

CITY COUNCIL AGENDA: June 17, 2014

SUBJECT: RENEWAL OF STANDARD AGREEMENT ALLOWING USE OF POLICE WEAPONS RANGE FACILITY BY STAFF OF THE LINDSAY POLICE DEPARTMENT

SOURCE: POLICE DEPARTMENT


SUBJECT: The Porterville Police Department weapons range became operational in May of 2011 for live fire training. The Porterville Police Department would like to renew the annual agreement to extend use of the training facility to staff of the Lindsay Police Department which expires June 30, 2014.

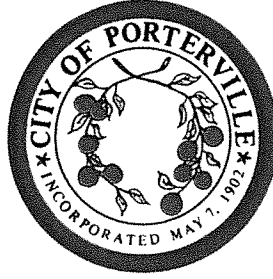
The Lindsay Police Department has agreed to pay a sum of \$1,200 per year to the City of Porterville in compensation for facility usage, upkeep, and maintenance over the next one (1) year. This amount is based upon a monthly usage. The agreement will be re-evaluated every year for renewal.

RECOMMENDATION: That the City Council:

- 1) Approve the Agreement between the City of Porterville and the City of Lindsay for the period of 07/01/14 through 06/30/15; and
- 2) Authorize the Chief of Police to execute the agreement on behalf of the City of Porterville.

ATTACHMENT: Standard Agreement between Contractor (City of Porterville - Police Department) and the City of Lindsay for use of range training facility

DD  CM  ACTING Appropriated/Funded  Item No. 9



POLICE FIRING RANGE COOPERATIVE AGREEMENT

This Agreement is entered into as of July 1, 2014, between the CITY OF PORTERVILLE ("CITY"), and the CITY OF LINDSAY ("LINDSAY"), (each a "Party," and collectively, the "Parties"), with reference to the following:

- A. The Parties desire to allow the use of the CITY Police Firing Range ("Range") by the Lindsay Police Department ("LPD").
- B. The Parties are willing to enter into this Agreement on the terms and conditions set forth below.

ACCORDINGLY, IT IS AGREED:

1. The term of this Agreement shall be for one (1) year, commencing on July 1, 2014, and ending on June 30, 2015.
2. LPD desires use of the Range approximately twelve (12) times per agreement year, at the frequency of approximately one (1) use per month.
3. The cost per agreement year shall be twelve hundred (\$1,200) dollars.
4. The CITY shall furnish use of the Range to the LPD including restroom facilities if available, and shall pay all taxes, insurance, maintenance fees, and all other costs required to provide use of the Range in accordance with this Agreement.
5. LPD shall have the use of on-site firearms buildings located at the Range for training programs. Any available classroom facility may be used on a case-by-case basis, without additional charge, when arranged through the PPD Range Supervisor.
6. PPD and LPD agree the Range shall be open and usable by members of LPD at such times that are mutually agreeable to both parties. Exclusive use of the facilities by LPD must be coordinated with, and scheduled by the PPD Range Supervisor.

7. Prior to exclusive use of the Range, LPD will submit their training agenda and course of fire to the PPD Range Supervisor for approval.
8. LPD agrees that its members using the Range under this Agreement shall be governed by the range safety rules established by PPD. (Firearms Range Rules and Regulations attached.)
9. On their scheduled training days, the LPD Range Master shall contact PPD Watch Commander upon their arrival and departure from the RANGE.
10. After use of the facility, LPD agrees to ensure the Range is cleaned properly of all debris resulting from their use, including brass. Brass will be left in containers (containing only brass) at the Range for disposal by PPD.
11. Both the PPD and LPD reserve the right to cancel this Agreement with thirty (30) days advance written notice to the other.
12. The amount to be paid by LINDSAY will be due and payable as follows: LINDSAY shall pay the amount as invoiced by the CITY, on an annual basis, of the agreed upon cost, within thirty days of receiving said invoice(s).
13. The Parties shall hold harmless, defend and indemnify each other, their agents, officers, and employees from and against all liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, arising out of their activities or those of their agents, officers, or employees under this Agreement. This indemnification obligation shall survive the expiration or termination of this Agreement.
14. Except as otherwise required by law, any notice to be given shall be in writing and shall be either personally delivered, sent by facsimile transmission, or sent by first-class mail, postage prepaid, and addressed as follows:

CITY:

City Clerk of the City of Porterville
291 N. Main Street
Porterville, CA 93257
Phone: 559-782-7447
Fax: 559-782-7452

CITY OF LINDSAY:

City Clerk of the City of Lindsay
251 East Honolulu Street
Lindsay, CA 93247
Phone: 559-562-7103
Fax: 559-562-7100

Notice personally delivered is effective when delivered. Notice sent by facsimile transmission shall be deemed received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after mailing. Any Party may change the above address, phone number, or fax number by giving written notice pursuant to this paragraph.

15. No part of this Agreement may be assigned by any of the Parties without the prior written consent of the other Parties.

16. Termination.

a. The right to terminate this Agreement under this provision may be exercised without prejudice to any other right or remedy to which the terminating Party may be entitled to by law or under this Agreement.

1) This Agreement may be terminated by any Party should another Party:

- a) be adjudged bankrupt;
- b) become insolvent or have a receiver appointed;
- c) make a general assignment for the benefit of creditors;
- d) suffer any judgment which remains unsatisfied for 30 days and which would substantively impair the ability of the judgment debtor to perform under this Agreement; or
- e) materially breach this Agreement.

2) For any occurrences except item (e), termination may be effected upon written notice by the terminating Party specifying the date of termination.

3) Upon a material breach, the Agreement may be terminated following the failure of the defaulting Party to remedy the breach to the satisfaction of the non-defaulting Party(ies) within five (5) days of written notice specifying the breach. If

the breach is not remedied within the five (5) day period, the non-defaulting Party may terminate the Agreement on further written notice specifying the date of termination.

- 4) If the nature of the breach is such that it cannot be cured within a five (5) day period, the defaulting Party may submit a written proposal within that period which sets forth a specific means to resolve the default. If the non-defaulting parties consent to that proposal in writing, which consent shall not be unreasonably withheld, the defaulting Party shall immediately embark on its plan to cure. If the default is not cured within the time agreed, the non-defaulting Party(ies) may terminate upon written notice specifying the date of termination.

- b. Effects of Termination. Termination of this Agreement shall not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports or pre-termination contract activities.

17. This Agreement represents the entire Agreement between the Parties as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without the written consent of all Parties.

18. This Agreement reflects the contributions of all Parties and accordingly the provisions of Civil Code Section 1654 shall not apply to address and interpret any uncertainty.

19. Unless specifically set forth, the Parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

20. The failure of any Party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for the breach or any subsequent breach. The acceptance by any Party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by any other Party.

21. This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the Parties, to be in conflict with any code or regulation governing its subject, the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a

material benefit of the Agreement to either Party is lost, the Agreement may be terminated at the option of the affected Party.

22. Each Party agrees to execute any additional documents and to perform any further acts that may be reasonably required to effect the purposes of this Agreement.

23. It is expected that this agreement will continue into coming years. In June of each year of the agreement, the Chief of Police and the Lindsay City Manager, or their designees, shall convene a meeting to discuss the agreement. If the agreement is continued, the Chief of Police shall provide the new cost (if applicable), and the new agreement will indicate the amount of funding each party shall be responsible for.

THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

CITY OF PORTERVILLE:

Chuck McMillan, Chief of Police

Date

CITY OF LINDSAY:

Richard Wilkinson, City Manager/Public Safety Director

Date

FIREARMS RANGE RULES AND REGULATIONS

The following safety regulations are designed to ensure the safety of all personnel in this department, as well as any other department, using the firearms training facility. The rules will be posted in a conspicuous location and shall be strictly enforced. The Range Master is responsible for the safe operation of the facility and he/she may take appropriate and necessary action to safeguard all persons using the facility or to ensure public safety. Failure to obey any of these regulations may result in disciplinary action and/or being ordered to leave the firearms facility by the Range Master or designated firearms instructor. The Range Master will take immediate action to address rules violations and, at his/her discretion, depending on the seriousness of the violation, report the violation to the Training Unit Supervisor.

These rules apply to the Porterville Police Department personnel, as well as any other person or agency, using the firearms range facility.

1. No personnel will enter the Range Master's office without prior approval of the Range Master or firearms instructor.
2. Only authorized personnel will enter the storage area (seatrain).
3. No alcoholic beverages are permitted at the firearms training facility.
4. All firearms at the firearms training facility are subject to a safety inspection by the Range Master or firearms instructor at any time.
5. Only approved ammunition will be used at the firearms training facility. All ammunition is subject to inspection by the Range Master or firearms instructor at any time.
6. The loading and unloading of firearms will take place only in designated areas of the firearms facility.
7. All range activities will be coordinated through the Training Unit Supervisor or, if designated by the Training Unit Supervisor, the Range Master.
8. All injuries will be promptly reported to the Range Master or firearms instructor.
9. Shooting will only be at targets approved by the Range Master or firearms instructor.

10. When on the firing line, unholstered firearms shall be pointed downrange at all times.
11. Ear and eye protection are required at all times by all persons while on the range when any person is actively engaged in discharging a firearm.
12. During range qualification or firearms training, firing will only commence on the command of the Range Master or firearms instructor.
13. All firing will stop immediately if the Range Master or firearms instructor determines there to be a safety issue. This will be done by yelling, "Cease fire!"
14. Firearms will not be left unattended, except unloaded in designated areas.
15. Horseplay or unsafe handling of firearms will not be tolerated.
16. Persons not abiding by all of the above rules will leave the firearms training facility upon the request of the Range Master or firearms instructor.