



February 16, 2009

M E M O R A N D U M

TO: District Board of Trustees

FROM: William D. Law, Jr., President

SUBJECT: Tallahassee Fire Academy Agreement

The Tallahassee Fire Academy recently graduated its 4th class and continues to prove to be a valuable addition to the overall programming at the Florida Public Safety Institute and Pat Thomas Law Enforcement Academy. The agreement entered into by the College with the City of Tallahassee Fire Department to use their equipment and facilities for this training is essential to the delivery of this program. Fees, approved by the College's Board of Trustees, are collected from students and paid to the City for use of said equipment and facilities.

The current agreement between the City and the College does not provide for continuation of the agreement from year to year without approval by both the City Commission and the College Board of Trustees. Recently, the City expressed its commitment to a long term relationship and asked that the agreement be amended to provide for easy extension of the agreement. Further, the City is requesting the flexibility necessary to adjust fees paid to the City by the College caused by any increases in fuel and other training related consumables that might be incurred by the City as a result of extending the agreement period over multiple years.

This agreement provides language that will allow for extension of the agreement each year without Commission and Board approvals. Any request by the City for a fee adjustment would require documentation supporting the adjustment and would still require approval by the Board of Trustees.

STAFF RESOURCE: JIM MURDAUGH

RECOMMENDED ACTION:
Approve agreement as presented

USE AGREEMENT

THIS USE AGREEMENT (“Agreement”) is entered into this _____ day of _____, _____, by and between the CITY OF TALLAHASSEE, a Florida municipal corporation (“City”), and TALLAHASSEE COMMUNITY COLLEGE DISTRICT BOARD OF TRUSTEES (“TCC”).

WHEREAS, the City, through the Tallahassee Fire Department (“TFD”), owns and operates a fire-fighting training facility (“Facility”) located at 2964 Municipal Way, Tallahassee, Florida;

WHEREAS, TCC desires to offer a Firefighter I and II – Minimum Fire Standards Program (“Minimum Standards Program”), and requires a fire-fighting training facility for this purpose;

WHEREAS, TCC desires to use the Facility, and the equipment described in Section 1.1 below (“Equipment”), for this Minimum Standards Program, and the City desires to permit TCC to use its Facility and the Equipment to conduct this Minimum Standards Program, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, and in consideration of the mutual covenants and agreements herein contained, the City and TCC do hereby mutually undertake, promise and agree, each for itself and its successors and assigns’ as follows:

ARTICLE 1

FACILITY, EQUIPMENT, AND OPERATIONS

1.1. The City hereby grants permission to TCC to use the Facility and Equipment described herein for the use and purpose of the Minimum Standards Program. The City agrees to provide the following:

- (1) Testing, regular maintenance and repair to buildings, grounds and training drill field owned by the City that is used by TCC
- (2) Testing, repair, regular maintenance, upgrade and replace all Equipment and apparatus owned by the City and used by TCC
- (3) Required Equipment including (a) one Class A Pumper and required tools, and (b) one (1) set of turn out pants, jacket and helmet for each student, all of which shall be

in compliance with the pertinent National Fire Protection Agency (“NFPA”) standards

(4) Required apparatus, burn building, drill tower and drill field which shall be in compliance with the pertinent NFPA standards

(5) Required expendables such as fuels, extinguishing agents and the like

(6) One (1) Safety Officer to be present at all live fire burns representing TFD

1.2. TCC shall be totally responsible for the operation of the Minimum Standards Program.

TCC agrees to provide the following:

(1) Qualified instructors to be hired by TCC and meeting all requirements set forth by the Bureau of Fire Standards and Training. In addition, all instructors employed by TCC that use Facilities and/or Equipment shall be approved by TFD prior to any use of the Facilities or Equipment in fulfillment of the training related to this Agreement

(2) Administrative needs to support the program, including, but not limited to, office space, classroom(s), classroom equipment, required documentation and registration of students and fee collection, including copies of class records for courses held at the Facility

(3) Administrative personnel to coordinate scheduling of the required equipment, apparatus, burn building, drill tower and drill field

(4) Administrative personnel to coordinate the hiring, salary, benefits and scheduling of the instructors

(5) Required textbooks, student uniforms, NFPA approved structural firefighting boots and gloves

1.3. As TFD shall continue to provide its own training at the Facility, TCC shall coordinate its training schedules with TFD for TCC’s use of the Facility for all courses in the Minimum Standards Program.

ARTICLE 2

TERM

The term of this Agreement, unless earlier terminated as set forth therein, shall run from the dated of the last signature on this Agreement until June 30, 2009. This Agreement may be automatically extended for additional one (1) year terms with the written agreement of both the

City and TCC. At least sixty (60) days prior to the expiration of any annual term, each party shall provide the other party with written notice of its intent to extend or to terminate this Agreement.

ARTICLE 3

USE FEES

3.1. Upon TCC receipt and submittal to the City of the required documentation for each Minimum Standards Program class, the City shall invoice TCC and TCC shall promptly pay to the City the fees in the amount of Five hundred twenty-nine and 84/100 dollars (\$529.84) per student per class for use of the Equipment and Facility. Fees are based on use of the Facilities and Equipment for 480 contact hours per student per class. For each hour of use exceeding 480 hours, TCC shall pay additional fees in the amount of One and 10/100 dollars (\$1.10) per student per additional contact hour.

3.2. TCC and the City agree that the use fees listed above shall remain in effect until June 30, 2009. Further, this agreement may be renewed annually with the mutual agreement of the City and TCC. At least sixty (60) days prior to this expiration date and every year thereafter for any extension terms, the fees shall be reviewed and adjusted, for any additional extension terms, as necessary based upon a mutual written agreement of both the City and TCC.

ARTICLE 4

MODIFICATION, CONSTRUCTION AND INSTALLATION

4.1. TCC shall not make any alteration, modification or structural changes in the Facility or the Equipment, nor shall TCC construct or install any additional facilities or equipment without the prior written consent of the City. Any such activities, which are so approved, shall be conducted strictly in accordance with plans and specifications approved, in writing, by the TFD Fire Chief, or his/her designee. TCC shall provide TFD with "as-built" plans upon the completion of any construction or installation of equipment. Any additional maintenance costs incurred by these approved alterations shall be the responsibility of TCC.

4.2. At City's option, upon termination of this Agreement, TCC shall, at its sole cost and expense, remove all alterations, additions, or improvements made by or for TCC and repair all damages occasioned by such removal. If TCC fails to complete such removal and repair, City

may, at TCC's expense, complete said removal and repair. TCC shall pay the reasonable cost thereof within thirty (30) days after City renders TCC a written statement therefore. If such removal is not required or requested by City, all alterations, modifications, other improvements, and equipment shall become the property of the City free and clear of all encumbrances.

ARTICLE 5 MAINTENANCE

TFD shall be responsible for use, maintenance, and repair of all buildings, facilities, other improvements and equipment located within the Facility and used by TCC, including facilities, improvements, and equipment constructed or installed by TCC, except as provided in Section 4.1 above, commensurate with the City's standards in comparable areas and in a manner and condition acceptable to the City.

ARTICLE 6 DAMAGE OR DESTRUCTION OF FACILITY

TCC shall promptly repair or rebuild any portion of the Facility or other improvements constructed or installed by TCC that is damaged or destroyed in connection with TCC's use of the Facility or improvements under the terms of this Agreement.

ARTICLE 7 INDEMNIFICATION AND INSURANCE

7.1. **INDEMNIFICATION:** To the extent permitted by law, each party hereto agrees that it shall be solely responsible for the negligent and wrongful acts of its employees, officers and agents. However, nothing shall constitute a waiver by either party of its sovereign immunity and the limitations set forth in Section 768.28, Florida Statutes. The liability of the parties, as set forth in this paragraph, is intended to be consistent with limitations of state law, including the state's waiver of sovereign immunity pursuant to Section 768.28, Florida Statutes, and no obligation imposed hereby shall be deemed to alter said waiver or to extend the liability of the parties beyond such limits.

7.2. **INSURANCE:** Where applicable, TCC is in compliance with all provisions of Section 768.28, Florida Statutes.

ARTICLE 8
RULES AND REGULATIONS

8.1. TCC shall observe and obey all the laws, ordinances regulations and rules of the federal, state, county and municipal governments, which may be applicable to its use of the Facility and the Equipment. The use by TCC of the Facility and Equipment shall be subject to compliance with all rules and regulations, as adopted by the City from time to time, relating to such uses.

8.2. The City may, from time to time, adopt, amend, or revise rules and regulations for the conduct of operations at the Facility, the Equipment, and associated property. TCC, its students, employees, agents and representatives, shall faithfully comply with and observe such rules and regulations of which it receives notice. Further, TCC, and its students, employees, agents and representatives, shall comply with all reasonable requests of the TFD Fire Chief or his/her authorized representatives relating to the use of the Facility and the Equipment. In the event of a conflict between such rules and regulations and the terms hereof, the Fire Chief or his/her designee shall have final say.

ARTICLE 9
ATTORNEYS FEES

In the event any action or suit or proceeding is brought to enforce compliance with this Agreement or which otherwise arises from rights or obligations set forth herein, the prevailing party shall have and receive such sum as the court may adjudge reasonable as attorney's fees to be allowed in said suit, action, or proceeding.

ARTICLE 10
OTHER FEES AND TAXES

TCC shall promptly obtain and pay the required fees for all permits and licenses necessary for the conduct of the Minimum Standards Program at the Facility. TCC shall also promptly pay all taxes and assessments that may become a lien on the Facility, or that may be levied by the state, county, city or any other tax levying body upon the following: (i) any taxable interest acquired by TCC in this Agreement or in the Facility, or (ii) any taxable possessory right which TCC may have in or to the Facility, or the improvements thereon, by reason of its occupancy thereof, or otherwise, or (iii) on taxable property, real or personal, owned by TCC and

located on or about said Facility. Upon any termination of this Agreement, all taxes then levied or a lien on any of said Facility, or taxable interest therein, shall be paid in full and without prorating by TCC, forthwith, or as soon as a statement thereof has been issued by the Tax Collector, if termination occurs during the interval between attachment of any such lien and issuance of a statement; provided, however, that TCC shall not be deemed to be in default under this Agreement for failure to pay taxes pending the outcome of any proceedings instituted to determine the validity or the amount of such taxes.

ARTICLE 11

TERMINATION

11.1. City, in addition to any other right of termination herein given by TCC or any other rights to which City may be entitled by law or otherwise, may terminate this Agreement by giving TCC sixty (60) days advance written notice to be served as hereinafter provided.

11.2. TCC, in addition to any other right of termination herein given to TCC by City or any other rights to which TCC may be entitled by law or otherwise, may terminate this Agreement at any time that TCC is not in default hereunder, or otherwise in violation of this Agreement, by giving City sixty (60) days advance written notice to be served as hereinafter provided.

ARTICLE 12

NON-WAIVER

12.1. No waiver of default by the City of any of the terms, covenants, or conditions of this Agreement to be performed, kept and observed by TCC shall be construed to be or act as a waiver of any subsequent default of any of the terms, covenants and conditions to be performed, kept and observed by TCC. The performance by the City for any period or periods after a default of any of the terms, covenants and conditions to be performed, kept and observed by TCC, shall not be deemed a waiver of any right on the part of the City to cancel this Agreement for failure by TCC to do, perform, keep or observe any of the terms or conditions of this Agreement.

12.2. No waiver of default by TCC of any of the terms, covenants or conditions to be performed, kept and observed by the City shall be construed to be or act as a waiver by TCC of any subsequent default of any of the terms, covenants and conditions herein contained to be

performed, kept and observed by the City. The performance by TCC of all or any part of this Agreement for or during any period or periods after a default of any of the terms, covenants, and conditions to be performed, kept and observed by the City, shall not be deemed a waiver of any right on the part of TCC to cancel this Agreement for failure by the City to perform, keep or observe any of the terms, covenants or conditions.

ARTICLE 13
SUSPENSION AND ABATEMENT

In the event that City's operation of the Facility, through no fault of the City, or TCC's operation at the Minimum Standards Program, through no fault of TCC, should be restricted substantially by action of the Federal Government, or any agency thereof, or by action of the State of Florida, or any agency thereof, then either party hereto shall have the right, upon written notice to the other, to a suspension of this Agreement and an abatement of a just proportion of the services and facilities to be afforded hereunder, from the time of such notice until such restriction shall have been remedied and normal operations restored.

ARTICLE 14
INVALID PROVISIONS

It is further expressly understood and agreed by and between the parties hereto that in the event any covenant, condition or provision of this Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of such covenant, condition, or provision shall in no way affect any other covenant, condition, or provision herein contained; provided, however, that the invalidity of any such covenant, condition or provision does not materially prejudice either the City or TCC in their respective rights and obligations contained in the valid covenants, conditions or provisions in this Agreement.

ARTICLE 15
NOTICE

All notices, requests, consents, and approvals under this Agreement shall be served or given only by certified or registered mail, except in cases of emergency, in which case they shall be confirmed by certified or registered mail; and shall be addressed as follows:

To the City:

Chief Cindy E. Dick
Tallahassee Fire Department
327 North Adams Street
Tallahassee, Florida 32301

To TCC:

Jim Murdaugh
Tallahassee Community College
444 Appleyard Drive
Tallahassee, Florida 32304

Either party may change its address or the person designated to receive such notice by notifying the other party of the change and its effective date in the manner provided in this Article 15.

ARTICLE 16

TITLES

Any titles or special emphasis (e.g., bold type) are inserted or used only as a matter of convenience and for references, and in no way are intended to define, limit or describe the scope or extent of any provision of this Agreement.

ARTICLE 17

PRIOR AGREEMENTS

The City and TCC hereby agree and acknowledge that this Agreement is intended to supercede any other agreements between the parties relating to the use by TCC of the Facility or the Equipment.

IN WITNESS WHEREOF, the parties have caused these presents to be executed by their duly authorized representatives effective the day and year first written above.

CITY OF TALLAHASSEE

Attest:

Gary Herndon,
City Treasurer-Clerk

By:_____
Anita Favors Thompson
City Manager

Approved as to form:

City Attorney

TALLAHASSEE COMMUNITY COLLEGE

Witness

By:_____
William D. Law, Jr.
President

Witness