

FACILITY SUBLICENSE AGREEMENT

This **FACILITY SUBLICENSE AGREEMENT** ("**Agreement**"), is made effective as of this 12th day of May, 2014 by and between the City of Orlando; whose address is: 400 S Orange Avenue, PO Box 4990, Orlando, FL 32802-4990, hereinafter referred to as "**Agency**", and **THE DISTRICT BOARD OF TRUSTEES OF VALENCIA COLLEGE, FLORIDA**, a political subdivision of the State of Florida, whose address is: 190 South Orange Avenue, Orlando, Florida 32801, ("**Valencia**").

WITNESSETH

WHEREAS, Valencia has entered into a license agreement (the "**License Agreement**"), attached to and incorporated herein as **Exhibit "A,"** with the School Board of Orange County, Florida, to use a portion of the facilities at Mid-Florida Technical School, located at 2900 W. Oak Ridge Road, Orlando, Florida 32809, more particularly described in **Exhibit "B"**, attached to and incorporated herein (the "**Facility**") to operate or cause the operation of the Central Florida Fire Institute at Valencia, such Facility formerly used and operated solely by the Central Florida Fire Academy in accordance with a prior interlocal agreement; and

WHEREAS, Agency participates in the Central Florida Fire Consortium (the "**Consortium**"), which supports the operation of, and maintenance of the Facility used by, the Central Florida Fire Institute at Valencia (the "**Institute**") in accordance with an interlocal agreement (the "**Interlocal Agreement**"), using a portion of Mid-Florida Tech's campus to operate a fire training facility, such portion more particularly described in Exhibit "B" attached; and

WHEREAS, Valencia wishes to grant a nonexclusive sublicense to Agency and give permission to Agency to enter onto the Facility and use the Facility for fire training purposes subject to and in accordance with this Agreement, the License, and the Interlocal Agreement, all as amended from time to time.

NOW THEREFORE, in consideration of the mutual covenants set forth in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Agency and Valencia hereby agree as follows:

1. **Recitals.** The recitals set forth above are true and correct and are incorporated herein by reference.
2. **Grant of Sublicense.**

(a) Subject to the terms and conditions of this Agreement, the License, and the Interlocal Agreement, all as amended from time to time, Valencia grants to Agency and its employees a temporary, nonexclusive and revocable sublicense to use the Facility, and parking spaces located on the Mid Florida Tech property outside of the Facility in numbers and locations as determined by the Consortium, solely to use the Facility for fire training purposes on days and at times scheduled by the Consortium throughout the Term. This Agreement creates a permissive use only and shall not

operate to create or vest any real property rights in Agency.

(b) Agency may not grant sublicenses to third parties to use the Facility for any purpose.

(c) Agency's use of the Facility shall not unreasonably interfere with the School Board of Orange County's operation of Mid-Florida Tech.

3. **Term.** Unless terminated earlier as provided by this Agreement or otherwise as agreed to in writing by the parties hereto, the term of this Agreement shall be for ten (10) years after the Effective Date (the "Term").

4. **Dues, Fees and In-Kind Contributions.** During the Term of this Agreement, Agency shall pay the fees, dues, and/or provide the in-kind contributions to the Consortium in accordance with the Interlocal Agreement.

5. **Maintenance Responsibilities.**

(a) Except for parking spaces provided for Agency's use as part of the sublicense granted pursuant to the License Agreement between Valencia and the School Board, Agency shall, as a member of the Consortium and at no cost to Valencia, support the obligations of the Consortium pursuant to the Interlocal Agreement to maintain, or cause to be maintained the Facility as the Consortium deems appropriate during the Term of this Agreement, including performance of operations, maintenance and repairs to the Facility necessary to eliminate disruption to the School Board of Orange County's operation of Mid-Florida Tech, except that Agency shall remediate a hazardous substance spill, release, or discharge on, in, under or from the Facility attributable solely to Agency's use of the Facility ("Hazardous Material Remediation") in a manner reasonably acceptable to Valencia.

(b) If Agency fails after twenty (20) business days' written notice to proceed with due diligence to perform, or cause to be performed, maintenance or to make repairs required for the specific purposes of Hazardous Material Remediation the same may be made by the Consortium at the expense of Agency and the reasonable expenses thereof incurred by the Consortium shall be paid to the Consortium as additional fees within thirty (30) days after rendition of a bill or statement therefore. Agency hereby grants to the Consortium and/or Valencia the right to enter the Facility at reasonable times to perform such repairs upon not less than two (2) business days (except in cases of emergency) advance notice to Agency. Except in cases of emergency, the Consortium and/or Valencia agree to make reasonable efforts to minimize any interference with Agency's operations caused by such entry and to coordinate such entry in advance with Agency's academic and training schedule.

(c) Agency is authorized to inspect the Facility prior to its use pursuant to this Agreement. Agency is aware, understands and agrees that the Facilities are

sublicensed by Valencia to Agency in an "AS IS" condition without warranty or representation, express or implied, and the Agency hereby agreeing, acknowledging and affirming to Valencia that the Agency has had full opportunity to inspect, and accepts the Facilities in an "AS IS" condition. Agency understands and acknowledges that Valencia hereby expressly disclaims any and all warranties, whether express or implied, with respect to the Facilities, including without limitation, any warranty of habitability, warranty of merchantability, or warranty of fitness for a particular use. It is the Agency's intention to give up, waive, and relinquish all rights to assert any claim, demand, or lawsuit of any kind with respect to the condition of the Facilities, including without limitation the improvements, the real property, or the personal property sublicensed or otherwise provided for Agency's use hereunder. Valencia will not be required to make any repairs or pay any expenses concerning the operation and maintenance of the Facilities.

(d) Should there arise during the term of this Agreement the need for other than ordinary usual repairs, which would result in costs in excess of the Consortium's budgeted expenses, and the Consortium is unable or unwilling to provide for such repairs to restore the Facilities to a safe and usable condition, then either party may cancel this Agreement without further obligation to make such repairs or otherwise reconstruct the Facility. In the event this Agreement is cancelled pursuant to this subsection, neither party shall be required to be responsible for payment of the expenses.

6. **Utilities.** Agency's use of water and sewer, electricity, gas and all other applicable utilities shall be metered and billed by the utilities directly to the Consortium. In the event any of these utility charges, as directly attributable to Agency's use of the Facility, are billed to Valencia, Agency shall be obligated to reimburse the Valencia for these charges as billed to the Valencia. All such reimbursement payments shall be paid no later than thirty (30) days after the Valencia provides Agency written notice of all amounts due and copies of supporting invoices from the utility provider.

7. **Indemnification and Insurance.** The Parties hereby acknowledge that Agency is a governmental entity in the State of Florida. Without waiving its sovereign immunity, and if and to the extent permitted by law, Agency shall be liable for all bodily injury and property damage attributable solely to its negligent acts or omissions, or those of its employees acting within the scope of their employment. Under no circumstances shall Agency be liable to or for the negligent acts of Valencia or any person employed by Valencia or under the direction of Valencia. Neither party shall have tort liability for any amounts in excess of those limits per claim and per occurrence set for tort liability in Section 768.29 of the Florida Statutes. The foregoing shall not constitute an agreement by the Agency to assume any liability for the acts, omissions and/or negligence of any third party. Valencia shall be named as additional insured or a loss payee on all policies of insurance that the Agency carries or is self-insured for with regard to worker's compensation, general liability, errors and omissions, administrative defense and automobiles. Upon request, Agency shall provide either a Certificate of Insurance evidencing such insurance or a Certificate of Self-insurance. Nothing contained in this Agreement shall be construed or interpreted as: (i) denying to either party any remedy or defense available to such

party under the laws of the State of Florida; (ii) the consent of a Party to be sued; or (iii) a waiver of sovereign immunity of a Party beyond the waiver provided in law.

8. **Compliance with Laws, Regulations, and Policies.** Valencia and Agency shall, to the extent applicable to each party's respective obligations hereunder, throughout the Term, promptly comply, or cause compliance, with all laws and ordinances and the orders, rules, regulations and requirements (individually and collectively, the "Legal Requirements") of all federal, state, county and municipal governments and appropriate departments, commissions, boards subdivisions, and officers thereof (individually and collectively, the "Governmental Authorities"), and with requirements of the State Fire Marshal which may be applicable to the Facility, or the use or manner of use thereof.

9. **Hazardous Materials.**

(a) Agency agrees to refrain, and to prevent its employees and contractors from bringing any Hazardous Materials onto the Facility in violation of any Legal Requirement. Agency hereby covenants and agrees, subject to the provisions of Florida Statutes §768.28 and without waiving any sovereign immunity, to indemnify, defend and hold Valencia harmless, if and only to the extent permitted by law, from and against any and all claims, actions, administrative proceedings, judgments, damages, penalties, costs, expenses, losses and liabilities of any kind or nature that arise (indirectly or directly) from or in connection with the presence, release, spill or discharge of any Hazardous Materials in, on or about the Facility at any time resulting from the acts or omissions of Agency, its employees, agents or contractors. Without limiting the generality of the foregoing, the indemnity set forth above, if and only to the extent permitted by law, shall specifically cover any investigation, monitoring and remediation costs. The provisions of this paragraph shall survive the termination or expiration of the Agreement.

(b) In the event, during the term of this Agreement, there is a spill, release, or other discharge of any hazardous substance on, in, under, or from the Facility, then, in addition to the provisions of any of the Legal Requirements requiring notice of such spill, release or other discharge, Agency shall immediately notify the Consortium and Valencia of such spill, release, or other discharge. Such notification shall be made by telephone and in writing, and, as soon as possible after such spill, release, or other discharge, Agency shall also provide a written follow-up notice providing Valencia and the Consortium with complete information concerning such spill, release or other discharge.

(c) For the purposes of this License, "hazardous substances or materials" shall mean (i) hazardous substances, as that term is defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et. seq.*; (ii) hazardous waste, as that term is defined by the Resource Conservation Recovery Act, 42 U.S.C. Section 6901, *et. seq.*; (iii) any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials, or substances within the meaning of any Environmental Law, (iv) petroleum or petroleum substances; (v) asbestos in any form or condition; (vi) polychlorinated biphenyl

(PCBs) or substances or compounds containing PCBs; and (vii) hazardous substances as that term may be defined by the Florida Statutes, the rules of the Florida Department of Environmental Protection, the rules of the United States Environmental Protection Agency and the rules of the St. Johns River Water Management District.

(d) Agency will immediately notify Valencia, and provide copies upon Agency's receipt, of all written complaints, claims, citations, demands, inquiries, reports, or notices alleging a spill, release, or discharge of any hazardous substance on, in, under, or from the Facility by Agency, employee, or independent contractor of the Agency during the term of this Agreement, or any extension thereof. To the extent specifically required by any of the other provisions of this Agreement, Agency shall promptly resolve any of those actions and proceedings to the satisfaction of Valencia.

10. Notices. All notices required under this Agreement shall be in writing and shall be given by hand delivery, acknowledged electronic transmission or United States mail, first class postage prepaid, addressed as follows (or to any such other address or office as either party may designate in writing).

Agency: City of Orlando
City Hall
400 S. Orange Ave.
PO Box 4990
Orlando, FL 32802-4990

Copy to: John M. Miller, Fire Chief
Orlando Fire Department
PO Box 2846
Orlando, FL 32802

Valencia: Valencia College
190 South Orange Avenue
Orlando, Florida 32801
Attention: Dr. Sanford C. "Sandy" Shugart, President
Telephone: (407) 582-3400

Copy to: Valencia College
190 South Orange Avenue
Orlando, Florida 32801
Attention: William J. Mullowney, Esq., Vice President of Policy
and General Counsel
Telephone: (407) 582-3411

11. Default/Termination. This Agreement may be terminated by either party and be

of no further force and effect, immediately upon the occurrence of any of the following events:

- (a) Failure of Agency to provide to the Consortium in a timely manner dues, fees, or required in-kind contributions as provided in the Interlocal Agreement, or
- (b) Upon no less than one hundred eighty (180) days written notice stating the party's intent not to participate in or otherwise to terminate the Agreement for any reason whatsoever, or
- (c) Immediately upon written notice of termination for the reasons provided in Section 5. (d) relating to other than ordinary and usual repairs for which the Consortium is unable or unwilling to provide, or
- (d) Failure of any party to observe, perform or comply with any of the material terms, covenants or conditions of this Agreement, or
- (e) Failure of the State of Florida to appropriate the funds necessary to operate the Facility or Institute, or
- (f) The Interlocal Agreement is terminated, Agency ceases to participate in the Interlocal Agreement, the Facility is rendered substantially inoperable by any cause or for any reason, or Valencia's License Agreement with the School Board of Orange County is terminated.

To the extent permitted by Federal and State Law, neither party shall be liable, whether contractually or in tort, for any consequential, special or indirect damages arising out of or in connection with this Agreement.

12. Miscellaneous Provisions.

- (a) No Other Parties. This Agreement is solely for the benefit of the parties executing this Agreement and no rights are intended, nor shall any rights accrue, to any third party. Valencia shall not have the right to assign this Agreement, but may grant written, nonexclusive sublicenses to third parties to use the Facility as described herein, but only upon written consent of the Consortium.
- (b) Assignments and Sublicenses. Valencia will issue nonexclusive sublicenses to all agency members of the Consortium, containing the same substantive terms and conditions as set forth herein. Valencia will not further assign the License or grant any other sublicenses or right to use the Facility by any third party, unless consented to in writing by the Consortium. Each member of the Consortium may use the Facility at such times and in the manner directed by the Consortium.
- (c) Binding on Successors. This Agreement shall run with the land and be binding on the parties, their successors and assigns and upon all entities operating for or on behalf of the parties to this Agreement.

(d) Governing Law. This Agreement shall be construed, interpreted and controlled according to the laws of the State of Florida, with venue in Orange County, Florida.

(e) Entire Agreement. This Agreement constitutes the entire agreement between the parties with regard to the subject matter hereof and supersedes all previous discussions, understandings and agreements with respect to those matters.

(f) Severability. If any sentence, phrase, paragraph, provision or portion of this Agreement is held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be considered an independent provision and the finding shall have no effect on the validity of the balance of this Agreement.

(g) Time of the Essence. Time is of the essence of this Agreement and of each and every provision hereof.

(h) Counterpart Execution. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, and, when taken together, shall constitute one and the same agreement.

(i) Enforcement and Attorney's Fees. Any litigation arising out of this Agreement shall take place in the Circuit Court for Orange County, Florida and the prevailing party will be entitled to recover its reasonable attorney's fees and costs at trial and any and all appeals from the non-prevailing party.

(j) Captions. The captions of this Agreement are for convenience only and are not to be construed as part of this Agreement and shall not be construed as defining or limiting in any way the scope or intent of the provisions hereof.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.
SIGNATURES TO FOLLOW]**

IN WITNESS WHEREOF, Agency and Valencia have caused this Agreement to be executed on the respective dates set forth below.

CITY OF ORLANDO

By: _____
Mayor/Pro Tem

ATTEST:

Alana C. Brenner, City Clerk

[SEAL]

APPROVED AS TO FORM AND LEGALITY
For use and reliance by the City of Orlando,
Florida, only

City Attorney
Orlando, Florida

_____ 2014.

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me, this _____ day of _____ 2014, by _____, Mayor _____ and Alana C. Brenner, City Clerk, respectively, City of Orlando; and they acknowledged before me that they executed the foregoing instrument on behalf of the City of Orlando as its true act and deed, and that they were authorized to do so.

"VALENCIA"

THE DISTRICT BOARD OF TRUSTEES
OF VALENCIA COLLEGE, FLORIDA

By: April Shelton
Printed Name: April Shelton

By: Vilma Miller Flores
Printed Name: Vilma Miller Flores

By: Sherrill Dixon for Keith W. Huck
Printed Name: Keith W. Huck
Title: Vice President, Operations & Finance
Date: 4/22/2014

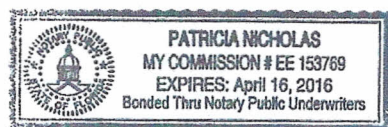
APPROVED BY

APR 21 2014

GENERAL COUNSEL
Valencia College

STATE OF FLORIDA
COUNTY OF: ORANGE

The foregoing instrument was acknowledged before me this 22nd day of April, 2014, by Sherrill Dixon, as representative of Valencia Community College, who produced _____ as identification or is personally known to me and who acknowledged that he/she signed the instrument voluntarily for the purpose expressed in it.



Patricia Nicholas
Notary Public
Printed Name: Patricia Nicholas
My Commission Expires: 4/16/16

EXHIBIT "A"

MID-FLORIDA TECHNICAL SCHOOL FACILITIES

Mid-Florida Tech and Eric Olson Bus Compound

Lots 36 and 45 and the West 2/3 of Lots 35 and 46, The McKoy Land Company Subdivision of Section 21, Township 23 South, Range 29 East, according to the plat thereof as recorded in Plat Book F, Page 48, Public Records of Orange County, Florida;

AND

The Northwest ¼ of the Southwest ¼ of the Southeast ¼ of Section 21, Township 23 South, Range 29 East, Orange County, Florida;

AND

The West 2/3 of the Northeast ¼ of the Southwest ¼ of the Southeast ¼ of Section 21, Township 23 South, Range 29 East, Orange County, Florida;

AND

Block .A. Orlando Central Park Number Fifty-Seven, according to the plat thereof as recorded in Plat Book 16, Pages 64, Public Records of Orange County, Florida as vacated by Resolution recorded in Book 3810, Page 3501;

AND

Block .B. Orlando Central Park Number Fifty-Seven, according to the plat thereof as recorded in Plat Book 16, Pages 64, Public Records of Orange County, Florida.

Together With vacated road vacated by Certificate recorded September 19, 1958 in Book 428, Page 30, if any, lying within the Southwest ¼ of Section 21, Township, 23 South, Range 29 East, Orange County, Florida and east of John Young Parkway right-of-way;

And Together With vacated road vacated by Certificate recorded April 19, 1963 in Book 1189, Page 492 as is contained within the above-described property;

And Together With vacated road vacated by Certificate recorded July 7, 1967 in Book 1647, Page 571 and corrective Certificate recorded August 8, 1967 in Book 1655, Page 1002, if any, lying east of John Young Parkway right-of-way and west of the above-described property.

Less and Except rights-of-way on north and west in Deed Book 554, Page 410, Book 234, Page 448, Book 1256, Page 26, and Book 4262, Page 1155

All lying west of the right-of-way of Chancellor Drive as established in Right-of-Way Deed recorded in Book 2639, Page 495.

EXHIBIT "B"

PORTION OF MID-FLORIDA TECH FACILITIES OCCUPIED BY CENTRAL FLORIDA FIRE CONSORTIUM TO OPERATE A FIRE CONSORTIUM TRAINING FACILITY

The area identified as being located within the fenced in area at the property known as Mid-Florida Tech which area shall include the following facilities and their approximate square footage:

- TOWER – 3,295 SQUARE FEET
- APPARATUS BAY - 4,500 SQUARE FEET
- BURN BUILDING – 3,186 SQUARE FEET
- FOUR (4) PORTABLES (2 CLASSROOM AND 2 EQUIPMENT) – 5,280 SQUARE FEET

In addition, there shall be sufficient sections of parking identified by mutual agreement of the parties to provide parking for the benefit and use of Valencia and the Consortium which shall not impact the School Board's use and operations of Mid-Florida Tech. To the extent feasible, sufficient signage shall be provided to identify the areas of parking designated for Valencia's/Consortium's use.