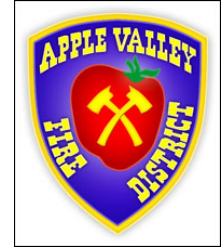




MEMORANDUM OF UNDERSTANDING FOR ACQUISITION, DEVELOPMENT AND USE OF A PUBLIC SAFETY TRAINING CENTER



This Memorandum of Understanding Agreement (“Agreement”) is made as of _____, 2009, between the Victor Valley Community College District (“VVCCD”) and the Apple Valley Fire Protection District (“AVFPD”) (collectively “the Parties”).

ARTICLE I **EXECUTIVE SUMMARY**

VVCCD has confirmed the economic feasibility regarding the development of a Public Safety Training Center (“Project”). The Project will be anchored by academically focused programs in fire science, emergency medical services, administration of justice training in law enforcement, corrections, and forensics, disaster management and those general education courses supporting public safety curriculum, all of which will enable expansion to meet increased market demands for a trained workforce in this area. The Project is funded by the VVCCD Bond Program (Measure JJ). Benefits to the community and the Parties include increased: access to higher education, trained public safety workforce, locally added jobs increasing tax revenues, and a demand for housing and educational enterprise. The Project will help stabilize the region’s economic base, and further catalyze private sector growth in businesses to serve the increase student population, causing a greater efficiency through joint use of public property for students and citizens. Public safety training is a top educational need expressed in the High Desert region. The anticipated training programs offer excellent opportunities to collaborate and jointly use facilities and instructional space. This will be an important regional facility, partnering with other High Desert agencies to offer a cost effective means to dramatically increase the number of emergency public safety personnel able to serve the High Desert communities.

ARTICLE II **RECITALS**

1. As part of its Capital Improvement Plan under Bond Measure JJ, on or about December 9, 2008 the VVCCD Board of Trustees authorized the issuance of a Request for Proposal on a public work of improvement for a Public Safety Training Center through the design-build delivery method under Education Code section 81700, *et seq.*

2. On December 17, 2008, VVCCD published a Request for Proposal for the design-build delivery of a Public Safety Training Center. VVCCD is in the evaluation process to select and award a design-build contract based on “best value.”

3. VVCCD has been working towards the delivery of a Public Safety Training Center to be located at the Northwest corner of Navajo Road and Johnson Road in the Town of

Apple Valley (APN #0463-2315900) (the “Property”). AVFPD owns the Property in fee after a quit claim transfer from WalMart with a covenant for use for fire “training purposes.”

4. The Parties agree it is in the best interests of their respective citizens and fire and safety personnel for VVCCD to develop and operate a Public Safety Training Center on a portion of the Property.

5. The Parties desire to preliminarily define the terms and conditions under which the AVFPD will lease a portion of the Property to VVCCD and under which the Project is to be designed, constructed, financed, operated and maintained by VVCCD.

6. VVCCD has an approved budget for the capital improvements and cost of construction for the Project, development, furnishings and equipment through the passage of Measure JJ, contingent upon funds actually becoming available through means of public finance.

7. Education Code section 81003 authorizes community college districts such as the VVCCD to build campus facilities on public property not owned by VVCCD.

8. Education Code section 81522 authorizes the VVCCD to lease land for a term extending to the expected duration of use of the property.

9. Health and Safety Code section 13861 authorizes AVFPD to acquire any property within the jurisdiction of the AVFPD and to create a leasehold interest in property for the benefit of the AVFPD.

10. Wal-Mart Stores East, LP, has acknowledged and agreed the intended use of the property, including the possible use for general education coursework, is acceptable and consistent with the terms contained in the Agreement for Donation of Real Property between AVFPD and Wal-Mart Stores East, LP, dated November 14, 2007.

11. The Parties acknowledge and agree that AVFPD has not made any representations or warranties with respect to the physical condition of the Property or the suitability of the Property for VVCCD’s intended use. VVCCD shall satisfy itself through its own due diligence that the Property is suitable for the development of the Project.

12. Both Parties agree this Agreement is subject to the negotiation and execution of definitive agreements with respect to the subject matter hereof after the approval of their respective governing bodies.

ARTICLE III **DEFINED TERMS**

As used herein the following terms shall have the meanings stated below:

1. “AVFPD Retained Property” means that portion of the Property consisting of approximately three (3) acres which shall not be leased to VVCCD, and shall be retained by

AVFPD for its exclusive use, which the Parties anticipate shall include the future development of a fire station. A general depiction of the AVFPD Retained Property is shown in the attached Property Map Exhibit “A”.

2. “Construction Documents” means the plans, specifications, bridging documents, and other construction documents for the Project, consistent with VVCCD standards and requirements, in the form prepared by the design-build entity to whom VVCCD awards the Project.

3. “Facilities” means all infrastructure, utilities, buildings, structures, fixtures, furnishings, associated equipment, and other improvements and amenities within the Project, as constructed and installed.

4. “Leased Property” means that portion of the Property consisting of approximately 9.83 acres intended to be leased to the VVCCD, pursuant to the terms of a subsequent lease and use agreement, and developed and used for the Project. A general depiction of the Leased Property is shown in the attached Exhibit “B”. A metes and bounds legal description and depiction of the Leased Property shall be completed and included as part of the lease agreement between the Parties.

5. “Project” means the VVCCD Measure JJ Public Work of Improvement commonly known as the Public Safety Training Center and its Facilities as further defined in the Construction Documents.

6. “Property” means that certain real property consisting of 12.83 acres located in the Town of Apple Valley, California commonly referred to as APN No. 0463-2315900.

7. “Site Plan” means the overall conceptual site plan attached hereto as Exhibit “B”.

8. “Training Center” means “Facilities and “Training Props” collectively.

9. “Training Props” means those objects, buildings or appendages, including a training tower, used for practicing rescue techniques and structural or vehicle fire suppression operations under controlled conditions using combustible and flammable materials.

ARTICLE IV
AGREEMENT

SECTION 1: ACQUISITION

1.1 Ownership and Property Interests of the Parties

- 1.1.1 Ownership of the Leased Property.** AVFPD shall retain ownership of the Leased Property. No course of conduct or actions by VVCCD will entitle VVCCD to any ownership, title or interest in the Leased Property, or any portion thereof. AVFPD will not subordinate its ownership interest in the fee title to the Leased Property to any security VVCCD is required to provide in order to secure financing for the Project, and VVCCD shall have no right to encumber fee title to the Leased Property.
- 1.1.2 Ownership of the Project.** For the term of the lease, as defined below, VVCCD shall have physical control over the Leased Property, and shall retain ownership of the Project, including the Facilities and Training Props. During the term of the lease, AVFPD shall have no right to encumber the Project or any portion thereof.
- 1.1.3 Grant of 99 Year Lease.** AVFPD intends to lease that portion of the Property referred to herein as the “Leased Property” to VVCCD in accordance with and subject to the terms of a lease and joint use agreement for a term of 99 years at valuable consideration of: (i) One Dollar (\$1.00) per year payable by VVCCD as lessee to AVFPD as lessor; and (ii) use of the Training Center, at no cost to AVFPD, as further specified in this Agreement and as shall be further detailed in the lease.
- 1.1.4 Succession of AVFPD.** In the event that AVFPD becomes subsidiary to or a Department of the Town of Apple Valley, or any other public entity, the lease and joint use agreement shall survive and the agency or entity taking over will be a successor and assume all responsibilities of AVFPD. In the event AVFPD or the Town of Apple Valley elect to contract for fire related services with another agency or company, the terms of Sections 3.1 and 3.2 of this agreement may be renegotiated as initiated by VVCCD.

SECTION 2: DEVELOPMENT

- 2.1 Design.** The Project shall be designed and constructed by VVCCD in accordance with applicable laws using the design-build delivery method. VVCCD shall pay

all costs for plans, review, permits and creation of the Construction Documents for the Project.

- 2.2 **Administration.** VVCCD shall administer all construction contracts for the necessary infrastructure and other site improvements. VVCCD shall have the usual rights of an owner of a public construction Project, including the authority to approve changes and make payments. VVCCD shall enter into all construction, supply and other contracts for the work to be performed and materials to be supplied in connection with the Project, which shall be the sole responsibility of VVCCD without any approval rights or liability on the part of AVFPD. VVCCD shall ensure that its construction contracts provide for indemnification of AVFPD by the contractor, and inclusion of AVFPD as an additional insured under the contractor's required insurance policies.
- 2.3 **Construction.** The work and improvements within the Project shall be constructed and delivered in accordance and substantial conformity with Education Code section 81700, *et seq.*, as a design-build project.
- 2.4 **Reimbursement for Specific Site Work.** VVCCD shall be responsible for all necessary work and materials associated with site preparation, including necessary infrastructure, grading, drainage, and building pads or right-of-way improvements for the Project. In the event VVCCD is required to improve any portion of the AVFPD Retained Property, AVFPD shall reimburse its reasonable proportionate share, subject to further negotiation, once the actual costs are determined.
- 2.5 **Changes.** VVCCD shall have the sole right to require and pay for enhancements and upgrades to any Facilities within the Project. While VVCCD may consult with AVFPD for direction or advice, AVFPD will have no authority or right to demand or order changes to the Facilities or Training Props (other than those mandated by State law in the course of development or Code Enforcement) and shall not be responsible for costs associated with such enhancements or upgrades.
- 2.6 **Project Management.** VVCCD shall furnish a representative to perform the usual and customary functions of a project manager. AVFPD, may, at its discretion and at no cost to VVCCD, furnish a representative who may consult and cooperate with the Parties regarding Site Specific Improvements only.
- 2.7 **Cooperation.** The Parties shall use reasonable diligent efforts to achieve completion of the Project on or before the agreed upon date of completion under the terms of VVCCD's contract with the design-build entity on the Project.
- 2.8 **Phased Implementation.** Development is expected to occur in two (2) phases. Phase I is the subject of this Agreement and the anticipated lease, and will focus

on the physical improvement and construction by VVCCD of the Training Center on the Leased Property. Phase II may involve new construction and development of a fire station and related improvements on the AVFPD Retained Property by the AVFPD.

SECTION 3: USE

- 3.1 Use and Scheduling of the Training Center.** VVCCD and its education programs and classes shall have priority for use of the Training Center. VVCCD shall be responsible for coordinating the sharing, renting, and scheduling of the facility to maximize its use by VVCCD and use by AVFPD and those other organizations with negotiated contracts as needed for public safety training. VVCCD will establish a procedure for use of the Training Center, including requirements for insurance and indemnification. The Parties understand and agree that any uses of the Training Center by AVFPD will be without charge as part of the consideration for the lease. Uses by other jurisdictions other than the Parties will pay appropriate use fees. All use fees will be collected and will be the sole property of VVCCD. In order to accommodate multi-agency disaster and mutual aid focused training, VVCCD agrees to allow AVFPD to sponsor one joint- training session each quarter without charge to other jurisdictional agencies.

- 3.2 Scheduling, Cooperation.** VVCCD will work toward consensus and agree to cooperate in the scheduling use of the Training Center. The Parties continuing cooperation hereunder shall include the obligation to meet on a regular basis to address the establishment and implementation of such scheduled uses and all future uses. The Parties agree to revise, update and modify the agreed upon schedule of uses and programs for the facility from time to time, as necessary, and to provide notice of same to each other and to each Parties' constituents. The Parties may contemplate the creation of a Joint Scheduling team to be co-chaired and managed by both Parties who represent a cross-section of users.

- 3.3 Disputes Over Use and Scheduling.** In the event the Parties cannot achieve consensus on scheduling and use as provided above, the Parties must exercise their rights under the Conflict Resolution provisions of this and any subsequent Agreement.

- 3.4 Supervision of Training Activities.** All Public Safety training conducted shall be supervised by an appropriate number of personnel holding required certifications and professional qualifications.

- 3.5 Live Fire Training.** All live fire training conducted at the Training Center shall be conducted in strict compliance with industry standards for such training, including the supervision requirements noted above.

- 3.6 Facilities Inspection, Repairs and Planned Maintenance Needs.** VVCCD shall provide all costs necessary for approved preventative maintenance, required maintenance, and repairs to the Training Center. All approved work associated with any custodial services, and all repairs and maintenance needs for the Training Center shall be completed and coordinated by VVCCD through its usual and customary procurement processes.
- 3.7 Training Tower and Associated Fire/Rescue Training Props/Buildings Maintenance and Repair.** AVFPD shall not be responsible costs incurred for any maintenance needs of the Training Center, Training Tower, Fire/Rescue Props, or Associated Buildings. Any agency, including AVFPD, will be responsible for cost incurred to repair damage done to any Facility or Training Prop within the Project caused by any employee and/or equipment owned by the agency causing such damage. Cost to replace expendable items/materials used for training purposes including, but not limited to lumber, plywood and fuel will be borne by the agency using such expendable items/materials.
- 3.8 Utilities.** VVCCD shall be responsible for all costs necessary for all utility services for the Training Center, including, but not limited to, electrical, gas, water and phone services.
- 3.9 Indemnification.** To the extent permitted by law, as respects this Agreement, each Party shall defend, indemnify and hold harmless the other party and its departments, officers, employees and agents from all losses, damages, claims, liabilities and expenses (including reasonable attorney's fees) for damages, including monetary loss, property loss, or for injury or death of persons, to the extent caused by any act, omission or negligence of the indemnifying party or its departments, officers, employees or agents.

The Parties agree that the lease shall provide for indemnification generally as follows:

- 3.9.1** Except as to any claim or liability arising from use of the Training Center by AVFPD, and covered by AVFPD's indemnity below, VVCCD shall defend, indemnify and hold harmless AVFPD and its departments, officers, employees and agents from all losses, damages, claims, liabilities and expenses (including reasonable attorney's fees) imposed or asserted by reason of: (a) any use, nonuse or condition of the Leased Property or any part thereof; (b) any accident, injury to or death of persons (including workmen) or loss of or damage to property occurring on or about the Leased Property or any part thereof; (c) performance of any labor or services or the furnishings of any materials or other property with respect to the Project, or the Leased Property or any part thereof; or (d) any failure on the part of the VVCCD to clean up any hazardous materials on the Leased Property, or to comply with any term of the lease.

3.9.2 AVFPD shall defend, indemnify and hold harmless VVCCD and its departments, officers, employees and agents from all losses, damages, claims, liabilities and expenses (including reasonable attorney's fees) imposed upon or asserted by reason of: (a) any use of the Training Center by AVFPD, or condition on the Leased Property caused by AVFPD; (b) any accident, injury to or death of persons or loss of or damage to property as a result of AVFPD's use of the Training Center; or (c) any failure on the part of AVFPD to clean up any hazardous materials generated during any use of the Training Center by AVFPD, or to comply with any term of the lease.

3.10 Insurance. VVCCD shall provide and maintain in full force liability and property damage insurance from an insurer licensed to transact business in California with coverage amounts of not less than Two Million Dollars (\$2,000,000) per occurrence and Ten Million Dollars (\$10,000,000) aggregate; or, an adequately funded self insurance program for such liability and damage claims which complies with all applicable laws, rules and regulations. AVFPD shall provide and maintain in full force insurance as shall be required by VVCCD's adopted procedure for use of the Training Center, and any other insurance as determined necessary by AVFPD. Each party shall, upon request of the other party, provide the other party with appropriate certificates of insurance or certificates of self insurance.

3.11 Workers Compensation and Employers Liability Insurance. VVCCD shall provide and maintain in full force during the term of the lease: (i) Workers' Compensation Insurance which shall cover claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts may be liable; (ii) Employer's Liability Insurance which shall cover bodily injury (including death) by accident or disease to any employee that arises out of the employee's employment by Program Manager or a Sub-Consultant. The Employer's Liability Insurance required hereunder may be obtained as a separate policy of insurance or as an additional coverage under the Workers' Compensation Insurance required to be obtained and maintained hereunder.

3.12 Notice of Claims. Notice of any possible injury, loss or damage, or dangerous condition of public property, which may involve the other Party, must be given immediately by the Party aware of such an occurrence to the other Party. Written notice of any such possible injury, loss or damage or dangerous condition of public property shall be provided within forty-eight (48) hours of any notice provided orally.

SECTION 4: GENERAL TERMS

4.1 Conflict Resolution. The Parties desire to resolve any dispute between them as quickly, inexpensively, and efficiently as possible, avoiding the expense and delay of court proceedings. This applies to every potential dispute between the Parties. Consequently, the Parties agree to the following sequence of procedures to resolve such disputes:

4.1.1 Negotiation. When either party feels a dispute has arisen, the Party shall notify the other Party in writing of the nature and details of the dispute. Within fifteen (15) days, a meeting shall be held between the Parties Fire Chief, Superintendent or their designees, to begin a good faith attempt to negotiate a resolution. During this procedure, the Parties shall communicate directly with each other in an effort to reach an agreement which serves the best interests of both Parties. This is considered an administrative prerequisite which must be done prior to mediation or arbitration as set forth below.

4.1.2 Mediation. If negotiation as provided in Section 4.1.1 does not resolve the dispute, the Parties shall submit the matter to a neutral private mediator to facilitate further negotiations between the Parties and, if possible, to resolve the dispute upon mutual consent of the Parties. The costs of mediation shall be borne equally between the Parties.

4.1.3 Arbitration. If the dispute does not resolve pursuant to the procedures set forth in Sections 4.1.1 or 4.1.2 above, then the Parties may submit the matter to binding arbitration under California law. The arbitration may be conducted in San Bernardino County, California, in accordance with the AAA rules then in effect unless otherwise agreed in writing between the Parties. The fees and costs of the arbitration shall be borne equally by the Parties. The prevailing party shall not be entitled to the recovery of its attorney's fees or costs. Each party shall bear the expense of its own counsel, experts and preparation and presentation of proof, in connection with all proceedings.

4.2 Time of Essence. Time is of the essence with respect to the performance of each and every term, condition, and obligation of this agreement. Each of the Parties shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this agreement.

4.3 Cooperation With State Chancellor's Office and Other Jurisdictions. The Parties acknowledge this MOU agreement and any subsequent lease or other joint use agreements may be reviewed and require approval from jurisdictions such as the State

Chancellor's Office of the California Community Colleges, including its Administration and Fiscal Policy Division. Parties agree to cooperate with said jurisdictions and amend or revise this agreement or any subsequent agreements as necessary in regards to the ability to procure State funding for development or use.

4.4 Termination. The current conditions, restrictions, environmental of the Property are assumed to provide for the feasible development of the Project. The Parties acknowledge that this MOU and any subsequent agreements may be terminated upon thirty days written notice based on the sole discretion of either Party between the time this MOU is signed and the Notice to Proceed to begin construction, should VVCCD discover changed or unforeseen conditions of, on, or under the Property, or through CEQA compliance, review and requirements by the Division of the State Architect, or review by the State Chancellor's Office, or any other entity of which create circumstances which make the Project impractical or economically unfeasible, or should the State Chancellor's Office require any change(s) to this Agreement or any subsequent agreements which either of the Parties determine to be unacceptable. The cancellation of the MOU based upon the above circumstances will result in no penalties or damages to any parties.

4.5 Incorporation of Recitals. The recitals set forth above are true and correct and are incorporated into this Agreement as though fully set forth herein.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first written above.

VICTOR VALLEY COMMUNITY
COLLEGE DISTRICT

APPLE VALLEY FIRE PROTECTION
DISTRICT

BY: _____
Joe Range

BY: _____
Rick Piercy

ITS: Board President _____

ITS: Board President _____

Exhibit A
[Property Map]

Exhibit B

[Conceptual Site Plan]