

**MEMORANDUM OF AGREEMENT
FOR USE OF COUNTY EMERGENCY VEHICLE OPERATIONS COURSE**

This memorandum of agreement ("Agreement"), dated 10-19-19 ("Effective Date"), is entered into by and between the County of San Diego, a political subdivision of the State of California ("County"), and the City of San Diego, a California municipal corporation ("City"). The Agreement relates to the acquisition of land and development of an Emergency Vehicle Operations Course ("EVOC").

RECITALS

- A. County is currently in the process of acquiring a 40-acre portion of Assessor Parcel Number 648-070-03 ("EVOC Parcel") located in East Otay Mesa, shown in Exhibit "A" (EVOC Project – Vicinity Map), in order to construct an EVOC. The proposed EVOC project will include the EVOC, up to 62,240 square feet. of structures, and approximately 170 parking spaces ("EVOC Project") shown for purposes of reference only in Exhibit "B" (EVOC Project - Conceptual Site Plan) of this Agreement.
- B. As a member of the San Diego Regional Public Safety Training Institute (SDRPTI), sometimes referred to as the Regional Law Enforcement Academy ("Academy") – a partnership between the County, the City of San Diego, and the Community College District (SDCCD) dedicated to training public safety personnel - the City wishes to contribute \$5,000,000 to help fund procurement and Phase I construction of the EVOC in order to conduct in-service training modules at the EVOC as further defined in this Agreement.
- C. The City's use of the EVOC would allow the City to meet requirements established by the California Commission on Peace Officer Standards and Training (POST) and other in-service training requirements.
- D. The Sheriff of San Diego County finds that entering into this Agreement with the City is in the public's interest, and will not conflict or interfere with County's use of the EVOC.

Now Therefore, County and City desire to proceed with the acquisition of the EVOC Parcel and construction of the EVOC project, and for good and valuable consideration, the parties agree as follows:

AGREEMENT

1. Term. The term ("Term") of this Agreement will begin on the Effective Date of this Agreement and shall expire fifteen (15) years after the Notice of Completion for the EVOC Project is recorded with the San Diego County Recorder's Office. If at any time during the Term, the EVOC Project cannot be used for any reasons for a period exceeding thirty (30) days, the Term will be automatically increased by the number of days that the EVOC Project was not usable. At the end of this term, both parties may agree to meet to renegotiate a new agreement.

2. Termination:

A. For Default: Upon City's breach of this Agreement, County shall have the right to terminate this Agreement, in whole or part. Prior to termination for default, County will send City written notice specifying the cause. The notice will give City thirty (30) days from the date the notice is issued to cure the default or make progress satisfactory to County in curing the default.

B. County maintains the right to discontinue the use of the EVOC Parcel for the purposes of EVOC training, and terminate this agreement, should it determine that it is unsafe to operate and a cure is infeasible, and if it is mutually agreed-upon by both County, City and Community College that it is no longer necessary or feasible to continue operating.

C. Should County terminate this Agreement for any of the reasons stated above, County shall refund to City a pro rata share of the Five Million Dollars (\$5,000,000) the City contributed per Section 7 of this Agreement.

3. County Duties:

A. County will make a good faith effort to acquire the EVOC Parcel.

B. If County is able to acquire the EVOC Parcel, County will construct the EVOC project using a phased approach, which at full build out will include: an EVOC track constructed according to POST requirements; an off-road driving area for training on all-terrain vehicles (ATVs), four-wheel drive training, and side-by-side training exercises; secured parking facilities where City can store vehicles in accordance with City's rights set forth below; locked storage facilities; up to 62,240 square feet of structures which must include classrooms able to accommodate at least 40 people and are equipped with a projector, computer, speakers and other equipment and furniture typically used for training, office space, space for the driving simulators, a garage and area for vehicle maintenance: a fueling center; and at least 170 parking spaces.

C. County will develop and maintain a scheduling process, to allow the City, along with the County and the SDCCD, to have priority scheduling rights. County agrees that use of the EVOC may be scheduled by the County, City, or SDCCD up to one (1) year in advance of intended date of use. Between the County, City, or SDCCD, such use shall be scheduled on a first-come basis. County will not allow any other entities to schedule use of the EVOC more than six (6) months in advance of the date of use.

D. County will be responsible for the ongoing maintenance of the EVOC Project, ensuring that the facilities are in good repair and are suitable for the intended use.

4. City Use of EVOC:

A. City will have the right to use the EVOC Project for a minimum of 60 days each year ("City Days"), without any charge from the County, to conduct training modules and in-service trainings for the sole purpose of providing law-enforcement related training. City will also be allowed to use up to 5 additional days each year, without any charge from the County, as long as there are no scheduling conflicts on those days of use. A maximum of 5 unused City Days may roll over to the next calendar year with total days of usage not to exceed 70 days in any calendar year without additional charges. City will have access to all driving courses, street grid, skills pad, classrooms, simulators, and any other facilities that are a part of the EVOC Project. City use of the EVOC Project will be scheduled in advance. City will not use any portion of the EVOC Project that was not reserved prior to the date of use, without obtaining County's approval for such use. For example, if City only scheduled use of the EVOC, City shall not use any other facilities such as the classrooms or simulators on that day, without seeking the County's consent.

B. The City Days will not include any days reserved by the City for instruction of the Regional Law Enforcement Academies provided by the SDRTPSI, which currently occurs four times per year. When scheduling use of the EVOC Project for Academies, City shall reserve the time as City/SDRTPSI, so that County will be able to differentiate between the City Days used strictly for SDPD training, and time reserved by the City for the SDRTPSI.

C. City shall also have the right to store up to 18 marked police vehicles, two trailers, an EVOC truck, a radar trailer and two Skid Car platforms at the facility at all times, in a secured location at the facility.

D. City shall also have the right to use a locked storage unit, which is at least 12' x 12' in dimensions in order to store equipment needed for training purposes, such as lighting systems, easy drift rings, mounted tires, spare parts, traffic signs, and cones. This list is not an exhaustive list of what the City may store, but is simply meant to provide examples of the types of items the City utilizes during training and will need to have on hand.

E. City will be provided with an office space large enough to place two desks and chairs, filing cabinets, stand up lockers, computers, and bookshelves for the storage of classroom training materials necessary to supplement the actual in-field driving training on the EVOC itself. City must be able to secure the office during times when City staff is not on-site.

5. Access. City shall not impede the flow of vehicular traffic on, or restrict public access to or from, the EVOC Parcel. City shall not interfere with other County operations on the EVOC Parcel that are unrelated to City training requirements.

6. Third Parties. This agreement does not, and the City shall not, extend the use of the EVOC Parcel to persons not engaged in the training being conducted by the City.

7. Agreement. This Agreement is not a lease, does not create or convey an easement and does not convey any interest or estate in real property to City.

8. City Funds.

A. City agrees to contribute funds towards the EVOC acquisition and development by delivering to County, sixty days after City Council approval and execution of this Agreement, Five Million Dollars (\$5,000,000) in the form of a check or wired funds as consideration for City's rights as referenced in this Agreement.

B. In the event that County does not acquire the EVOC Parcel or does not construct the EVOC Project within five years of the execution of this Agreement, the County shall return the Five Million Dollars (\$5,000,000) provided by City with interest within 60 days, and this Agreement shall terminate. Interest shall accrue from the date the City remits the Five Million Dollars (\$5,000,000) to the County at a rate per annum equal to the rate County then earns on its cash investments.

9. Dispute Resolution If in the opinion of either party the other has failed to comply with the requirements of this Agreement or if a dispute arises over the interpretation of this Agreement (collectively, a "Dispute"), then the dispute resolution procedures of this section shall be invoked.

- A. Within 10 days of receiving notification of a dispute, the Sheriff's EVOC manager, Sheriff's Contracts Manager and the San Diego Police Department's Commanding Officer over training and employee development, shall meet and try to resolve the dispute;
- B. If the parties listed in 9A are unable to resolve the dispute the Sheriff's Human Resources Commander and the San Diego Police Department's Assistant Chief over training and employee development, will meet and try to resolve the issue;
- C. If the parties listed in 9B are unable to resolve the dispute, the Assistant Sheriff for Human Resources will meet with the Executive Assistant Chief of the San Diego Police Department.

10. Insurance.

A. The City shall provide Certificates of Insurance or proof of Self Insurance in the amount of \$1 million per occurrence and an annual aggregate amount of \$2 million.

11. Indemnification.

A. The County shall not be liable for, and City shall defend and indemnify County and the employees and agents of County (collectively "County Parties"), against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys'

fees and court costs (hereinafter collectively referred to as "Claims"), related to this Agreement or the work covered by this Agreement and arising either directly or indirectly from any act, error, omission or negligence of City or its Contractors, licensees, agents, servants, employees, or Academy recruits referred to the EVOC solely by City who are not employees of a local law enforcement agency. City shall have no obligation, however, to defend or indemnify County Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of County Parties.

B. City shall not be liable for, and County shall defend and indemnify City and the elected official, officers, employees and agents of City (collectively "City Parties"), against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), related to this Agreement or the work covered by this Agreement and arising either directly or indirectly from any act, error, omission or negligence of County or its Contractors, licensees, agents, servants, employees, or Academy recruits referred to the EVOC solely by County who are not employees of a local law enforcement agency. County shall have no obligation, however, to defend or indemnify City Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of City Parties.

B. The indemnification provisions herein shall survive termination of the Agreement.

12. Notices. Any notice ("Notice" or "Notices") required or permitted to be given pursuant to this Agreement shall be written and shall be effective (i) when personally delivered to an officer or an authorized representative of the other party, (ii) sent by the United States Postal Service, postage prepaid, (iii) sent by courier delivery service, (iv) sent by facsimile, with the original document subsequently sent by United States Postal Service First Class Mail, postage prepaid, or (iv) sent by the United States Postal Service, postage prepaid sent to the following addresses:

If to County: San Diego County Sheriff's Department
 Contracts Division
 Attn: Contracts Manager
 9621 Ridgehaven Court
 San Diego, California 92123

If to City:

THE CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, CA 92101
and

THE CITY OF SAN DIEGO

Attention: Chief of Police, San Diego Police Department
1401 Broadway
San Diego, CA 92101

Notices mailed by the United States Postal Service or sent by a courier delivery service shall be deemed to have been given, delivered and received three (3) business days after the date the Notice or other communication is postmarked by the United States Postal Service or dated by the courier delivery service. All other Notices or other communications shall be deemed given, delivered and received upon actual receipt. Either party may, by written Notice delivered pursuant to this section, at any time designate a different address to which Notices shall be sent.

13. Entire Agreement. This Agreement and any exhibits attached to this Agreement constitute the entire agreement between County and City with respect to the subject matter contained in this Agreement. All other representations, oral or written, are superseded by this Agreement. Neither party is relying on any representation outside of this Agreement. This Agreement may be changed only by written amendment signed by County and City.

14. Interpretation. This Agreement shall be governed by the laws of the State of California. However, the provisions of this Agreement shall be strictly construed against City.

15. Authority to Sign. City represents and warrants that it has full power and authority to execute and fully perform its obligations under this Agreement without the need for any further action, and that the person executing this Agreement on behalf of City is the duly designated agent of City and is authorized to act on behalf of City.

16. Signatures; Effectiveness; Effective Date. County and City have executed this Agreement as of the day and year written below. This Agreement shall be effective as of the date of its execution by the Clerk of the Board of Supervisors.

"County"

County of San Diego,
A political subdivision of the State of California

By: [Signature]
County Counsel

By: [Signature]
Andrew Potter, Clerk of the Board

Date: 10/11/19

Date: 10/14/19

Approved and/or authorized by the Board of Supervisors of the County of San Diego.	
Meeting Date: <u>4/9/19</u>	Minute Order No. <u>2</u>
By: <u>E. Rocha</u>	Date: <u>10/11/19</u>
Deputy Clerk of the Board Supervisors	

"City"

THE CITY OF SAN DIEGO, a
California Municipal Corporation

Date: 8/15/19

By: 

Cybele L. Thompson
Director, Real Estate Assets Department

Approved as to form:

MARA W. ELLIOTT, CITY ATTORNEY

By: Melissa Ailes
Melissa Ailes
Deputy City Attorney

Date: 8/15/19

EXHIBIT "A"
EVOC PROJECT
Vicinity Map

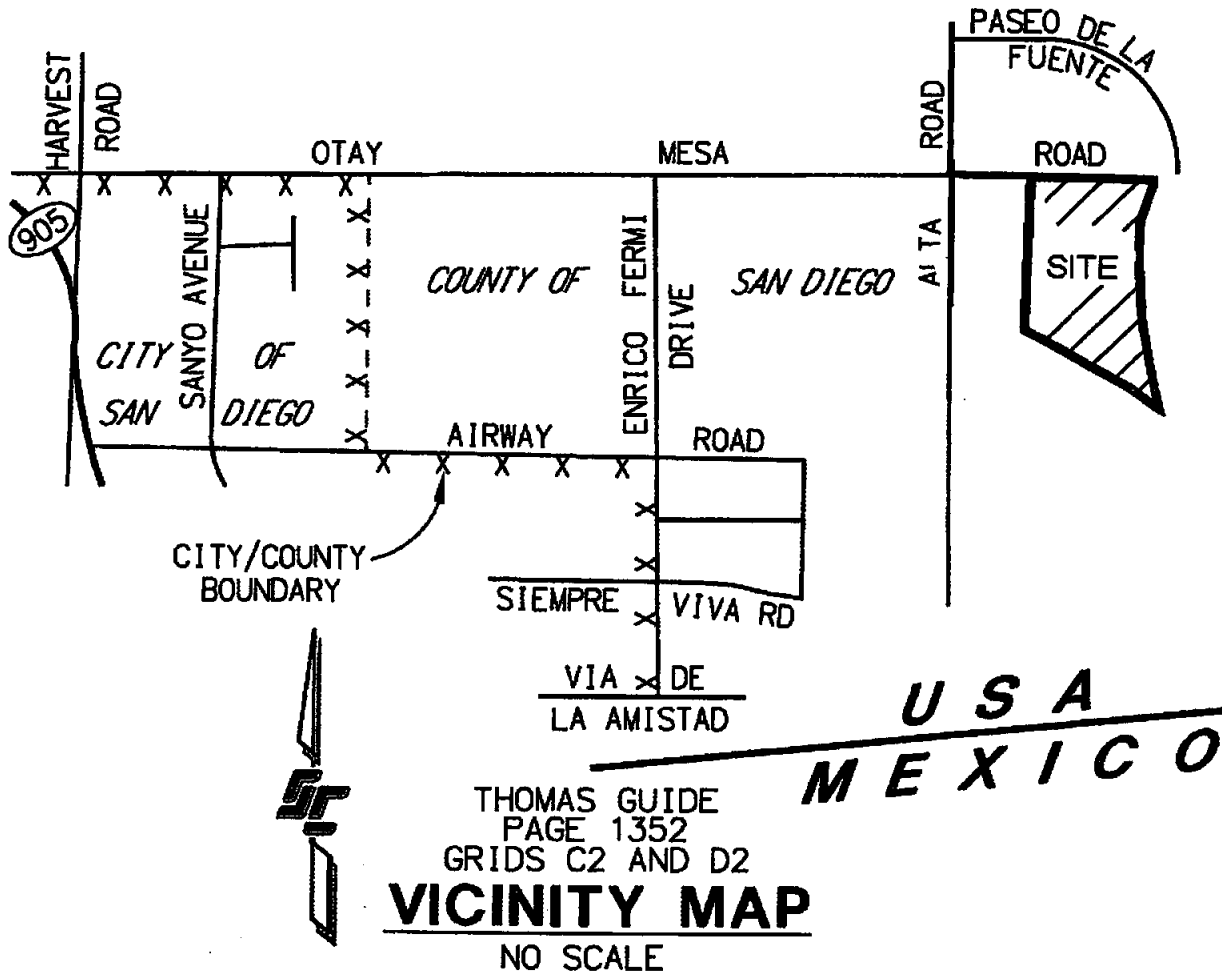
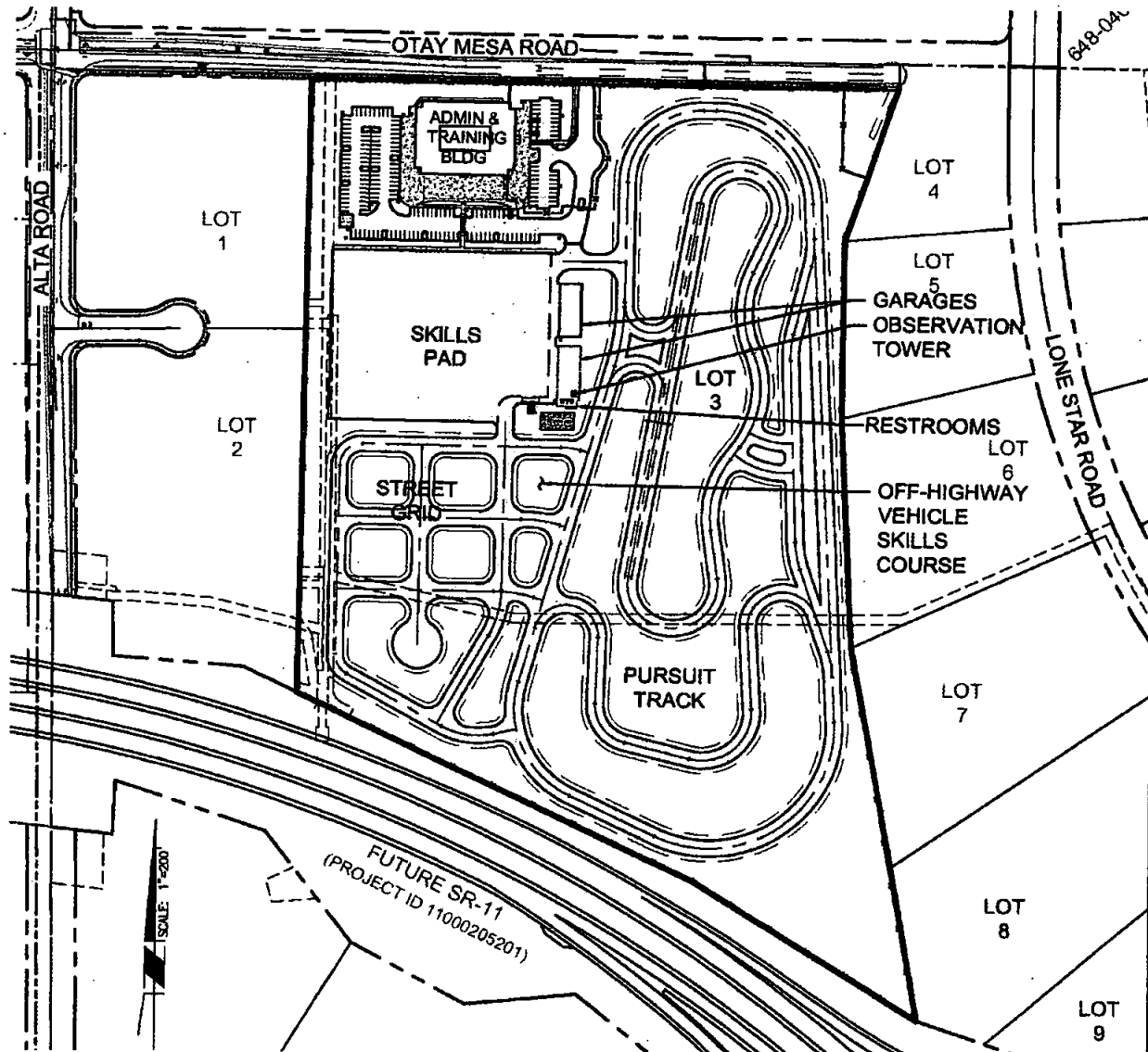


EXHIBIT "B"
EVOC PROJECT
Conceptual Site Plan



ORDINANCE NUMBER O- 21095 (NEW SERIES)

DATE OF FINAL PASSAGE JUL 11 2019

AN ORDINANCE OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING THE MAYOR, OR HIS
DESIGNEE, TO EXECUTE AND DELIVER THE
MEMORANDUM OF AGREEMENT FOR USE OF COUNTY
EMERGENCY VEHICLE OPERATIONS COURSE THAT
WILL BE CONTRUCTED BY THE COUNTY ON THE REAL
PROPERTY IDENTIFIED AS ASSESSOR'S PARCEL
NUMBER 648-070-03 IN THE OTAY MESA AREA.

WHEREAS, the City of San Diego (City), the County of San Diego (County), and the
San Diego Community College District (SDCCD) have informally cooperated with the training
of safety personnel since 1993, and entered into a Joint Exercise of Powers Agreement on May
15, 2000; and

WHEREAS, the City, County, and SDCCD historically used a portion of the Miramar
College campus for emergency vehicle operations trainings until the campus expanded and was
no longer able to accommodate that use; and

WHEREAS, following that expansion, the parking lot of SDCCU Stadium (Stadium) is
used for the purposes of emergency vehicle operations training, however, the City, County and
SDCCD determined that there is a need for a new Emergency Vehicle Operations Course
(EVOC) because the Stadium is not laid out ideally for EVOC training, and the training has to be
coordinated with numerous events at the Stadium and in the Stadium parking lot; and

WHEREAS, the City, County and SDCCD originally planned to each contribute
\$5,000,000 to purchase land and develop the EVOC, however, after researching potential
properties and construction costs, it was determined that \$15,000,000 would be insufficient to
accomplish these goals; and

WHEREAS, the County informed the City and SDCCD that it was willing to acquire approximately 40 acres located near the Southeast corner of Alta and Otay Mesa Roads in Otay Mesa at a price of \$21,000,000 and to design and construct the EVOC, with the total project costs estimate being \$29,140,000; and

WHEREAS, the County has moved forward to acquire the site, fully entitled to allow the EVOC, and escrow is expected to close in July 2019; and

WHEREAS, the City and County have negotiated a Memorandum of Agreement for Use of County Emergency Vehicle Operations Course on file with the City Clerk as Document No.: 00-21095 (Agreement), which requires that the City provide a contribution of \$5,000,000 within 60 days of the effective date of the Agreement; and

WHEREAS, the City will have the right to use, without additional charge, the EVOC for a minimum of sixty days per year for fifteen years, which days will not include any days reserved by the City for instruction of the Regional Law Enforcement Academies; and

WHEREAS, the City will also have the right to store equipment related to and necessary for EVOC training at the EVOC facility, and will have the right to use an office space large enough to accommodate two desks and related office equipment; and

WHEREAS, if the County is unable to close escrow or construct the EVOC as required in the Agreement, the City will be entitled to the return of its \$5,000,000 contribution plus interest as set forth in the Agreement; and

WHEREAS, Planning Department staff has reviewed three certified environmental documents prepared by the County as the lead agency, specifically the Addendum to the Final Supplemental Environmental Impact Report (SEIR) for the Otay Crossings Commerce Park project certified April 13, 2018, the Final SEIR for the Otay Crossings Commerce Park project

certified October 7, 2011, and the Final EIR for the East Otay Mesa Specific Plan certified on July 27, 1994, and determined that this activity is adequately addressed by those documents as part of the previously approved projects, and this activity is not a separate project for the purposes of California Environmental Quality Act (CEQA) review pursuant to CEQA Guidelines section 15060(c)(3) and 15378(c); and

WHEREAS, under San Diego Charter section 99, a supermajority vote of the City Council is required for passage of this Ordinance; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the Mayor, or his designee, is authorized to execute and deliver that certain Memorandum of Agreement for Use of County Emergency Vehicle Operations Course with the County of San Diego.

Section 2. That the Chief Financial Officer is authorized to appropriate and expend \$5,000,000 from Fund 400006, C.O.-Pueblo Land/Pol. Decentralization, for the purposes of making the City's contribution payment required by the Agreement, contingent upon the Chief Financial Officer furnishing one or more certificates certifying that the funds necessary for expenditure are, or will be, on deposit in the City Treasury.

Section 3. That a full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 4. That this Ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By Melissa D. Ables
Melissa D. Ables
Deputy City Attorney

MDA:nja
06/06/19
Or. Dept: READ
Doc. No.: 2024123

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of JUL 09 2019.

ELIZABETH S. MALAND
City Clerk

By Connie Patterson
Deputy City Clerk

Approved: 7/11/19
(date)

Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on JUL 09 2019, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	☒	☐	☐	☐
Jennifer Campbell	☒	☐	☐	☐
Chris Ward	☒	☐	☐	☐
Monica Montgomery	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Scott Sherman	☒	☐	☐	☐
Vivian Moreno	☒	☐	☐	☐
Georgette Gómez	☒	☐	☐	☐

Date of final passage JUL 11 2019.

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

By Connie Patterson Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

JUN 18 2019

, and on JUL 11 2019.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

By Connie Patterson Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 21095

Passed by the Council of The City of San Diego on July 9, 2019, by the following vote:

YEAS: **BRY, CAMPBELL, WARD, MONTGOMERY, KERSEY, CATE, SHERMAN,**
MORENO, GÓMEZ.

NAYS: **NONE.**

NOT PRESENT: **NONE.**

RECUSED: **NONE.**

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: **Matthew R. Hilario**, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of ORDINANCE NO. **O-21095** (New Series) of The City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on **June 18, 2019**, and on **July 11, 2019**.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By:  _____, Deputy