

THIS AGREEMENT, made this 1st day of January, 1995, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a corporation, herein called "SPT," and SAN LEANDRO POLICE DEPARTMENT, herein termed "Permittee";

DOCUMENT

AUDIT No. 183147

WITNESSETH:

SPT hereby permits Permittee to use the police training facility and pistol range (Facilities) of SPT at Stege in Richmond, California, within the hours of operation determined by SPT and subject to the following terms and conditions.

1. Only those officers, agents and employees of Permittee who have previously been designated in writing to SPT by Permittee shall be permitted to use the Facilities. Permittee shall be fully responsible for all so designated, while they are on or about the Facilities.

2. Permittee agrees to comply with the requirements of the Southern Pacific Range Rules and Regulations attached to and made a part of this Agreement.

3. Permittee shall designate a range officer (Range Officer) each time the Facilities are to be used. Such Range Officer shall direct and control all actions of each officer, agent and employee of Permittee while on or about the Facilities, and shall assure that their actions shall comply with the posted Range Rules and Regulations of SPT with respect to use of the Facilities. Permittee will furnish all ammunition, targets and other equipment used by its officers, agents and employees.

4. PERMITTEE ACCEPTS THE FACILITIES OF SPT AS IS AND IN THE CONDITION IN WHICH IT FINDS THEM, EXPRESSLY ACCEPTING ALL RISKS INCIDENT TO THE USE THEREOF BY ITS OFFICERS, AGENTS AND EMPLOYEES.

5. Permittee agrees to and shall indemnify and hold harmless SPT, its officers, agents, and employees from and against any and all claims, demands, losses, damages, causes of action, suits, and liabilities of every kind (including reasonable attorneys' fees, court costs, and other expenses related thereto) for injury to or death of a person or for loss of or damage to any property arising out of the use of said Facilities by Permittee and for any action taken or permitted by Permittee, its agents or employees under this Agreement. It is the express intention of the parties hereto, both

Permittee and SPT, that the indemnity provided for in this paragraph indemnifies SPT for its own negligence, whether that negligence is active or passive, or is a concurring cause of the injury, death or damage; provided that said indemnity shall not protect SPT from liability for death, injury or damage arising from the sole negligence of SPT, its officers, agents or employees.

6. Permittee understands and agrees that its use of the Facilities may be concurrent with the use thereof by SPT or by others with the consent of SPT, unless exclusive use is authorized in advance by SPT in writing. In addition, Permittee agrees to obtain prior permission each time the Facilities are to be used.

7. Notwithstanding all of the foregoing, SPT reserves the full right to close the Facilities at any time for any purpose, and further reserves the right to exclude any person from use of the Facilities for violation of the SPT Range Rules and Regulations and to matters relating to safety.

8. This agreement may be terminated by either party upon fifteen (15) days' written notice to the other party, and may be terminated forthwith by SPT in the event of violation of any of the terms hereof by Permittee.

9. The right of either party to require strict performance and observance of any obligations hereunder will not be affected in any way by any previous waiver, forbearance or course of dealing. Exercise by either party of its right to terminate hereunder will in no way affect or impair its right to bring suit for any default or breach of this Agreement.

10. Any supplement, modification or waiver of any provision of this Agreement must be in writing and signed by authorized representatives of both parties.

11. If any portion of this Agreement is found to be invalid or unenforceable, the parties agree that the remaining portions shall remain in effect. The parties further agree that in the event such invalid or unenforceable portion is an essential part of this Agreement, they will immediately begin negotiations for a replacement.

12. Any legal action by Permittee brought against SPT with respect to this Agreement must begin within two (2) years after the cause of action arises.

13. This Agreement shall be construed in accordance with and governed by the local laws of the state of California.

14. This is the entire agreement between the parties with respect to the Facilities and supersedes all prior agreements, proposals, communications between the parties and understandings, whether written or oral.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate the day and year first herein written.

SOUTHERN PACIFIC TRANSPORTATION COMPANY

Approved as to Form
William L. ...
ATTORNEY 8/23/95

By *Carrie L. Moeller*
(Title)
MANAGER - CONTRACTS

(Permittee)

By _____
(Title)