SOC08FTF

TYPE OF RECORD: NON-PERMANENT

CATEGORY OF RECORD: LEASE

NAME OF AGENCY OR

CONTRACTOR: STATE OF COLORADO ACTING BY AND

THROUGH THE DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

STREET ADDRESS/LOCATION: 2810 D ROAD FIRE TRAINING FACILITY

CITY DEPARTMENT: FIRE DEPARTMENT

YEAR: 2008

EXPIRATION DATE: 12/31/2033

DESTRUCTION DATE: 01/01/2040

# **GROUND LEASE**

THIS GROUND LEASE is made and entered into this day of, 2008_, (this "Lease") by and between THE STATE OF COLORADO, acting by and through the _Department of Military and Veterans Affairs, whose address is 6848 S. Revere Pkwy., Centennial, CO 80112 (the "Landlord" or the "State") and the city of Grand Junction, a Colorado municipal corporation, whose address or principal place of business is 250 North 5 <sup>th</sup> Street, Grand Junction, CO 80501, ("Tenant").		
<b>WHEREAS</b> , the Landlord owns certain real property herein identified, which the Landlord desires to lease to Tenant, and Tenant desires to lease from the Landlord, according to the terms of this Lease; and		
<b>WHEREAS</b> , Tenant desires to construct improvements on the leased real property to use and/or sublease the improvements as may be permitted by the Landlord during the term of the lease.		
<b>NOW, THEREFORE</b> , in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:		
1. SITE		
The Landlord hereby grants to Tenant a lease to use the site as described in Exhibit A attached hereto and incorporated herein by this reference (the "Leased Property' or "Site").		
2. TERM OF LEASE		
The term of this Lease shall extend from the <u>1st</u> day of <u>October 2008</u> (the "Effective Date") until the <u>30th</u> day of <u>September 2033</u> , (the 'Term") unless terminated sooner, as provided herein.		
3. RENT		
Tenant hereby agrees to pay to the Landlord annual rent ("Rent") of <u>ten dollars</u> (\$10.00), payable in U.S. Dollars, without further notice and without any setoff or deduction whatsoever.		
4. USE OF SITE		
A. Tenant shall use the Site during the Term:		
(i.) for the purposes of constructing and operating a training complex to include a driving course, burn building, storage building for fire engines/equipment, irrigation pond, personal property, and utilities including without limitation plumbing and sewer lines, storm sewer, electrical lines, and telephone lines (collectively, the "Improvements"). Except to the extent necessary for construction on the Site or use of the Site for the purposes contemplated by this agreement, the parties agree not to treat, generate, release, discharge, store, transport, or cause to be transported, or dispose of any hazardous substances at, on, under, in, or about the Site or the building. (See exception in paragraph 21A.) The term "hazardous substances" shall mean any toxic or hazardous or noxious substance, material, or waste which is regulated by any local government authority having jurisdiction over the Site, the State of Colorado, or the United States government. The Tenant is responsible for disposal and payment of the cost of disposal of		

hazardous substances that it introduces to or uses on the Site. The Tenant will remain a Conditionally

Exempt Small Quantity Generator during the term of this Lease.

(ii.) subject to and in compliance with all requirements and restrictions that burden the Site, including without limitation those contained in real property documents related to the Site, recorded or otherwise.

- B. Throughout the Term, Tenant shall allow employees, contractors, subcontractors, students, and/or agents of the Landlord reasonable access to the Site and the improvements for such training purposes as the Landlord deems appropriate. Access shall be prearranged and scheduled by mutual agreement of the Landlord and Tenant on mutually satisfactory terms.
- C. Tenant shall not use or permit the Site to be used for any purposes prohibited by the laws or regulations of the United States or the State of Colorado, the ordinances of Mesa County, City of Grand Junction or other governmental entity with jurisdiction.
- D. The tenant's training exercises shall be conducted without sirens or flashing lights. This applies to both the off site approach to the training area as well training exercises on the property. The burn building shall use smokeless fire technology. Training exercises shall be reasonably coordinated with the Veterans Memorial Cemetery to ensure that conflict with burial services are reduced or preferably eliminated.
- E. Except to the extent necessary to utilize the Site for training purposes, Tenant shall not generate, store or dispose on the Site any substance or material classified, designated or regulated as hazardous and/or toxic by the U.S. Environmental Protection Agency or any agency of the State of Colorado.
  - F. Tenant shall not permit any nuisance as defined by local law on the Site.

### 5. POSSESSION

The Landlord covenants to deliver the Site to the Tenant upon commencement of the Term.

### 6. AS-IS CONDITION

The Site is leased in an as-is condition. Without limiting the foregoing, the Landlord does not warrant the suitability of the soil on the Site for support of any improvement to be constructed thereon.

## 7. CONSTRUCTION OF IMPROVEMENTS ON THE LEASED PROPERTY

- A. <u>Permits.</u> The Tenant shall obtain at its expense all licenses and permits required to design and construct the planned improvements on the Site and shall comply with all applicable laws affecting planned improvements. All construction and materials shall be in accordance with the Department of Personnel and Administration, Office of the State Architect current, Policy and Procedures for Code Compliance. Tenant shall give all notices and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on performance of the construction.
- B. Tenant shall submit architectural and engineering plans and specifications for the planned improvements on the Site ("Plans") to the Landlord for its approval. The plans and specifications are to be prepared in conformance with the City of Grand Junction Zoning and Development Code. Tenant shall not commence any physical work or construction on the Site until the Landlord has approved the Plans in writing as indicated below.
- C. <u>Safety.</u> The Tenant shall ensure that the Project is maintained in a safe condition and that only those involved in supervising and/or performing the construction work and the Landlord's employees and agents shall be permitted access to the Project.

D. <u>Asbestos.</u> Tenant shall provide the Landlord a letter of certification that states all products used in the construction are below regulated quantities of asbestos.

#### 8. COMPLIANCE WITH GOVERNMENTAL REGULATIONS

Tenant must comply with all applicable statutes, laws and regulations over the Site, Work, Project, and improvements or any activity or condition on the Site.

## 9. WASTE

Tenant shall not permit, commit, or suffer waste, impairment, or deterioration of the Site, Project or improvements thereon or any part thereof, reasonable wear and tear excepted.

#### PROVISIONS FOR SERVICE

The Landlord will make available to Tenant water, sewer, and electrical power. Solid waste generated by and disposed of by the Tenant is the responsibility of the Tenant. The Tenant is responsible for extending all necessary utilities onto the Site. The Landlord will maintain and make available all streets adjoining or providing access to the boundary line of the Site. The tenant is responsible for providing roadway access within the site. The Landlord is not, however, liable to Tenant for any interruptions of third party services to Tenant unless caused by the Landlord.

### 11. RIGHT TO ENTER

- A. <u>Easements and Utilities.</u> The Landlord expressly reserves the right to enter upon the Site for the purposes of installing, using, maintaining, renewing and replacing such underground water, oil, gas, steam, sewer and other pipe lines and telephone, electric, power and other lines and conduits as the Landlord and/or a public utility reasonably may deem desirable in connection with the development or use of any other property in the neighborhood of the Site. Such entry and work will not interfere with Tenant's use and development of the Site. In the event this right is exercised, Landlord must restore the Site and the improvements, including landscaping, to its original condition. The Landlord agrees it will give Tenant ten (10) business days prior written notice of entry upon the Site, indicating the time and location of such work and the expected date of completion. However, the Landlord has the right to enter upon the Site in the event of an emergency. The Landlord agrees to use reasonable efforts to inform Tenant of any emergency requiring immediate action by the Landlord. Prior to the execution of this Lease, the Landlord will provide with a survey map of the Site depicting all easements and utility lines identified. In the event the Tenant requires additional easements on the Site, other than those shown on the survey map, the location of such easements are subject to the approval of the Landlord, and all costs associated with obtaining such additional easements shall be born by Tenant.
- B. <u>Training Purposes.</u> In accordance with paragraph 4B of this agreement, the Landlord expressly reserves the right to enter upon the Site for any and all training purposes that it deems appropriate, including without limitation, entry by Colorado Army National Guard personnel and military vehicles, for use of the roadway training course.

## 12. MECHANICS' AND OTHER LIENS

Tenant covenants and agrees to keep the Site and the leased property free and clear of any mechanics', materialmen's, and other liens for labor or services performed, materials used or furnished or to be used on Site in connection with any operations of Tenant, any alteration, improvement or repairs or additions which Tenant may make or cause to be made, or any work or construction by, for or permitted by Tenant on the Site. Tenant must promptly and fully pay and discharge any and all claims upon which any such lien may or could be based, and will save and hold the Landlord, the Site, and the leased property

free and harmless from any and all such liens and claims of liens and suits or other proceeding to enforce liens

- A. <u>Interest of the Landlord</u>. No mechanics' or materialmen's liens, mortgages, deeds of trust, or other liens of any character whatsoever created or suffered by Tenant will to any extent, affect the future interests or rights of the Landlord in the leased property.
- B. <u>Contesting Claims</u>. Tenant is not required to immediately pay or discharge any mechanics' or other lien so long as Tenant in good faith proceeds to contest such lien by appropriate proceedings. Tenant must give notice in writing to the Landlord of Tenant's intention to contest the validity of such lien and agrees to indemnify and hold the Landlord harmless from all liability in accordance with paragraph 12A.

### 13 MAINTENANCE AND REPAIRS

- A. <u>Tenant.</u> Tenant has inspected and accepts the Site in its present undeveloped condition. Tenant shall keep the Site and the improvements constructed thereon safe, clean and in a sanitary condition as required by any laws and regulations of the City of Grand Junction, County of Mesa, State of Colorado. Unless otherwise agreed in writing to the contrary, during construction and upon completion of the improvements, the Tenant shall maintain the structural components, interior, exterior interior and roofs of all buildings and building systems constructed on the Site by the Tenant in good order and repair.
- B. <u>Landlord</u>. The Landlord shall have the right to enter the Site and the improvements at reasonable times for the purpose of making necessary inspections.

### ASSIGNMENT AND SUBLETTING

Neither this Lease nor any interest herein may be assigned by Tenant, voluntarily or involuntarily, by operation of law or otherwise. In addition, Tenant agrees that it will not sublet the Site, or any part thereof, or any interest therein, without the written consent of the Landlord first had and obtained. No assignment nor subletting, if permitted, shall release Tenant from any responsibility or liability hereunder. Any subletting or assignment in violation of this Section shall be null and void.

### 15. CASUALTY

- If, during construction or upon completion of the improvements there is a partial or total destruction of the improvements from any cause, the Site must be restored by Tenant to a safe condition and Tenant, at Tenant's sole option and cost, shall either:
- A. Diligently restore and rehabilitate the improvements and pay the cost of such restoration and rehabilitation; or
- B. Within ninety (90) calendar days after such destruction notify the Landlord of Tenant's election to terminate this Lease and surrender the Site to the Landlord, in such event Tenant shall, at the Landlord's option, (1) complete Removal (as defined below); (2) restore the Site as nearly as possible to the condition existing prior to the construction of the improvements, except usable improvements may, at Landlord's option, remain; and (3) redeliver the Site to the Landlord in a neat and clean condition.

Notwithstanding such termination, Tenant must fully perform any obligation under this Lease (except the obligation of restoring and rehabilitating the improvements if Tenant adopts option (B) of this section) relating to an event occurring or circumstances existing prior to the date of termination of this Lease, including the payment of any taxes, assessments, or any charges which Tenant is obligated to pay under the terms of this Lease which may be a lien upon the Site at the date of termination.

## 16. EMINENT DOMAIN, TERMINATION OF LEASE

If the leased premises shall be taken by right of eminent domain, in whole or in part, then this lease, at the option of either party, shall forthwith cease and terminate and the current rent shall be properly apportioned to the date of such taking; and in such event the entire damages which may be awarded for such taking shall be apportioned between the Landlord and Tenant, as their interests appear.

#### 17. TENANT'S PERSONAL PROPERTY

- A. <u>Loss or Damage.</u> Tenant agrees that all property of the Tenant, its agents, employees, students and guests kept or stored on the Site or in the improvements shall be the sole risk of the Tenant and the Landlord shall not be held liable for any damage or loss to any of Tenant's personal property of any kind or description whatsoever, except as otherwise provided in this Lease.
- B. Removal. If Tenant fails to remove all its effects from the Site upon abandonment, expiration or termination of this Lease for any cause whatsoever, the Landlord, at its option, may remove the same in any manner that it shall choose, and store the effects without any liability to Tenant for loss or damage. Tenant agrees to pay the Landlord on demand any and all expenses incurred in such removal, including court costs, attorneys' fees, and storage charges. The Landlord, at its option and without notice, may sell said effects, or any of the same, at public or private sale, for such prices as the Landlord may obtain. The proceeds of such sale may be applied to any amounts due the Landlord under this Lease, including removal expense. If said property, or any portion thereof, shall be offered at public auction, the Landlord may become the purchaser thereof.

#### 18. DEFAULT PROVISIONS

The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

- A. <u>Failure to Pay Rent</u>. Tenant failing to pay the Rent or Additional Rent herein required within thirty (30) days from the date when due.
- B. <u>Failure to Pay Other Costs.</u> Tenant failing to make any other payments required to be made by Tenant when due, where such failure shall continue for a period of thirty (30) days following written notice from the Landlord to Tenant.
- C. <u>Failure to Keep Covenants</u>. Tenant failing to perform or keep any of the terms, covenants, or conditions of this Lease, where such failure shall continue for a period of thirty (30) days following written notice from the Landlord to Tenant.
- D. Abandonment. Tenant abandoning the Site.

### 19. REMEDIES

In the event of an occurrence of default as set forth above, the Landlord shall have the right to:

A. Terminate Lease. Terminate this Lease by giving Tenant written notice of such termination, or

B. Repossess Premises. After notice, re-enter and take possession of the Site, expel Tenant and those claiming by, through or under Tenant and remove the effects of both or either (forcibly, if necessary) without being liable for prosecution thereof, without being deemed guilty in any manner of trespass and without prejudice to any remedies for Lease defaults. The Landlord may then from time to time, without terminating this Lease, relet the Site. Such reentry or taking of possession of the Site by the Landlord shall not be construed as an election on the Landlord's part to terminate this Lease unless a written notice of termination is given to Tenant. In the event of the Landlord's election to proceed under this Section, then such repossession shall not relieve Tenant of its obligations and liability under this Lease, all of which shall survive such repossession.

## 20. TITLE ON TERMINATION, REMOVAL OF IMPROVEMENTS AND EQUIPMENT

The Tenant shall, upon the termination or expiration of this Lease, quit and surrender the Site, and at Landlord's option, all right, title and interest in and to all improvements and equipment constructed or installed on the Site shall vest in the Landlord free and clear of all and any liens and encumbrances created or caused by the Tenant. If the Landlord wants the improvements and equipment removed from the Site, the Landlord shall remove the improvements and equipment at Landlord's expense.

## 21. ENVIRONMENTAL MATTERS

Except to the extent necessary to utilize the Site for training purposes, the parties agree not to use, produce, treat, generate, release, discharge, store, transport, or cause to be transported, or dispose of any hazardous substances at, on, under, in, or about the Site or the building. The term "hazardous substances" shall mean any toxic or hazardous or noxious substance, material, or waste which is regulated by any local government authority having jurisdiction over the Site, the State of Colorado, or the United States government, including but not limited to:

- A. Uncontrolled use, storage, (exception: tenant will be allowed to store propane in an approved tank for training purposes such as use in the burn building), or discharge of oil or petroleum compounds, flammable substances, explosives, radioactive materials, or any other materials or pollutants which pose a hazard to the Site or cause the Site to be in violation of any environmental laws, including all federal, state and local laws, statutes, regulations, or ordinances relating to the environment, and/or public health and safety ("Environmental Laws"):
- B. Asbestos or any asbestos-containing material of any kind or character which is now or may potentially become friable;
- C. Polychlorinated biphenyls ("PCBs"), as regulated by the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; or
- D. Any materials or substances designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. § 1251 et seq., defined as "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., or defined as "chemical substance," "new chemical substance," or "hazardous chemical substance or mixture" pursuant to Sections 3, 6 and 7 of the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.

Tenant also agrees that it will remain a Conditionally Exempt Small Quantity Generator and promptly notify the Landlord of its receipt of any notice of a violation of any Environmental Laws during the Term of this Lease, and will immediately provide the Landlord copies of the same.

Tenant shall take no action to disturb or disrupt existing asbestos within the Site, if any. Should remediation of asbestos be required by an appropriate governmental entity, unless it is the result of Tenant's breach of this provision, either party may terminate this Lease upon 30 days' notice to the other, whereupon all responsibilities of both parties relating to this Lease shall terminate.

#### 22. APPLICABLE LAW

The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution and enforcement of this Lease. Any provision of this Lease, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this Lease to the extent that this agreement is capable of execution.

## 23. COMPLETE AGREEMENT

Time is of the essence of this Lease and of all of its provisions.

This Lease, including all exhibits, supersedes any and all prior written or oral agreements and there are no covenants, conditions or agreements between the parties except as set forth herein. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever unless embodied herein in writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written contract.

# 24. CAPTIONS, CONSTRUCTION, AND LEASE EFFECT

The captions and headings used in this Lease are for identification only, and shall be disregarded in any construction of the Lease provisions. All of the terms of this Lease shall ensure to the benefit of and be binding upon both the Landlord and the Tenant. If any provision of this Lease shall be determined to be invalid, illegal, or without force by a court of law or rendered so by legislative act, then the remaining provisions of this Lease shall remain in full force and effect.

### 25. NO BENEFICIAL INTEREST

The signatories aver that to their knowledge, no state employee has any personal or beneficial interest whatsoever in the service or property described herein.

## 26. NO VIOLATION OF LAW

The signatories hereto aver that they are familiar with §18-8-301, et seq., (Bribery and Corrupt Influences) and §18-8-401, et seq., (Abuse of Public Office), C.R.S., as amended, and that no violation of such provisions is present.

## 27. NOTICE

Any notice required or permitted by this Lease may be delivered in person or sent by registered or certified mail, return receipt requested, to the party at the address as hereinafter provided, and if sent by mail it shall be effective when posted in the U.S. Mail Depository with sufficient postage attached thereto:

#### Landlord:

<u>Purchasing and Contracts</u>
6848 S. Revere Pkwy., Centennial, CO 80112

With a copy of the Notice send to: The Department of Personnel and Administration Real Estate Programs 1313 Sherman, Suite 319 Denver, CO 80203

With a copy of the Notice send to: City of Grand Junction Attorney 250 North 5<sup>th</sup> Street Grand Junction, CO 80501 Tenant:

City of Grand Junction, Colorado
250 North 5<sup>th</sup> Street
Grand Junction, Colorado 80501

Notice of change of address shall be treated as any other notice.

## 28. CONSENT

Unless otherwise specifically provided, whenever consent or approval of the Landlord or Tenant is required under the terms of this Lease, such consent or approval shall not be unreasonably withheld or delayed and shall be deemed to have been given if no response is received within 30 days of the date of request was made. If either party withholds any consent or approval, such party shall on written request deliver to the other party a written statement giving the reasons therefore.

### 29. LANDLORD LIABILITY EXPOSURE

Notwithstanding any other provision of this Lease to the contrary, no term or condition of this Lease shall be construed or interpreted as a waiver of any provision of the Colorado Governmental Immunity Act, §24-10-101 et seq., C.R.S., as now or hereafter amended. The parties hereto understand and agree that liability for claims for injuries to persons or property arising out of the negligence of either the State of Colorado, City of Grand Junction or the respective departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of §24-10-101, et seq., C.R.S., as now or hereafter amended.

## 30. TAX LIABILITY

The Landlord and Tenant acknowledge the Site is presently tax-exempt state property but may be used for both public and private purposes. The Tenant shall be responsible for all taxes assessed against the leased premises if any.

## 31. RIGHT OF THE LANDLORD TO INSPECT

The Landlord shall have reasonable access to inspect the property and improvements after providing 48 hours advanced notice to the Tenant.

### 32. RECORDING

This Lease must be recorded in the official records of Mesa County, Colorado, in order for constructive notice to be given to any third party entering into any contract with Tenant for financing or construction of improvements to be located on the Site, and to any other party claiming under a third party, that the Landlord has no liability for the satisfaction of any claims of any nature arising out of a contract with Tenant. Recordation will be at the sole cost of Tenant.

# 33. LEASE ASSIĞNMENT

Lessee shall not assign this lease and shall not sublet the leased property.

IN WITNESS WHEREOF, the parties hereto have executed this Lease agreement on the day and year first above written.

THE LANDLORD

STATE OF COLORADO
Bill Ritter, Jr., Governor
Acting by and through the Department of Military and Veterans Affairs\_\_\_\_\_\_

By: WINTER

H. Michael Edwards, MAJ GEN, COANG

The Adjutant General

TENANT City of Grand Junction Gregg Palmer, Mayor

(If Corporation) Attest (Seal)

Laurie Kadrich, City Manager

Secretary Secretary	
APPROVED:	LEGAL REVIEW:
STATE OF COLORADO DEPARTMENT OF PERSONNEL & ADMINISTRATION REAL ESTATE PROGRAMS	STATE OF COLORADO John W. Suthers, Attorney General
By: Mulue M. Mulsarl For the Executive Director	Ву

### **EXHIBIT**

# PARCEL F First Responders Campus

A parcel of land situate in the SW1/4 of Section 18, Township One South, Range One East of the Ute Meridian, County of Mesa, State of Colorado, being a part of the lands of the State of Colorado and being more particularly described as follows: Commencing at a Mesa County Survey Marker for the South ¼ Corner of Section 18, Township One South, Range One East of the Ute Meridian, whence a Mesa County Survey Marker for the S.W. Corner of said Section 18 bears N89°39'18"W for a distance of 2654.49 feet; thence N 00°06'42" W a distance of 1318.69 feet; thence N 00°25'24" W for a distance of 500.70 feet to the Point of Beginning; thence the following:

- 1. N 00°25'24" W for a distance of 402.76 feet to the southerly line of the Union Pacific Railroad;
- 2. S 73°01'18" W on said southerly line for a distance of 959.20 feet;
- 3. Departing said southerly line, S 18°16'21" E for a distance of 318.05 feet;
- 4. S 00°03'11" W a distance of 75.05 feet to a point of curvature;
- 5. 220.86 feet along a 400.00 foot radius curve to the right (the central angle of which is 31°38'08" and the chord of which bears N 73°17'44" E for a distance of 218.06 feet.) to a point of reverse curvature;
- 6. 389.20 feet along a 600.00 foot radius curve to the left (the central angle of which is 37°09'58" and the chord of which bears N 70°31'49" E for a distance of 382.41 feet.) to a point of reverse curvature;
- 7. 197.03 feet along a 300.00 foot radius curve to the right (the central angle of which is 37°37'46" and the chord of which bears S 70°45'44" W for a distance of 193.50 feet.) to point of tangency;
- 8. N 89°34'36" E for a distance of 68.61 feet to the point of beginning.

[ Containing approximately 7.96 acres, more or less. ]

This description was prepared by Richard Mason for Rolland Engineering, 405 Ridges Blvd., Grand Junction, CO 81503

