

**LEASE AGREEMENT**

**By And Between**

**THE CITY OF RIALTO, a California general law city**

**And**

**CONFIRE, a California joint powers authority**

**Dated: \_\_\_\_\_, 2022**

## LEASE AGREEMENT

This Lease Agreement (the "**Agreement**") is entered into as the date indicated on the cover page by and between the City of Rialto, a California municipal corporation (the "**Landlord**"), and CONFIRE, a California joint powers authority (the "**Tenant**"), who agree as follows:

### RECITALS

- A. Landlord owns certain real property located at 3288 N. Alder Avenue, Rialto, California 92377, that is currently being used by Landlord as a fire station ("Fire Station").
- B. Tenant desires to use a portion of the Fire Station, as more particularly depicted as the "Comm Room" and "Offices" in Exhibit A, as a dispatch center ("Property").
- C. Landlord and Tenant desire to enter into this Agreement for use of the Property for a Term not exceeding one year.

### OPERATIVE PROVISIONS

For consideration, the receipt and value of which is hereby acknowledged by both Parties, Landlord and Tenant hereby agrees as follows:

1. **Definitions.** For purposes of this Agreement, the terms set forth below shall be defined as and have the specific meaning ascribed herein:

1.1 "**Expiration Date**" means the date and time upon which the Term of the Agreement expires and Tenant is obligated to have vacated and surrendered the Property.

1.2 "**Hazardous Materials**" shall mean any and all of the following:

(i) any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or for which liability arises for misuse, pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901, et seq.; the Toxic Substances Control Act, 15 U.S.C.S. § 2601, et seq.; the Clean Water Act, 33 U.S.C. §1251, et seq.; the Insecticide, Fungicide, Rodenticide Act, 7 U.S.C. § 136, et seq.; the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 6901, et seq.; the Clean Air Act, 42 U.S.C. § 7401, et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f, et seq.; the Solid Waste Disposal Act, 42 U.S.C. §6901, et seq.; the Surface Mining Control and Reclamation Act, 30 U.S.C. § 1201, et seq.; the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11001, et seq.; the Occupational Safety and Health Act, 29 U.S.C. §§ 655 and 657; the Hazardous Waste Control Act, California Health and Safety Code ("H.&S.C.") § 25100, et seq.; the Hazardous Substance Account Act, H.&S.C. § 25330, et seq.; the California Safe Drinking Water and Toxic Enforcement Act, H.&S.C. § 25249.5, et seq.; the Underground Storage of Hazardous Substances, H.&S.C. § 25280, et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act, H.&S.C. § 25300, et seq.; the Hazardous Waste Management Act, H.&S.C. §25170.1, et seq.; the Hazardous Materials Response Plans and Inventory, H.&S.C. § 25001, et seq.; the Porter-Cologne Water Quality Control Act, Water Code § 13000, et seq., all as they may from time to time be amended;

(ii) any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or for which liability for misuse arises pursuant to any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree due to its hazardous, toxic or dangerous nature;

(iii) any petroleum, crude oil or any substance, product, waste, or other material of any nature whatsoever which contains gasoline, diesel fuel or other petroleum hydrocarbons other than petroleum and petroleum products contained within regularly operated motor vehicles; and

(iv) polychlorinated biphenyls (PCB), radon gas, urea formaldehyde, asbestos and lead.

1.3 **“Property”** means that portion of the Fire Station located at 3288 N. Alder Avenue, Rialto, California 92377, that is more particularly described and depicted in Exhibit A.

2. **Material Inducement.** Tenant agrees that its promises and agreements to strictly adhere to and comply with the material terms and conditions set forth in this Agreement are a material inducement to Landlord’s lease of the Property to Tenant, in the absence of which Landlord would not have leased the Property to Tenant. Tenant’s failure to adhere to and comply with the terms and conditions of this Agreement shall be deemed a material breach of the Agreement.

3. **“AS-IS” Condition; Tenants Sole Risk.**

(i) Tenant agrees that it is thoroughly familiar with the Property and all aspects thereof, including, without limitation, the physical condition of the Property, its zoning and all other restrictions and limitations applicable to the Property (whether or not of public record). Tenant additionally agrees that it assumes all liability and responsibility for the physical condition of the Property. **Tenant agrees that neither Landlord nor anyone acting on Landlord’s behalf has made any representation or warranty of any kind or nature whatsoever respecting the physical condition of the Property, its suitability for Tenant’s use, or any other matter relating to the Property (including, but not limited to, the environmental condition of the Property) or this Agreement, and Tenant agrees that it is leasing the Property in its “AS-IS CONDITION AND WITH ALL FAULTS”.**

\_\_\_\_\_  
Tenant’s Initials

4. **Term.** The term (“**Term**”) of this Agreement commences on [REDACTED] (“**Commencement Date**”) and shall continue for a period of five (5) years from the Commencement Date. Tenant may terminate this Agreement at any time during the Term by providing Landlord with written notice at least thirty (30) days prior to the date Tenant will vacate the Property.

5. **Use; Restricted Access to Property; Safety Measures; Compliance with Laws.**

5.1 **Use.** Tenant agrees that it shall use the Property solely for dispatch service necessary to the operation of CONFIRE (“**Permitted Use**”).

5.2. Safety Measures. Tenant agrees to take all actions reasonably necessary to protect human safety in the course of its occupancy of the Property.

5.3 Hazardous Materials. During the term of the Agreement, Tenant agrees that it will not spill (without adequately cleaning up) or dispose of any Hazardous Materials on the Property. Tenant agrees to comply with all applicable laws and regulations concerning the use or storage of Hazardous Materials necessary for the Permitted Use on the Property. Tenant agrees to indemnify, defend and hold Landlord harmless against all claims, judgments, and costs (including attorneys') related to Tenant's use, storage, spillage, or disposal of Hazardous Materials on the Property during the term of the Agreement.

5.4 Use of Property by Landlord in the Event of an Emergency. Landlord shall have the right, upon no less than twenty-four (24) hours' notice, to use all portions of the Property as an Emergency Operations Center in the event of a declared emergency by the President of the United State, the State of California, the County of San Bernardino, the City Council of the City of Rialto, or by the City Manager of the City of Rialto.

6. Rent. As rent for the Property, Tenant agrees to pay to Landlord the sum of \$1.00 per year for the Term of the Agreement. Rent is to be paid in advance, without abatement, deduction or offset due to Landlord upon the execution of the Agreement and annually upon the anniversary of the Commencement Date.

7. Maintenance. Tenant agrees that it shall, at its sole cost and expense, during Tenant's occupancy of the Property, maintain the Property and all portions thereof. Tenant agrees that Landlord has no obligation of any kind or nature to maintain, repair, replace or improve the Property or any portion thereof. Tenant agrees that Landlord will have no liability of any kind or nature respecting any loss or theft of, or damage to, any such fixtures, equipment, or personal property of Tenant located in the Property.

8. Insurance. Tenant agrees to keep and maintain public liability and property damage insurance respecting the Property, naming Landlord as an additional insured, in form and amounts (not less than \$1,000,000 per occurrence) and with insurers reasonably satisfactory to Landlord. Such insurance shall expressly cover Tenant's obligation to indemnify, protect, defend and hold Landlord harmless, as provided in Section 9 of this Agreement. Tenant also agrees to keep and maintain a policy or policies of fire and extended coverage insurance, with vandalism and malicious mischief endorsements, in the name of Landlord and with loss payable to Landlord, to the extent of the full replacement cost of the improvements located on the Property and otherwise in form and with insurers reasonably satisfactory to Landlord. Tenant also agrees to keep and maintain worker's compensation insurance coverage for its employees in the minimum amounts required by California law. All such insurance will be primary and not contributing with any insurance which Landlord may maintain, and the insurer providing such insurance must agree that such insurance will not be changed or cancelled except upon at least thirty (30) days prior written notice to Landlord. Tenant waives any and all rights of recovery against Landlord and its officials, officers, agents and employees on account of loss or damage occasioned to Tenant or its property or the property of others under its control, to the extent that such loss or damage is insured against under the fire and extended coverage policy required to be kept and maintained by Tenant under this Agreement; and Tenant shall cause each policy required to be kept and maintained by it under this Agreement to provide that the insurer waives all right of recovery by way of subrogation against Landlord in connection with any damage covered by such policy. Tenant will provide Landlord with copies

of the policies of such insurance or certificates evidencing such insurance upon execution of this Agreement and from time to time thereafter as reasonably requested by Landlord.

9. **Indemnification.** In addition to, and without limiting, Tenant's other obligations of indemnity under this Agreement, Tenant agrees to indemnify, protect, defend (by counsel reasonably satisfactory to Landlord) and hold Landlord and its officials, officers, agents and employees, and each of them, harmless from and against all claims, losses, liabilities, actions, judgments, orders, demands, costs and expenses (including without limitation reasonable attorneys' fees and costs) arising from or in any way related to: (1) the use and/or occupancy of the Property by Tenant and/or its officers, employees, agents, contractors, or invitees; (2) any bodily injury or trauma (including, without limitation, death, dismemberment, mental or physical illness, and/or emotional distress) suffered by any person while on the Property relating in any way to Tenant's use of the Property, or condition of the Property; (3) any injury or damage (including, without limitation, loss of profit, loss of opportunity) to any real or personal property or rights thereto, that is owned by Tenant, or its officers, employees, agents, contractors, or invitees where such injury or damage is in any way related to the Tenant's use of the Property or condition of the Property; (4) any willful misconduct, negligence, or act or omission of Tenant, or its officers, employees, agents, contractors, or invitees in or about the Property; or (5) any default by Tenant under this Agreement, but excluding any claims, losses, liabilities, actions, judgments, costs and expenses arising from or relating to Landlord's willful misconduct or sole negligence.

10. **Utilities.** The Property comprises approximately twenty percent (20%) of the total building square footage. Tenant agrees to pay, before delinquency, twenty percent (20%) of the water, sewer, gas, heat, light, power, refuse removal and all other utilities or services of any kind supplied to the Property. It is agreed that Landlord is not liable for any failure or interruption of any utility or service, and the failure or interruption of any utility or service will not entitle Tenant to terminate this Agreement or stop making any rental or other payments due under this Agreement. Landlord will provide monthly invoices to Tenant for the cost of utilities used during the term of the Agreement, with partial months prorated.

#### 11. **INTENTIONALLY OMITTED**

12. **Alterations.** Tenant agrees that it will not make any alterations or improvements to the Property, or any portion thereof, without Landlord's prior written consent, which consent Landlord is under no obligation to give. If Landlord consents to the making of any alterations or improvements, Tenant agrees that such alterations or improvements will be made in strict compliance with all applicable laws, rules and regulations of all governmental authorities having jurisdiction, will be performed in a good and workmanlike manner, and will be made in compliance with such other conditions as Landlord may require in connection with the granting of its consent. Tenant agrees that it will pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Tenant at or for use on the Property, which claims are or may be secured by any mechanics' or materialmen's lien against the Property or any interest therein. All alterations and improvements made by Tenant shall, at Landlord's option and at Tenant's sole cost and expense, be removed from the Property at the end of the Term of this Agreement and the Property restored to their condition prior to the making of such alterations or improvements.

12.1 **Approved Alterations.** At its sole cost and expense, Landlord approves and Tenant agrees to make the following alterations to the Property: installation of new carpeting; installation of office partitions, furniture, and equipment necessary to the operation of

the dispatch center; interior cleaning of the Property; painting; and electrical and data network installations necessary to the operation of the dispatch center.

13. **Tenant's Personal Property.** Unless agreed to in writing by Landlord, all equipment and personal property of Tenant located at the Property, including, but not limited to equipment, tools, supplies, and materials, will be removed from the Property on the expiration or termination of the Agreement, at Tenant's sole cost and expense, and shall remain the property of Tenant, with the exception of equipment fixed to the Premises. Upon vacating the Property, Tenant shall leave the Property broom clean. In the event Tenant fails to remove all equipment and personal property in accordance herewith, Landlord shall be entitled to recover the actual cost to remove such equipment and personal property of Tenant.

14. **Damage and Destruction.** If the Property or any portion thereof is damaged or destroyed by any casualty (whether or not insured), Tenant, at Tenant's sole cost and expense, shall promptly repair and restore the same; provided, that the proceeds, if any, of the fire and extended coverage insurance required to be kept and maintained by Tenant under Section 7 (after deduction of all costs incurred by Landlord in recovering the same) shall be made available to Tenant by Landlord for the purpose of making such repairs and restorations; provided, further, that if the cost of repairing or restoring the Property exceeds one month's rent or if the repairs and restorations would require more than one month to complete once commenced, then either Landlord or Tenant may cancel this Agreement upon the giving of written notice to the other. Upon any cancellation of this Agreement pursuant to the provisions of this Section, all proceeds of insurance shall be the sole property of Landlord, and Tenant shall have no right or interest therein.

15. **Assignment.** Tenant may not assign this Agreement nor sublet all or any part of the Property without prior written agreement from Landlord.

16. **Default.** The occurrence of any one or more of the following shall constitute a default by Tenant:

- (a) Vacation or abandonment of the Property by Tenant.
- (b) Failure by Tenant to make payment of rent or any other payments required to be made by Tenant hereunder as and when due.
- (c) Failure by Tenant to keep and maintain any of the insurance required to be kept and maintained by Tenant under this Agreement.
- (d) Failure by Tenant to observe or perform any of the covenants or provisions of this Agreement, other than as provided in subsections (b) and (c) above, when such failure continues for a period of 30 days after written notice of such failure is given by Landlord to Tenant; provided, that if the nature of Tenant's failure is such that more than 30 days are reasonably required for its cure, then Tenant will not be deemed to be in default if Tenant commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

17. **Remedies.** If Tenant is in default, then, in addition to all other rights and remedies which Landlord may have at law or in equity, Landlord has the following rights and remedies which are not exclusive but are cumulative:

(a) Landlord can terminate Tenant's right to possession of the Property at any time. No act by Landlord other than giving written notice to Tenant will terminate this Agreement. On termination, Landlord has the right to recover from Tenant:

(i) The worth, at the time of the award, of the unpaid rent that had been earned at the time of termination of this Agreement;

(ii) The worth, at the time of the award, of the amount by which the unpaid rent that would have been earned after the date of termination of this Agreement until the date Landlord recovers possession of the Premises, provided that Landlord shall have no claim pursuant to this clause (ii) unless Tenant has remained in possession after the date of termination of this Agreement;

(iii) The worth, at the time of the award, of the amount by which the unpaid rent for the balance of the Term, not to exceed the last day of the first full calendar month after Landlord has recovered possession, after the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided Premises, provided that Landlord shall have no claim pursuant to this clause (iii) unless Tenant has remained in possession after the date of termination of this Agreement; and

(iv) Any other amount, and court costs, necessary to compensate Landlord for all detriment proximately caused by Tenant's default.

"The worth, at the time of the award," as used in (i) and (ii) of this subsection (b), is to be computed by allowing interest at the maximum rate an individual is permitted by law to charge. "The worth, at the time of the award," as referred to in (iii) of this subsection (b), is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus 1%.

(b) Any and all rights and remedies available to it under the law.

18. **Late Payment.** Rent and other amounts not paid by Tenant when due under this Agreement shall bear interest at the rate of ten percent (10%) per annum from the date due until the date paid, provided that Tenant shall not be liable for any interest or late charges pursuant to this Agreement in the absence of invoice or other written demand from Landlord given within one year of the date the late charge or interest was incurred..

19. **Landlord Entry.** Landlord and its authorized representatives shall have the right upon reasonable prior written notice to Tenant to enter all portions of the Property for any of the following purposes: (a) to determine whether the Property are in good condition and whether Tenant is complying with its obligations under this Agreement; (b) to inspect the Property; (c) in connection with Landlord's design and construction planning respecting Landlord's future use of the Property; and (d) to post notices of nonresponsibility. Notwithstanding the foregoing to the contrary, Landlord and its authorized representatives shall have the right to enter the Property at any time, and without notice to Tenant, where an emergency situation necessitates such entry. No exercise by Landlord of its rights under this Section shall entitle Tenant to any damages for any injury or inconvenience occasioned thereby or to any abatement of rent or other amounts payable under this Agreement.

21. **Notices.** Except as otherwise provided, all notices required or permitted to be given under this Agreement must be in writing and addressed to the parties at their respective

notice addresses set forth below; provided, that notices to Tenant may also be effectively given in writing and addressed to Tenant at the Property address. Notices must be given by personal delivery (including by commercial delivery service) or by first-class mail, postage prepaid. Notices will be deemed effectively given, in the case of personal delivery, upon receipt (or if receipt is refused, upon attempted delivery), and in the case of mailing, three (3) days following deposit into the custody of the United States Postal Service. The notice addresses of the parties are as follows:

If to Landlord: City of Rialto  
150 S. Palm Avenue  
Rialto, CA 92376  
Attention: City Manager

With a copy to:

Eric S. Vail, Interim City Attorney  
Burke, Williams & Sorensen, LLP  
1770 Iowa Avenue, Suite 240  
Riverside, CA 92507-2479

If to Tenant: CONFIRE  
1743 Miro Way  
Rialto, California 92376  
Attn: General Manager

24. **General.**

(a) The acceptance by Landlord of any rental or other payments due hereunder with knowledge of the breach of any of the terms, covenants or provisions of this Agreement by Tenant shall not be construed as a waiver of any such breach. The acceptance at any time or times by Landlord of any sum less than that which is required to be paid by Tenant shall, unless Landlord specifically agrees otherwise in writing, be deemed to have been received only on account of the obligation for which it is paid, and shall not be deemed an accord and satisfaction notwithstanding any provisions to the contrary written on any check or contained in any writing transmitting the same.

(b) The titles to the sections of this Agreement are for convenience of reference only and are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement. Any exhibits attached to this Agreement are, however, a part of this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to any otherwise governing principles of conflicts of law. In construing this Agreement, none of the parties to it shall have any term or provision construed against it solely by reason of its having drafted the same.

(c) Any provision of this Agreement that is invalid, illegal or unenforceable shall be ineffective to the extent of such invalidity, illegality or unenforceability without invalidating, diminishing or rendering unenforceable the rights and obligations of the parties under the remaining provisions of this Agreement.

(d) No term or provision of this Agreement may be amended, altered, modified or waived orally or by a course of conduct, but only by an instrument in writing signed by a duly



authorized officer or representative of the party against which enforcement of such amendment, alteration, modification or waiver is sought. Any amendment, alteration, modification or waiver shall be for such period and subject to such conditions as shall be specified in the written instrument affecting the same. Any waiver shall be effective only in the specific instance and for the specific purpose for which given.

(e) This Agreement and all exhibits attached to it constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements (whether written or oral) with respect to that subject matter.

(f) This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(g) If either party hereto brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in such action, on trial or appeal, shall be entitled to reasonable attorneys' fees to be paid by the losing party as fixed by the court.

The parties have caused this Agreement to be duly executed by their respective duly authorized officers or representatives as of the date first set forth above.

CITY OF Rialto, a municipal corporation

By: \_\_\_\_\_  
Sean Grayson  
Acting City Manager

ATTEST:

\_\_\_\_\_  
Barbara McGee, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Eric S. Vail,  
Interim City Attorney

CONFIRE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT "A"**