

AGREEMENT/LICENSE FOR ENTRY UPON LAND AND
RELEASE FOR DESTRUCTION OF PROPERTY

This Agreement is made and entered into this 3rd day of August, 2004 by and between the City of Redlands, a municipal corporation ("City"), and Bixby Land Company ("Owner").

RECITALS

A. Owner, is the fee owner of certain real property located in the City of Redlands which is located at 26180 West Lugonia Avenue (APN 0292-031-07-0000) and 1320 Bryn Mawr (APN 0292-031-07-0000 - Parcel 20) together, the "Property."

B. City desires to conduct fire training by burning all improvements and structures, trees, shrubs and other vegetation on the Property.

C. Owner desires to have all improvements, structures, trees, shrubs and other vegetation on the Property destroyed by way of fire on the Property.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the City of Redlands and Bixby Land Company agree as follows:

AGREEMENT

1. Owner grants to City, its employees and agents a license to enter upon the Property to conduct fire training and burn all improvements, structures, trees, shrubs and other vegetation on the Property. City shall provide five (5) days prior notice to Owner of the date the fire training shall be conducted.

2. For purposes of this Agreement, the following terms shall have the following meanings:

A. "Environmental Claims" shall mean any claims by third parties for personal injury (including sickness, disease or death), or for injury to property or natural resources or the environment, including, without limitation, lost profits, consequential damages, diminution of property value or loss of use of property, or for any violation or alleged violation of, or noncompliance with, the requirements of any Environmental Law.

B. "Environmental Cleanup Liability" shall mean any cost or expense incurred to investigate, monitor, remove, remediate, treat, clean up, abate or otherwise respond to any Release or threatened Release of Hazardous Materials, including, without limitation, the cost of obtaining site closure from applicable governmental agencies and the cost of restoring the affected property upon completion of any responsive action.

C. "Environmental Compliance Costs" shall mean any cost or expense necessary to enable the affected property to comply with all applicable Environmental Laws.

D. "Environmental Law" shall mean any applicable federal, California, regional or local law, statute, ordinance, rule, regulation or order for the protection of human health or the environment, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601, et. seq.); the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et. seq.); the Federal Water Pollution Control Act (33 U.S.C. § 1251 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 Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. § 11001 et. seq.); the Occupational Safety and Health Act (29 U.S.C. § 651 et. seq.); the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et. seq.); the Hazardous Materials Transportation Act (49 U.S.C. § 5101 et. seq.); the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health and Safety Code § 25300 et. seq.); the Hazardous Waste Control Law (Health and Safety Code § 25100 et. seq.); the Hazardous Waste Disposal Land Use Law (Health and Safety Code § 25220 et. seq.); the Porter-Cologne Water Quality Control Act (Water Code § 13000 et. seq.); Hazardous Materials Release Response Plans and Inventory (Health and Safety Code § 25500 et. seq.); Underground Storage of Hazardous Substances (Health and Safety Code § 25280 et. seq.); the Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") (Health and Safety Code § 25249.5-25249.13); the Asbestos Notification Law (Health and Safety Code § 25915 et. seq.); the California Occupational Safety and Health Act (Labor Code § 6300 et. seq.); Chapters 10 and 11, Division 4.5, Title 22, California Code of Regulations; and any law or regulation implementing, amending or succeeding any of the foregoing, and any similar laws or regulations at any time in effect having any of the purposes designated above.

E. "Hazardous Materials" shall mean any pollutant, contaminant, hazardous or toxic substance, material or waste which is or becomes identified, listed or regulated as such under any Environmental Law by the United States government, the State of California or any regional or local governmental authority having jurisdiction over the Property.

F. "Release" shall mean the release, as defined in Health and Safety Code §§ 25320 and 25321 of a Hazardous Material or Hazardous Materials.

3. Effective upon the date this Agreement is entered into by the City, Owner shall, defend, indemnify, and hold the City and its elected officials, officers, agents and employees free and harmless from and against any and all claims, actions, proceedings, lawsuits, orders, costs, liabilities, judgments, damages, fines, encumbrances, liens, penalties, punitive damages, losses and expenses (including without limitation all costs and expenses reasonably incurred to investigate and defend claims, whether or not a claim is ultimately defeated, and costs and expenses reasonably incurred for consultants, court fees, administrative fees, expert witness fees, and attorneys' fees) of whatever kind or nature, contingent or otherwise, matured or not matured, foreseeable or unforeseeable, any of which are suffered or incurred by such indemnified parties, or assessed, levied

or asserted by any person or entity (whether governmental or private) against the indemnified parties and relating to the following:

Environmental Claims, Environmental Cleanup Liability and Environmental Compliance Costs arising from the Release or threatened Release of Hazardous Materials in or into the soil or groundwater in, on, under or from the Property as a result of the use, generation, discharge, storage, handling or disposal of Hazardous Materials at the Property by Owner or Owner's agents, employees, contractors or invitees or Owner's predecessors in interest.

4. Pursuant to Civil Code Sections 851(g), 853(f) and other applicable law, Owner hereby acknowledges and agrees that, until the expiration or earlier termination of this Agreement, the terms, provisions and requirements of the Environmental Responsibility Acceptance Act (Civil Code § 850 et. seq.) shall have no application with respect to any Environmental Claims, Environmental Cleanup Liability and Environmental Cleanup Costs of the parties as to each other and related to the Property.

5. Owner further agrees as follows:

A. The City shall not be required to remove, breakout or haul away any concrete, pipe, or debris as a result of the Property's destruction by way of fire.

B. No portion of any buildings or structures located on the Property shall be changed from the date this Agreement is entered into by the City.

C. That any holes in the Property shall be filled and the remaining debris on the Property, after the fire training exercise, shall be cleared by Owner within sixty (60) days after the burn is completed.

D. Owner shall disconnect all utilities to the Property prior to the burn date with written proof of confirmation of said disconnection being provided to City to City's satisfaction.

6. City shall secure all authorizations and permits required to conduct the fire training and will comply with all applicable federal, state, regional and local laws, rules, ordinances and regulations.

7. A. City shall indemnify and save harmless the Owner its successors and assigns together with its officers, directors, employees, agents and those for whom it is in law responsible, only from and against any and all liabilities, damages, costs, expenses, causes of action, claims, suits, proceedings and judgments (collectively "Claims") which they may incur or suffer or be put to by reason of or in connection with or arising from any breach, violation or non-performance by City of any obligation contained in this Agreement to be observed or performed by City, or any wrongful

act or negligence of City or its agents or employees which relates to this Agreement, howsoever arising. City acknowledges and agrees that this indemnity shall survive any termination of this Agreement.

B. Owner shall indemnify and save harmless the City its successors and assigns together with its elected officials, officers, directors, employees, agents and those for whom it is by law responsible (collectively, the "City Indemnified Parties") from and against any and all Claims which they may incur or suffer or be put to by reason of or in connection with or arising from (i) any breach, violation or non-performance by Owner of any obligation contained in, or relating to, this Agreement to be observed or performed by Owner and (ii) any wrongful or negligent acts or omissions of the Owner its agents or employees which give rise to a tortious Claim against City and, in such circumstances, Owner shall defend City Indemnified Parties from such Claim (in addition to providing its indemnity). Owner acknowledges and agrees that these indemnities shall survive any termination of this Agreement.

8. Except as otherwise provided in this Agreement, it is the intention of the parties hereto that the releases entered into by the parties to this Agreement shall be effective as a bar to all actions, causes of action, obligations, costs, expenses, attorney's fees, damages, losses, claims, liabilities and demands of whatsoever character, nature and kind, known or unknown, suspected or unsuspected, to be so barred; in furtherance of which intention the parties, individually and collectively, herein expressly waive any and all rights and benefits conferred upon them by the provisions of Section 1542 of the California Civil Code, which reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of execution of the release, which if known by him must have materially affected his settlement with the debtor."

The parties hereby acknowledge that the foregoing waiver of the provisions of Section 1542 of the California Civil Code was bargained for separately. The parties hereto expressly agree that the release provisions herein contained shall be given full force and effect in accordance with each and all of their expressed terms and provisions, including but not limited to those terms and provisions relating to unknown or unsuspected claims, demands and causes of action herein above specified. The parties individually and collectively, assume the risk of the subsequent discovery or understanding of any matter, fact or law which if now known or understood would in any respect have affected this Agreement.

9. This Agreement supersedes any and all prior oral or written agreements between the parties hereto relating to the Property and contains the entire Agreement of the Parties as to the matters covered hereby. No other agreement, statement, or promise made by any party or to any employee, officer, or agent of any party to this Agreement shall be binding, except a subsequent amendment to this Agreement, in writing, executed by the parties. All obligations of Owner and City under this Agreement shall be joint and several.

10. In the event any action is commenced to enforce or interpret the terms or conditions of this Agreement the prevailing party shall, in addition to any costs or other relief, be entitled to recover its reasonable attorneys' fees.

11. Any amendment to this Agreement shall be in writing and executed by the Parties.

IN WITNESS WHEREOF, the parties hereto executed this Agreement on the dates set forth opposite their respective signatures hereto.

BIXBY LAND COMPANY

By: A. Terrance Dickens
A. Terrance Dickens
President/CEO

Executed this 29th day of July, 2004
at Redlands, California

CITY OF REDLANDS

By: Susan Peppler
Susan Peppler, Mayor

Executed this 3rd day of August, 2004
at Redlands, California

ATTEST:

By: Lorrie Poyzer
Lorrie Poyzer, City Clerk