

1st Reading:
2nd Reading:

SPONSOR: HUELS

ORDINANCE NO. ____

BILL NO. 22-53

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A LEASE AGREEMENT WITH THE MISSOURI STATE HIGHWAY PATROL.

WHEREAS, the Missouri State Highway Patrol approached the City and requested the ability to lease and utilize 900 Gregory Lane for periodic active shooter and SWAT training events and a small space as designated by the City Administrator at 625 New Smizer Mill Road; and

WHEREAS, the Board of Aldermen discussed this request at three separate Board of Aldermen Committee Meetings; and

WHEREAS, the proposed lease can be terminated at any time by the City; and

WHEREAS, the Board finds that the use of its property by the Missouri State Highway Patrol will provide public benefits including better active shooter and SWAT training of Missouri State Highway Patrol personnel to better serve the residents of Missouri, including Fenton, and its Water Division being located closer to the Meramec for faster water rescues and responses to other incidents on or surrounding the Meramec; and

WHEREAS, the Board of Aldermen now desires and finds it in the best interest of the City to enter into a lease agreement with the Missouri State Highway Patrol.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FENTON, MISSOURI, AS FOLLOWS:

Section 1. The Board of Aldermen hereby authorizes the Mayor to execute on behalf of the City a lease agreement with the Missouri State Highway Patrol, for periodic use of 900 Gregory Lane and use of a small space as designated by the City Administrator at 625 New Smizer Mill Road, in substantially the form of Exhibit 1 attached hereto and incorporated herein by reference.

Section 2. This ordinance shall be in full force and effect after the date of its passage and approval.

ORD. NO. _____

ORD. NO. _____

PASSED this 23rd day of June, 2022.

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JOE MAURATH, MAYOR

APPROVED this 23rd day of June, 2022.

JOE MAURATH, MAYOR

ATTEST:

Jane Hungler, City Clerk

Motion to approve. Roll Call vote:

Ayes:

Abstain:

Nays:

Absent:

ORD. NO. _____

Exhibit 1

LEASE AGREEMENT

This Lease Agreement (hereinafter, "Lease") is made and entered into by and between the City of Fenton, Missouri as lessor (hereinafter, "Landlord") and the Missouri State Highway Patrol, as lessee (hereinafter, "Tenant"), as of the date hereinafter specified.

Landlord owns certain real property in the City of Fenton, County of Saint Louis, State of Missouri commonly known and numbered as 900 Gregory Lane (hereinafter "Gregory") and 625 New Smizer Mill Road (hereinafter "Office" and together, the "Premises"). Landlord, in consideration of and in exchange for the covenants and agreements made by Tenant as hereinafter specified, does by this Lease let and lease the Premises to Tenant in accordance with the terms of this Lease as hereinafter specified.

1. Term and Renewal. The term of this Lease shall be one (1) year, beginning on June 1, 2022, and ending on May 31, 2023 unless sooner terminated as provided for herein. This Lease shall automatically renew for four (4) successive one (1) year terms unless Landlord or Tenant notifies the other in writing of their desire not to renew the lease for another term at least thirty (30) days in advance of the expiration of the then current term. Any such renewal of the Lease shall be subject to rent or other amounts or covenants, if any, provided by Landlord to Tenant in writing not less than seventy-five (75) days prior to the expiration of the then current lease term.

2. Purposes and Uses. Tenant is hereby authorized to use Gregory for periodic active shooter and SWAT training events upon at least two (2) week's prior written notification to Landlord. Tenant shall be responsible for any damage caused to Gregory or injury to persons arising out of such training or use of Gregory. Tenant shall also have the right to utilize space as designated by the City Administrator within the Office for office use by Tenant's Water Division (hereinafter "Space"). Tenant shall be responsible for providing its own equipment, furniture, and supplies needed for such office use. Tenant shall not use the Premises in any way that may jeopardize Landlord's insurance of the Premises or increase Landlord's premiums therefor. Tenant shall not use the Premises in any way that would disturb the peaceable use and possession of the Landlord or any other tenant of the Premises and shall at all times during use of the Premises abide by all applicable laws and regulations.

3. Compensation. Due to the public benefits provided by Tenant through this Lease including better active shooter and SWAT training of Tenant's personnel to better serve the residents of Missouri, including Fenton, and its Water Division being located closer to the Meramec for faster water rescues and responses to other incidents on or surrounding the Meramec, Landlord agrees to lease the Premises under the terms herein for no charge to Tenant during at least the first term of this Lease except for any costs associated with Tenant's insurance and other obligations provided for herein.

4. Surrender of Premises to Landlord. Upon the natural expiration or upon the termination of this Lease or of Tenant's right to possess the Premises or a portion thereof as provided under any provision of this Lease, Tenant shall surrender possession of the Premises, or portion thereof, to Landlord immediately and peaceably, and in as good of condition as the Premises were on the

Effective Date in accordance with Paragraph 6, reasonable and ordinary wear and tear excepted, unless there is a loss as described in Paragraph 20. Tenant agrees that by 5 P.M. on the date of the termination of this Lease or repossession of the Premises by Landlord, Tenant shall remove all personal property to which it has the right of ownership under this Lease. Any and all property of Tenant not removed by such date and time shall, at the option of Landlord, irrevocably become the sole property of Landlord. Tenant waives all rights to notice and all common law and statutory claims and causes of action that it may have against Landlord subsequent to such date as regards to the storage, destruction, damage, loss of use, and ownership of the personal property affected by the terms of this Paragraph. Tenant acknowledges Landlord's need to re-let or put to other public purpose the Premises, or portion thereof, upon termination of this Lease or repossession of the Premises, or portion thereof, and understands that Tenant's forfeitures and waivers provided herein are necessary to aid said re-letting or other public use. Tenant expressly agrees that its obligation to restore the Premises to a condition as good as existed on the Effective Date as provided in this Paragraph and in Paragraph 6 shall survive termination of this Lease.

5. Assignment and Subletting. Tenant shall not assign or sublease the Premises.

6. Condition of Premises, Repair, and Maintenance. Tenant acknowledges that it has inspected and examined the Premises and accepts them "as is" in their condition as of the Effective Date. Landlord makes no warranties as to the condition of the Premises. Tenant agrees that Landlord shall make no repairs to or otherwise maintain the Premises, other than such repairs that are required to maintain the structural integrity of the Premises. Tenant shall not injure, overload, or deface the Premises, or otherwise cause damage to or of the Premises, and shall immediately rectify any such injury, overloading, or damage. Tenant shall use diligence and care in protecting the Space and shall maintain the Space in as good of condition as existed on the Effective Date and maintain the Space generally in good working repair and order and keep the Space clean and safe for all persons using or present in the Space, all at Tenant's sole expense. Tenant shall notify Landlord before it makes: (a) any non-routine repairs, (b) any repairs that might affect the structural integrity of the Premises, and/or (c) when any repairs could affect any other tenants, Landlord, or the public.

7. Improvements and Alterations; Landlord's License to Enter. Tenant shall not improve or alter the Premises in any way, including but not limited to by attaching or installing any fixtures or equipment in or to the Premises, without first obtaining the express written approval of the City Administrator of Landlord, which may be withheld in his/her sole and complete discretion. The changing of any locks on any doors of the Premises shall constitute an improvement and/or alteration, and Tenant shall not change such locks without first obtaining the express written approval of Landlord, and additionally shall furnish free of charge two (2) keys to Landlord on the date such locks are changed as approved. Tenant shall ensure that all improvements or alterations made to the Premises are done in a workmanlike fashion with materials that meet or exceed the quality of the materials present in the Premises on the Effective Date. Any improvements or alterations made to the Premises shall, upon the expiration or termination of this Lease and at the option of the Landlord, become the property of Landlord, and in such case Tenant's obligations in Paragraph 4 to restore the Premises shall be modified only to the extent that such improvements and alterations are to remain part of the Premises; otherwise, Tenant is obligated to completely restore the Premises as required in Paragraph 4, unless Tenant obtains an express written waiver or modification from Landlord. Tenant shall make every reasonable effort

to minimize any disruption or disturbance caused by any improvements or alterations to other tenants or other persons within or on the Premises. Landlord retains the right to make alterations or additions to the Premises at any time and Tenant hereby grants Landlord, its agents, licensees, and assigns, a right and license to enter the Premises for the purpose of performing such work.

8. Building Sign. Tenant agrees not to affix anything upon the exterior of the Premises, including but not limited to signs without the prior written consent of Landlord. Any sign or other exterior alteration must be approved by Landlord and must conform to Landlord's ordinances.

9. Insurance, Waiver of Subrogation. Landlord acknowledges that Tenant is self-insured and Tenant warrants that such self-insurance program is adequate to cover Tenant's obligations under this Lease including as described in Paragraph 10.

10. Responsibility for Own Acts. Neither party shall be responsible for the acts or the failures to act of the other party in connection with the obligations under this Agreement. Nothing in this Agreement shall be deemed a waiver of any immunities held by either party.

11. Landlord May Enter; Landlord's Placement of Signs. Landlord reserves and shall at all times have the right to enter the Premises to inspect the same, to show the Premises to prospective purchasers, lenders, or tenants, and to inspect, alter, improve, or repair the Premises, and may, without limitation, for that purpose erect, use, and maintain scaffolding, pipes, conduits, and other necessary structures in and through the Premises where reasonably required by the character of the work to be performed. Landlord may also display such "For Sale" or "For Rent" signs as it deems advisable on any door or window, or elsewhere on the Premises. For each of the aforesaid purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors in the Premises, and Landlord shall have the right to use any and all means that Landlord may deem proper to open said doors in an emergency to obtain entry to any portion of the Premises. Landlord shall also have the right at any time to change the name, number, or designation by which the Premises is commonly known. Any such entry shall not in any way constitute by Landlord a dispossession of the Premises from Tenant.

12. Personalty. All personal property of any kind that may be on the Premises remains there at the sole risk of Tenant, irrespective of its ownership. Landlord shall not be liable to Tenant or to any other person for any injury, loss, or damage to such property, or to the property or person of another by any such property. Tenant shall be solely responsible for any property, regardless of ownership, that is brought into the Space and for keeping the Space locked when not in use.

13. Compliance with Law. Tenant shall comply with all statutes, ordinances, court orders, rules, regulations, directives of lawful authorities, and any other source of governing law pertaining to or affecting the Premises and its occupation and use.

14. Subordination, Attornment. Without the necessity of any additional document being executed by Tenant for the purpose of effecting a subordination, Tenant agrees that this Lease shall be subject and subordinate at all times to any ground or underlying leases and to the lien of any mortgages or deeds of trust now or hereafter placed on, against, or affecting the Premises or Landlord's interest or estate therein.

15. Conveyance by Landlord/Optional Termination. In event of any conveyance of the Premises by Landlord, such conveyance shall operate to release Landlord from this Lease and from any future liability upon any of the covenants or conditions, expressed or implied, herein contained in favor of Tenant, and in such event Tenant agrees to look solely to the successor-in-interest of Landlord in and to this Lease. In the event of conveyance of the Premises by Landlord, either Landlord or Landlord's successor in interest shall have the right to terminate this Lease at any time upon at least thirty (30) days advance written notice to Tenant. In the event Tenant fails to vacate the Premises within thirty (30) days of the date of said termination notice, or such other later date as set forth in said notice, Tenant shall be a holdover tenant and Landlord or its successor in interest shall have, in addition to any other rights in this Lease and by law, the right to exclude Tenant from the Premises by any lawful means, including changing locks and terminating utility services to the Premises.

16. Termination by Landlord. In addition to any other rights to terminate this Lease under the terms hereof including upon conveyance of the Premises by Landlord, Landlord may terminate this Lease at any time should it be determined by its Board of Aldermen that convenience requires it to do so, by serving upon the Tenant a written notice of such termination of Lease at least thirty (30) days prior to the effective date of such termination. Landlord may also for any reason and upon at least thirty (30) days' notice to Tenant terminate Tenant's right to utilize Gregory or the Office without terminating this Lease or Tenant's right to utilize the space not so terminated.

17. Holdover. In the event that Tenant does not immediately vacate the Premises, or Gregory or the Office if such rights to utilize only the Office or Gregory are terminated, and surrender possession thereto to Landlord on the required date under any provision of this Lease, Tenant shall pay to Landlord the actual damages of such delay incurred by Landlord as stated by Landlord, unless otherwise provided in a written amendment to this Lease. Such payment by Tenant and its acceptance by Landlord alone shall not constitute an amendment to or renewal of this Lease, but rather such occupancy by Tenant shall be a tenancy by sufferance, and Landlord shall not be deemed to have waived any other remedy available to it under this Lease or under any law by such acceptance.

18. Default. Any of the following occurrences shall constitute a default under this Lease:

(a) Failure of Tenant to vacate a portion of the Premises or the Premises and surrender possession immediately upon termination or expiration of the Lease, or upon termination of Tenant's right to possession; or

(b) Tenant fails to comply with any other term, provision, or covenant of this Lease, and Tenant remains out of compliance by not taking steps to rectify such noncompliance within five (5) days after written notice thereof to Tenant, including by submitting to Landlord a detailed plan to rectify any such noncompliance.

19. Landlord's Remedies. Landlord shall retain the right, in addition to any other right at law or in equity, to seek any and all remedies available under this Lease notwithstanding the termination of the Lease for any reason. Landlord's election of any particular remedy hereunder shall not constitute a waiver of other remedies provided by this Lease or by law, and Landlord fully reserves any and all rights and remedies available to it to enforce the terms of this Lease, and Landlord shall not in any other way be prevented or foreclosed from exercising its complete rights as conferred by this Lease or by law.

20. Casualty, Loss of Premises. In the event of an exercise of eminent domain, Tenant shall have no share of the condemnation award. Tenant acknowledges that Tenant shall have no claim against Landlord for the value of any unexpired portion of the term under any loss as defined herein, or for any other loss Tenant incurs as a result of any loss or casualty. Landlord is under no obligation to, and makes no warranties or guarantees that it will, replace, restore, repair, or rebuild the Premises, or an equivalent in the event of any such loss; Landlord is not the insurer of Tenant, and any loss of or damage to personal property is governed by Paragraph 12. In the event of any loss or other casualty or damage of any nature whatsoever resulting from any negligence, recklessness, or intentional conduct of Tenant or its agents, officers, employees, guests, customers, and invitees, Tenant shall repair and restore the Premises as provided in Paragraph 4.

21. Notices. Notifications to Landlord or Tenant on any matter required by or relating to this Lease shall be made in writing by U.S. Mail return receipt requested, by courier, or by hand-delivery personally served, as follows:

If to Landlord:

City of Fenton
Attention: City Administrator
625 New Smizer Mill Road
Fenton, Missouri 63026

If to Tenant:

Missouri State Highway Patrol
Attn: Fleet and Facilities Division
1501 E. Elm Street
Jefferson City, MO 65101

Notice shall be deemed made when the written notice is (1) placed in the U.S. Mail, with written receipt thereof, (2) placed in the hands of a courier with written receipt thereof, or (3) personally delivered to Landlord or Tenant, as the case may be.

22. Hazardous Materials. Except for Hazardous Material contained in standard consumer products used by Tenant in *de minimis* quantities for ordinary cleaning and office purposes, Tenant shall not permit or cause or suffer any party to bring any Hazardous Material, as hereinafter defined, upon the Premises, or transport, store, use, possess, generate, manufacture, or release any Hazardous Material in or about the Premises without Landlord's prior written consent. Tenant at its sole cost and expense, shall operate its business in the Premises in strict compliance with all Environmental Laws, as hereinafter defined, and shall remediate in a manner satisfactory to Landlord any Hazardous Materials released on or from the Premises by Tenant, its agents, employees, contractors, or invitees. The term "Environmental Laws" shall mean all applicable present and future statutes, regulations, ordinances, rules, codes, judgments, orders, or other similar enactments of any federal, state, or local governmental authority, or agency relating to health, safety, or environmental conditions on, under, or about the Premises or the environment. The term "Hazardous Material" shall mean and include any substance, material,

waste, pollutant, or contaminant listed or defined as hazardous or toxic, under any Environmental Law, asbestos and petroleum, including crude oil or any fraction thereof, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel or any mixture thereof. The obligations of this Paragraph shall survive any termination or expiration of this Lease.

23. Commissions. Landlord and Tenant both warrant that they have not dealt with any broker or finder or other similar real estate or leasing agent in connection with the procurement, negotiation, or execution of this Lease.

24. Waivers. Landlord shall not be deemed to have waived any condition, term, or provision of this Lease, or any right it has under this Lease or under law, unless Landlord expressly sets out such waiver in writing, nor shall any waiver of any single violation, noncompliance, or other breach of any of the terms, provisions, or covenants of this Lease be deemed or construed to constitute a waiver of any identical but subsequent violation, noncompliance, or other breach nor of any other violation, noncompliance, or breach of any other term, provision, or covenant herein contained.

25. Miscellany.

a. This Lease shall be governed by and interpreted under the laws of the State of Missouri, and any suit to enforce or interpret the provisions hereof shall be filed in Saint Louis County; provided however that Tenant agrees it shall first exhaust the administrative appeals process provided for in Landlord's Code of Ordinances, Chapter 160.

b. The captions and numbers of each paragraph are provided for convenience only, and to the extent there is any perceived or actual conflict between, or a perceived or actual ambiguity created by, the captions and the express terms of this Lease, the express terms shall govern, and the captions disregarded.

c. This Lease contains the entire agreement of the Landlord and Tenant and supersedes any prior understanding or representation of any kind preceding the Effective Date of this Lease. This Lease may be modified after the Effective Date only in writing, and only by those duly authorized by the Landlord and Tenant to amend or modify this Lease.

d. The signatories hereto warrant that they are authorized to execute this Lease on behalf of Landlord and Tenant, respectively.

e. Landlord and Tenant acknowledge that they have read the entirety of this Lease, that they have had sufficient time and opportunity to review and consult with counsel, and expressly agree that the ordinary rule of construction that contracts are to be construed against the drafter shall not apply to the interpretation of this Lease.

f. This Lease may be executed in counterparts.

26. Effective Date. The Effective Date of this Lease shall be the later of the date the last party hereto executes it, and this Lease shall be of no force or effect unless and until both Landlord and Tenant execute it.

IN WITNESS WHEREOF, Landlord and Tenant execute this Lease on the date noted:

LANDLORD

CITY OF FENTON, MISSOURI

By: _____
Mayor

Date: _____

ATTEST:

City Clerk

TENANT

By: _____

Date : _____

Name: Catherin Brown

Title: Fleet & Facilities Division Director

ATTEST: _____