTRACTOR] a license to allow [CONTRACTOR] to use the District Lot in accordance with the terms and conditions of this Agreement.

AGREEMENT

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

1. Grant of License.

1.1 FIRE DISTRICT grants LICENSEE a license to use the District Lot as a staging area, including the storage of non-hazardous construction materials in accordance with the terms and conditions contained herein.

1.2 This Agreement gives LICENSEE a license only for the Term of this Agreement and does not constitute any easement, lease, transfer or grant by FIRE DISTRICT of the District Lot or any portion thereof.

2. LICENSEE’s Responsibilities.

2.1 LICENSEE shall pay FIRE DISTRICT for all attorneys’ fees incurred by FIRE DISTRICT in preparing, revising, and amending this Agreement as evidenced by an invoice provided by FIRE DISTRICT to LICENSEE.

2.2 Prior to use of the District Lot, LICENSEE shall pay FIRE DISTRICT a \$500.00 Administrative Fee.

EXHIBIT A

2.3. LICENSEE shall pay FIRE DISTRICT a monthly usage fee of \$1,500.00 to be paid on the [X¹]th of each month, beginning on [FIRST DAY OF USE]. LICENSEE shall not be reimbursed for any portion of a monthly usage fee should the term of LICENSEE's usage end after the [X]th of any month, but before the next payment is due.

2.4 LICENSEE shall use the District Lot for staging purposes only and for no other purposes. Specifically, LICENSEE shall not store or dump or allow any toxic materials to be stored or dumped on the District Lot.

2.5 LICENSEE shall provide the Town and FIRE DISTRICT with workday and after-hours phone numbers (cell, home and office) for two (2) individuals connected with or employed by LICENSEE who are authorized to handle such calls.

2.6 LICENSEE shall protect all existing structures on the District Lot, including, but not limited to, bollards, chain, and storm drain inlets. If required by FIRE DISTRICT, wattles shall be placed around the existing storm drain structures to keep debris from entering the inlet.

2.7 LICENSEE shall protect all existing vegetation, including, but not limited to, trees and shrubs.

2.8 LICENSEE shall keep Arastradero and Purissima Roads clean from any debris caused during the Term of this Agreement. LICENSEE shall use a street sweeper to keep Arastradero and Purissima Roads clean at all times or as directed by the FIRE DISTRICT.

2.9 During the Term of this Agreement, as requested by FIRE DISTRICT, LICENSEE shall correct any unforeseen circumstances that may arise.

3. Term. This Agreement is to be in effect for the period of [FIRST DAY OF USE THROUGH ANTICIPATED LAST DAY OF USE²] ("Term"). The Term of this Agreement may be extended in accordance with Paragraph 10, below.

4. Requirements. Upon expiration of the Term or termination of this Agreement, whichever is earlier, LICENSEE shall remove any and all vehicles, debris, and/or other items located on the District Lot and return the District Lot to FIRE DISTRICT in its original condition as of the first day of the Term of this Agreement.

5. Maintenance of District Lot. LICENSEE shall be solely responsible for maintaining the District Lot during the Term of this Agreement and shall keep the District Lot well maintained at all times. LICENSEE shall remove garbage from the District Lot daily.

¹ This should match the first day of use. For example if the first day of use is March 4, payments shall be made on the 4th of each month.

² The "Term" should be in 30/31 day increments depending on the month, and shall not exceed 6 months.

EXHIBIT A

6. Compliance with Laws. LICENSEE shall conduct all activities on the District Lot in compliance with all applicable federal, state and local laws, statutes or ordinances and with all regulations, orders and directives of appropriate governmental agencies. In particular, LICENSEE shall abide by all Town of Los Altos Hills regulations relative to the usage of the District Lot and adjoining roads and have all necessary licenses and permits.

7. Insurance. LICENSEE shall procure, maintain and provide appropriate types and amounts of insurance for use of the District Lot, as required by FIRE DISTRICT's Insurance Requirement, as set forth in Exhibit A, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by LICENSEE, their agents, representatives, employees, contractors or subcontractors. LICENSEE shall not be required to meet the insurance requirements as set forth in Paragraph 4 (Professional Liability) of Exhibit A. For purposes of this Agreement and Exhibit A, the term "work" shall include use of the District Lot. LICENSEE shall name the FIRE DISTRICT as an additional indemnified party and an additional Insured. LICENSEE shall provide the FIRE DISTRICT with documentation evidencing the above before the first day of the Term.

8. Indemnity.

8.1 To the fullest extent permitted by law, LICENSEE shall defend (with counsel reasonably approved by FIRE DISTRICT), indemnify and hold FIRE DISTRICT, the FIRE DISTRICT Board of Commissioners, members of the FIRE DISTRICT Board of Commissioners, its employees, representatives, agents and volunteers harmless from any and all suits, damages, costs, fees, claims, demands, causes of action, liabilities, losses expenses, damage or injury of any kind, in law or equity, to property or persons, including wrongful death and financial losses (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of LICENSEE or LICENSEE'S officers, assistants, subcontractors, employees or agents in connection with LICENSEE'S use of the District Lot or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses.

8.2. The FIRE DISTRICT does not and shall not waive any rights that they may possess against LICENSEE because of the acceptance by the FIRE DISTRICT or the deposit with the FIRE DISTRICT of any insurance policy or certificate required pursuant to this Agreement. These hold harmless and indemnification provisions shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

8.3. LICENSEE's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by FIRE DISTRICT, the FIRE DISTRICT Board of Commissioners, members of the FIRE DISTRICT Board of Commissioners, its employees, or authorized volunteers.

EXHIBIT A

8.4. LICENSEE's obligations to indemnify set forth in Paragraphs 8.1 through 8.4 shall survive termination and/or expiration of the Agreement.

9. Assignments and Successors in Interest. LICENSEE may not assign or transfer its right to use of the District Lot, either voluntarily or by operation of law, without the prior written approval of FIRE DISTRICT.

10. Amendments and Modification. Only a writing signed by both Parties may modify this Agreement.

11. Termination. Notwithstanding any other provision of this Agreement, the FIRE DISTRICT may terminate this Agreement without cause at any time upon giving two (2) days written notice to LICENSEE and the FIRE DISTRICT shall have no further obligation to LICENSEE.

12. Notice. Any notice which may be given hereunder shall be in writing, and may be personally delivered or given by mailing the same by Registered or Certified mail, postage prepaid, addressed as follows:

FIRE DISTRICT: Los Altos Hills County Fire District
P.O. Box 1766
Los Altos, CA 94023-1766
Attn: District General Manager

[CONTRACTOR]:

13. Governing Law. This Agreement shall be governed by California law and the venue for any legal action related to this Agreement shall be Santa Clara County.

14. Attorney's Fees. In the event that any party to this Agreement commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which the successful party may be entitled.

15. Waiver. No waiver of any term, provision or condition of this license shall be deemed to be a further or continuing waiver of any such term, provision or condition or a waiver of any other term, provision or condition.

16. Severability. If any part of this Agreement or any amendment or modification of this Agreement is found to be legally void or unenforceable by a court of law, the remainder of the Agreement will remain in full force and effect.

17. Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement. This Agreement may be executed by way of facsimile or electronic signature.

EXHIBIT A

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates herein below shown.

FIRE DISTRICT

[CONTRACTOR]

By: _____
President, District Board

By: _____

Date: _____

Date: _____

SAMPLE

EXHIBIT B

AMENDMENT NO. ___
TO THE LICENSE AGREEMENT BETWEEN
LOS ALTOS HILLS COUNTY FIRE DISTRICT
AND
[CONTRACTOR] FOR USE OF THE DISTRICT LOT

THIS AMENDMENT No. X, (“Amendment”) is made and entered into as of the _____ day of _____ 20XX, **TO LICENSE AGREEMENT BETWEEN THE LOS ALTOS HILLS COUNTY FIRE DISTRICT AND [CONTRACTOR] FOR USE OF THE DISTRICT LOT**, made and entered into on [date of original agreement], (“License Agreement”).

RECITALS

- A. WHEREAS**, on _____, [CONTRACTOR] and Fire District entered into the License Agreement; and
- B. WHEREAS**, [CONTRACTOR] now desires to extend the Term of the License Agreement through _____; and
- C. WHEREAS**, a copy of the fully executed License Agreement is attached hereto as Exhibit A.

In consideration of the covenants, conditions and promises hereinafter contained, to be kept and performed by the parties hereto, Fire District and LICENSEE hereby agree that the following sections of the aforesaid License Agreement, are amended to read as follows:

- 1. Section 3, Term, is hereby amended to extend the Term of the License Agreement to _____:
- 2. The License Agreement shall terminate at 11:59 p.m. on _____.
- 3. All other terms of the License Agreement, which are not in conflict with the provisions of this (First/Second/Third and so forth) Amendment, shall remain unchanged and in full force and effect. In case of a conflict in the terms of the License Agreement and this (First/Second/Third and so forth) Amendment, the provisions of this (First/Second/Third and so forth) Amendment shall control.

FIRE DISTRICT

[CONTRACTOR]

By: _____
President, District Board

By: _____

EXHIBIT B

Date: _____

Date: _____

SAMPLE