

RESOLUTION NO. RES-2018-014

RESOLUTION OF THE COUNCIL OF THE CITY OF SANTA ROSA APPROVING THE AGREEMENT BETWEEN THE MENLO PARK FIRE PROTECTION DISTRICT AND THE CITY OF SANTA ROSA FOR THE USE OF TEMPORARY FIRE STATION TRAILER AND APPARATUS TENT IN FIRE DISTRICT 5

WHEREAS, the City of Santa Rosa sustained a loss of Fire Station 5 located in the Fountaingrove area due to the recent destructive Tubbs fire; and

WHEREAS, the Menlo Park Fire Protection District has agreed to a "Use Agreement" with the City of Santa Rosa for use of a temporary fire station trailer and apparatus tent; and

WHEREAS, The Board of Directors of the Menlo Park Fire District voted to approve the temporary use of the fire station trailer and apparatus tent to the City of Santa Rosa for a period not to exceed two years. As compensation for the use of the facilities, the City shall pay the Menlo Park Fire Protection District one dollar (\$1.00) per year.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Santa Rosa approves the Agreement for the Use of Modular Temporary Fire Station Trailer and Apparatus Tent Between the Menlo Park Fire Protection District and the City of Santa Rosa, attached hereto as Exhibit A, and authorizes the Mayor to execute the Agreement.

BE IT FURTHER RESOLVED that Exhibit A is made part of this Resolution.

BE IT FURTHER RESOLVED that the Council authorizes the Chief Financial Officer to pay all proper claims from JL Key 05096.

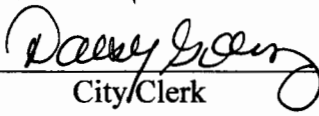
IN COUNCIL DULY PASSED this 6th day of February, 2018.

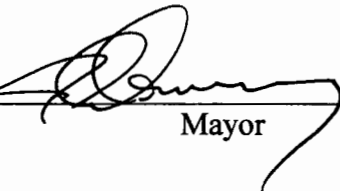
AYES: (7) Mayor Coursey, Vice Mayor Rogers, Council Members Combs, Olivares, Sawyer, Schwedhelm, Tibbetts

NOES: (0)

ABSENT: (0)

ABSTAIN: (0)

ATTEST: 
City Clerk

APPROVED: 
Mayor

APPROVED AS TO FORM:


City Attorney

Exhibit A - Agreement for the Use of Modular Temporary Fire Station Trailer and Apparatus Tent

**AGREEMENT FOR THE USE OF MODULAR TEMPORARY FIRE STATION TRAILER
AND APPARATUS TENT BETWEEN THE MENLO PARK FIRE PROTECTION
DISTRICT AND THE CITY OF SANTA ROSA**

This Agreement for the Use of Modular Temporary Fire Station Trailer and Apparatus Tent (the "**Agreement**") is entered into as of February 6, 2018 (the "**Effective Date**"), by and between the Menlo Park Fire Protection District, a California Special District, ("**District**") and the City of Santa Rosa, a California municipal corporation ("**City**"). City and District are collectively referred to herein as the "**Parties**".

RECITALS

WHEREAS, City recently sustained the loss of both its new and previous Fire Station 5 structures in the recent Northern California Fire Storms that devastated Napa and Sonoma Counties; and

WHEREAS, the District previously purchased and used a twenty four foot by sixty foot (24' X 60') double wide Modular Temporary Fire Station Trailer manufactured by Modtech Holdings, Inc. serial number 02011263S0993021 for temporary crew quarters (the "**Modular Station**") and a eighteen foot by thirty-six foot (18' x 36') Apparatus Tent structure for storage of a fire apparatus (the "**Apparatus Tent**") during the District's previous station rebuilding project; and

WHEREAS, the District does not need the Modular Station and Apparatus Tent (collectively, the "**Facilities**") at this time and would benefit from its temporary removal from its current storage location at the Station 77 property; and

WHEREAS, City desires to borrow from the District, and the District desires to loan to City, the Facilities pursuant to the terms and conditions contained herein; and

WHEREAS, Board of Directors of the District unanimously voted to approve the temporary loan of the Facilities to City for a period not to exceed two years, at a Special Meeting on October 25, 2017.

NOW, THEREFORE, the Parties agree as Follows:

1. Use of Facilities

The District hereby grants City the exclusive right to use and occupy the Modular Station and Apparatus Tent for such purposes as City deems necessary and appropriate. City's use of the Facilities shall be consistent with uses customarily engaged in by a public entity providing fire protection and suppression services. As compensation for the use of the Facilities, City shall pay the District One Dollar (\$1.00) per year.

2. Relocation of Facilities

City shall have the right to move and relocate the Facilities to within the jurisdiction of the City of Santa Rosa at its sole cost and expense. City shall retain qualified personnel or entities to remove, transport and install the Facilities. Prior to removal of the Facilities from their current location, City shall obtain any and all necessary approvals for the transportation of the Facilities on public roads and highways. City shall ensure that the removal, transportation and installation of the Facilities is completed in a safe manner, and in compliance with all applicable laws. The relocation of the Facilities from their current location will occur on a date mutually agreed to by City and District.

3. Alterations and Improvements

City shall have the right to make additions, improvements and/or replacements of and to the Facilities necessary to the provision of fire protection and suppression services provided the same are made in a workmanlike manner and utilizing good quality materials. Any major change to the structural components of the Modular Station by the City shall require prior written consent of the District Fire Chief. City shall have the right to place and install personal property, fixtures and other equipment in and on the Facilities, and such personal property, fixtures and other equipment shall remain City's property and City shall have the right to remove the personal property, fixtures and other equipment at any time during the term of the Agreement. Damage caused to the Facilities by removal of the personal property, fixtures or other equipment shall be repaired by City at City's expense.

4. Term

This term of this Agreement (the "Term") shall commence on the Effective Date and shall remain in effect for two (2) years from the date of relocation of the Facilities to the City, unless sooner terminated pursuant to the provisions of Section 5. The Parties may elect to extend the Term via a separate Lease Extension Agreement.

5. Termination

Either party may terminate this Agreement upon ninety (90) days prior written notice to the other party. Within a reasonable time after the effective date of the termination of this Agreement, or within a reasonable time after the final day of the Term, City shall transport and return the Facilities to a location within the jurisdiction of the District, as determined by the District. Said reasonable time shall not exceed one hundred twenty (120) days without the consent of the District Fire Chief which consent shall not be unreasonably withheld. Such removal, transportation and return of the Facilities shall be subject to the same terms and conditions as set forth in Section 2 above except that City shall return the Facilities in a reasonable "AS IS" condition to storage, and shall not undertake to install the Facilities.

6. Condition of Facilities

City shall take possession of the Facilities in their "AS IS" condition as such condition exists as of the Effective Date, without any warranties whatsoever regarding their condition except as specifically described in this Agreement, and with all faults and defects, if any, that may be located on, under, or around the Facilities, whether known or unknown, suspected or unsuspected, actual or potential.

7. No Representations

City acknowledges that except as expressly set forth herein, the District makes no representations or warranties expressed or implied regarding the condition of the Facilities or the fitness or suitability thereof for City's purposes, including but not limited to, the presence or absence of Hazardous Materials, and no patent or latent defect or deficiency in the condition of the Facilities shall affect the rights of the District or City hereunder. City shall rely solely on its own independent investigation and judgment as to all matters relating to the Facilities. City acknowledges and agrees that prior to the Effective Date it has made such investigations of the Facilities as City deemed necessary to determine the condition of the Facilities, and has approved all such characteristics and conditions and shall take possession of the Facilities in its condition as of the Effective Date "AS-IS" "WHERE-IS" AND WITH ALL FAULTS.

8. Insurance

City, at its sole cost and expense, shall carry insurance, or self-insure, for its activities in connection with this Agreement, and obtain, keep in force, and maintain insurance or equivalent programs of self-insurance, for general liability, workers compensation, property, and business automobile liability adequate to cover its potential liabilities hereunder. City shall require any third party transporting or otherwise working on or in the Facilities to have sufficient insurance to cover risks associated with such activity. District shall be named as an additional insured under each such policy, and the City shall provide proof of insurance to District.

9. Valuation of the Facilities

If the Facilities are destroyed during the Term, the Parties agree that the value of the Modular Station is \$300,000 (three hundred thousand dollars) and the value of the Apparatus Tent is \$7,000 (seven thousand dollars).

10. Indemnification

City shall indemnify, defend with counsel acceptable to the District, whose acceptance shall not be unreasonably withheld, and hold harmless, District and its officers, officials, employees, and agents (collectively, "Indemnitees") from and against all actions, proceedings, claims, demands, liabilities, judgments, losses, expenses (including

reasonable attorneys' fees and expenses) and costs (all of the foregoing, collectively "Liability") arising out of this Agreement, except to the extent such Liability is caused by the willful misconduct of the Indemnitees. Furthermore, City shall indemnify, defend and hold harmless the Indemnitees from and against any claim, action or proceeding to attack, set aside, void or annul this Agreement or any part hereof.

11. No Property Rights

This Agreement is not intended to nor shall it be interpreted to create or vest in City any permanent property rights or interests in the Facilities.

12. Approval by City Council

This Agreement shall not be effective for any purpose until it is approved by resolution of the City Council and executed by the Mayor of the City of Santa Rosa.

13. Miscellaneous

13.1 No Joint Venture. No provision of this Agreement shall be deemed to constitute the Parties as partners, principal and agent, or joint venturers with one another.

13.2 No Waiver. No waiver of, acquiescence in or consent to any breach of any term, covenant or condition hereof shall be construed as, or constitute a waiver of, acquiescence in, or consent to, any other, further or succeeding breach of the same or any other term, covenant or condition.

13.3 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Parties in accordance with this Section. All such notices shall be sent by:

City:	City of Santa Rosa Office of the City Manager 100 Santa Rosa Avenue, Room 10 Santa Rosa, CA 95404
District:	Menlo Park Fire Protection District 1700 Middlefield Road Menlo Park, CA 94025 Attention: Chief Harold Schapelhouman

13.4 No Third Party Beneficiaries. There are no third party beneficiaries to this Agreement. Nothing in this Agreement is intended to or shall confer upon any person other than the Parties any rights or remedies hereunder.

13.5 Governing Law; Venue. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law. Any legal action filed in connection with this Agreement shall be filed in the Superior Court of San Mateo, California or in the Federal District Court for the Northern District of California.

13.6 Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged thereby.

13.7 Attorneys' Fees. In any action at law or in equity, arbitration or other proceeding arising in connection with this Agreement, the prevailing party shall recover reasonable attorneys' fees and other costs, including but not limited to court costs and expert and consultants' fees incurred in connection with such action in addition to any other relief awarded, and such attorneys' fees and costs shall be included in any judgment in such action.

13.9 Amendments; Assignment. This Agreement may be amended only by a written instrument executed by the Parties hereto. This Agreement may not be assigned without written authorization from both Parties.

13.10 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

The parties hereto have executed this Agreement as of the Effective Date.


MENLO PARK FIRE PROTECTION DISTRICT


Fire Chief

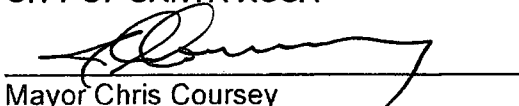
ATTEST:


Clerk

APPROVED AS TO FORM:


District Legal Counsel

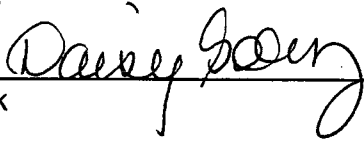
CITY OF SANTA ROSA


Mayor Chris Coursey

ATTEST:

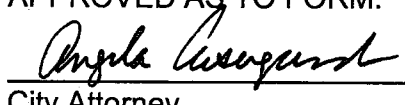
City Clerk

2904678.1

A handwritten signature in black ink, appearing to read "Daisy Young", written over a horizontal line.

APPROVED AS TO FORM:

City Attorney

A handwritten signature in black ink, appearing to read "Angela Livingston", written over a horizontal line.