City of FRESNO **REPORT TO THE CITYCOUNCIL**

AGENDA ITEM NO.
COUNCIL MEETING 05-08-07
APPROVED BY
DEPARTMENT DIRECTOR Randy R. Bruegman
CITY MANAGER

May 8, 2007

FROM: RANDY R. BRUEGMAN, Fire Chief
Fire Department

SUBJECT: REQUEST COUNCIL APPROVAL OF LEASE AGREEMENT WITH THE NORTH CENTRAL FIRE PROTECTION DISTRICT OF THE USE OF FIRE STATION NO. 45, 7285 WEST SHIELDS AVENUE

KEY RESULT AREA - 0209001000

Public Safety

RECOMMENDATION

Approve lease agreement for the use of the North Central Fire Protection District Station 45 and authorize execution of the lease agreement.

EXECUTIVE SUMMARY

With the passage of Measure B and the approval of the service agreement with the North Central Fire Protection District by the City Council and subsequently by the North Central Fire Protection District Board of Directors, the transition of services has begun and the implementation of the service agreement will begin July 1, 2007. With the closure of Fire Station No. 45, it affords the opportunity to utilize the station as a satellite maintenance facility, which has advantages to both the City and the District, in that preventative maintenance and minor repairs could be performed at this facility.

The following are key points the agreement allows for:

- Initial term will be from June 1, 2007 to June 30, 2008, with an automatic lease renewal option by the City for up to four additional one-year terms, subject to a convenience termination right by the City upon 90 days notice to District.
- Monthly rent of $200 paid by the City to District on the first day of the month.
- City will be responsible for the cost of water, sewage, garbage, gas, and electric, along with any sub metered costs of utilities.
- City shall be responsible for all improvements, required permits/approvals including any/all associated costs and the upkeep for such improvements. The City will be responsible for any damage to the property caused by installation, operation, and or removal of lessee improvements, fixtures and equipment.

- The City acknowledges and agrees with the District allowing American Ambulance to continue using Station 45 as a staging base.
- District shall retain ownership of all facilities and equipment owned by the District as of the effective date of the contract. Should the District decide to sell the facilities and equipment, the City shall have the right-of-first refusal to purchase such at a fair market value.
- District shall be responsible for and maintain and repair all capital and structural portions of the property including the roof, in a good, clean, and safe condition. The City will be responsible to perform day-to-day routine maintenance and repair of District owned property.
- There is a 30-day written notice required by either party for Non-Performance and Termination.
- The City agrees to maintain self-insurance in an amount of $1,000,000 to fund any liability for any act, neglect, fault of or omission of any duty arising out of City's use and occupation of the Property.
- District will maintain the right to enter and inspect the property with a two-hour notice to the City during normal working hours (6 a.m. to 6 p.m.) or 24-hour notice to enter outside normal working hours.

KEY OBJECTIVES

The balance of this proposed contract provides gains in all three key objectives of Customer Satisfaction, Employee Satisfaction, and Financial Management. Customer satisfaction will be enhanced by providing better coordinated services between the City and the District. Use of this facility will provide a more effective and timely response to maintenance issues for both agencies, and the location will enhance productivity of the maintenance staff.

BACKGROUND

The current Fire Department maintenance facility, which is scheduled to be replaced, is outdated and does not afford the space for maintenance personnel to work on numerous vehicles at one time. Often personnel are performing maintenance in the drill yard behind Fire Station No. 3. With the addition of the second maintenance site, it is anticipated the productivity of the maintenance mechanics would improve, and the location of this facility would also assist in the maintenance of vehicles located west of Highway 99 for both the City and the District. In addition, this facility also has the repair and refilling capabilities for self-contained breathing apparatus (SCBA).

FISCAL IMPACT

The lease fee for this facility is $200 per month. The lessee (City) will be responsible for the cost of utilities for the portion of the property utilized. The City is also responsible for the daily upkeep and minor maintenance issues that arise from the use of this structure. The cost will be absorbed in the existing budget.

RRB/mc 050107

Attachment:
Lease Agreement for Use of Fire Station 45 from the North Central Fire Protection District

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City of Fresno
Fire Department
450 M Street
Fresno, CA 93721-3083
Attention: Fire Chief

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

This Lease Agreement is recorded at the request and for the benefit of the City of Fresno and is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

CITY OF FRESNO

By: _____
Name: _____
Title: _____

LEASE AGREEMENT BETWEEN NORTH CENTRAL FIRE PROTECTION DISTRICT AND CITY OF FRESNO

(Regarding North Central Station 45)

DRAFT

THIS LEASE ("Lease") is made as of _____, 2007, between NORTH CENTRAL FIRE PROTECTION DISTRICT, a California fire protection district, organized and operated pursuant to the Fire Protection District Law of 1987, Health and Safety Code, Sections 13800, et seq., (hereinafter referred to as "DISTRICT"), and the CITY OF FRESNO, a municipal corporation (hereinafter called the "LESSEE").

1. GRANT AND DESCRIPTION OF LEASEHOLD. DISTRICT owns in fee and hereby leases to LESSEE, in "as is" condition, on a turnkey basis (i.e., including all equipment, facilities, tools, and implements – see Inventory attached hereto/incorporated herein) a portion of the improved property known as DISTRICT Station 45, located at 7285 West Shields Avenue, Fresno, California, as more completely described and depicted in the Exhibit "A," attached hereto and incorporated by reference herein, and hereinafter referred to as the "Property."

2. TERM. DISTRICT leases to LESSEE the above described Property for an initial term commencing on June 1, 2007 and ending on June 30, 200[8] ("Initial Term"), and DISTRICT grants LESSEE up to four (4) additional one-year extension options exercisable by LESSEE in its sole discretion ("Extended Term"), unless sooner terminated pursuant to the terms of this Lease. Should LESSEE retain possession after the expiration or earlier termination of this Lease, LESSEE shall become a holdover tenant on a month-to-month basis on the same terms and conditions as then in effect and either DISTRICT or LESSEE may then terminate the holdover tenancy by giving the other at least thirty (30) days prior written notice in the manner otherwise provided in this Lease

3. RENT. Monthly rent in the amount of two hundred dollars ($200) shall be due in advance on the first day of each month during the Lease and shall be overdue if not paid by the 10th day of the month, prorated for portions thereof.

4. UTILITIES. LESSEE will be responsible for the cost of water, sewage, trash, gas, and electricity arising from LESSEE's use of the Property. LESSEE shall be responsible for paying all such sub metered costs of utilities.

5. LESSEE IMPROVEMENTS/USE.

A. LESSEE may use the Property for equipment maintenance, repair, storage, and outfitting. LESSEE may locate upon the Property trade fixtures and equipment as are necessary in pursuit of LESSEE's permitted use of the Property and such shall at all time remain the property and responsibility of LESSEE. LESSEE may undertake improvements additional to above only (i) upon approval of the DISTRICT, which approval shall not be unreasonably withheld, and (ii) at LESSEE's sole cost, expense, and risk. LESSEE shall be responsible for all required permits/ approvals including any/all associated costs, provided DISTRICT shall fully cooperate in this regard. The LESSEE shall be responsible for any damage to the Property caused by installation, operation, and/or removal of LESSEE improvements, fixtures, and equipment.

B. LESSEE agrees to comply with all applicable laws, ordinances, and regulations in connection with its use of the Property. DISTRICT covenants that said Property is suitable for the intended use of LESSEE and is in compliance with all applicable laws, ordinances, and regulations for said use.

C. LESSEE shall not commit any acts on the Property, nor use the Property in any manner that will increase the existing rates for or cause the cancellation of any fire, liability, or other insurance policy insuring the Property or the improvements on the Property. If, following notice and not less than 30 days opportunity to cure, the LESSEE'S occupancy or use of the Property results in an increase in the insurance costs or property taxes, LESSEE will reimburse DISTRICT for such increased costs or taxes within thirty (30) days of DISTRICT giving notice to LESSEE of a right to reimbursement under this section and DISTRICT providing LESSEE with documentation of increased costs or taxes. LESSEE, following notice

thereof, shall, at LESSEE's own cost and expense, reasonably comply with all requirements of DISTRICT's insurance carriers that are necessary for the continued maintenance at reasonable rates of fire and liability insurance policies on the Property and the improvements on the Property.

D. LESSEE shall not commit any waste or any public or private nuisance upon the Property. LESSEE shall not do anything on the Property that will cause damage to the Property.

E. The parties acknowledge and agree that a portion of Station 45/environs not leased the LESSEE hereunder, is and may during the term hereof continue to be used by American Ambulance as a staging base, provided that such use shall be subject to and consistent with applicable laws, regulations, and requirements and not interfere with LESSEE's use and quiet enjoyment hereunder.

F. There will be during the term of this Lease and no less often than annually, meetings between LESSEE's representatives and DISTRICT's representatives to review performance under this Lease and address issues and concerns related to this Lease. Such meetings may be conducted in person or by telephone.

G. DISTRICT shall retain ownership of all facilities and equipment owned by DISTRICT hereunder on the effective date hereof. Should DISTRICT decide to divest itself of such facilities and equipment, LESSEE shall have right-of-first refusal to purchase such at a fair market value.

6. MAINTENANCE AND REPAIR.

A. DISTRICT shall be responsible for and maintain and repair all capital and structural portions of the Property including the roof in a good, clean, and safe condition. LESSEE shall perform day-to-day routine maintenance and repair of DISTRICT owned property.

B. LESSEE, at LESSEE's own expense, shall repair all damage to the Property or to the improvements thereon occasioned by LESSEE's lack of ordinary care. Without limitation by any other provision of this Lease, LESSEE shall be responsible to pay for, or reimburse DISTRICT, for all damages, costs, or expenses incurred in connection with installing or removing any improvements made by LESSEE in connection with this Lease

C. Except as otherwise provided in this Lease, LESSEE shall perform, at LESSEE's sole expense, all repairs and maintenance for all LESSEE owned improvements thereon. Any repairs by LESSEE shall be made promptly with first-class materials, in a good and workmanlike manner, and in compliance with all applicable laws of all governmental authorities.

7. NON-PERFORMANCE AND TERMINATION. Any event of nonperformance by either party that is not cured within 30 days written notice thereof (or if not reasonably capable of cure within said 30 days when said cure is not commenced within the 30-day period and continued to completion of cure) shall be an event of default. Upon default, the non-defaulting party may, notwithstanding any other available right/remedy:

A. Terminate this Lease.

B. Reasonably make and/or commence making the required performance/repairs, and thereupon be entitled to reimbursement from the defaulting party for the costs thereof including repair, labor, material, and other costs incurred in connection with making the repairs. Such reimbursement shall be due within thirty (30) days of notice of exercise of rights under this subsection.

C. Upon any expiration or earlier termination of this Lease, LESSEE shall surrender the Property to DISTRICT in as good a condition and repair as existed on the date of this Lease, less reasonable wear and tear.

8. LIABILITY. DISTRICT shall not be responsible for any injury or damage to any person or property in or about the Property caused by any act, neglect, fault of, or omission of

any duty by LESSEE, its agent, servant, employees, or invitees. LESSEE agrees to maintain self-insurance in an amount of $1,000,000 to fund any liability for any act, neglect, fault of, or omission of any duty arising out of LESSEE'S use and occupation of the Property.

9. ADDITIONAL GROUNDS FOR TERMINATION. Without limitation, this Lease may be terminated upon [90] days written notice by LESSEE (i) upon any failure of City Council to allocate funding sufficient in pursuit hereof, (ii) at LESSEE's convenience.

10. IMPROVEMENTS/FIXTURES. It is further mutually understood and agreed that any equipment, fixtures, or apparatus installed in or on said Property by the LESSEE, shall continue to be the Property of the LESSEE and shall be removed by the LESSEE, without damage to the Property, at the expiration or earlier termination of this Lease. As to any permanent improvements/fixtures, such may be left upon the Property as mutually agreed by the parties including DISTRICT's payment of the then current market (depreciated) value, if any.

11. RIGHT OF ENTRY. DISTRICT, or its representatives, shall upon giving LESSEE two (2) hours notice of intention to enter during normal working hours (6 a.m. to 6 p.m.), or twenty-four (24) hours notice of intention to enter outside of normal working hours, have the right to enter the Property at any time during the term of this Lease for any lawful purpose.

12. OPTION TO RENEW. It is further understood and agreed that DISTRICT gives to LESSEE an option to renew this Lease and continue on the Property under the same terms and conditions on a year-to-year basis after the Initial Term for a period not to exceed four (4) years. Said option will be deemed automatically exercised upon expiration of the Initial Term and each option year thereafter unless LESSEE advises DISTRICT of non-exercise by giving DISTRICT at least a ninety (90) day written notice before the last day of the then current term. Such option to renew following the initial term shall be referred to herein as the "Extended Term."

13. ATTORNEY'S FEES. If any action at law or in equity is brought to recover any rent or other sums under this Lease, or for or on account of any breach of or to enforce or interpret any of the covenants, terms, or conditions of this Lease, or for the recovery of the possession of the Property, the prevailing party shall be entitled to recover from the other party as part of prevailing party's costs reasonable attorney fees, the amount of which shall be fixed by the court and shall be made a part of any judgment rendered. Furthermore, if DISTRICT incurs any costs of collection for amounts due to DISTRICT by LESSEE, then DISTRICT shall be entitled to recover all such reasonable collection costs.

14. VENUE. Venue for any action arising out of or relating to this Lease shall only be in Fresno County, California. The rights and obligations of the parties and all interpretation and performance of this Lease shall be governed in all respects by the laws of the State of California.

15. NOTICES. Any notice required or intended to be given to either party under the terms of this Lease shall be in writing and shall be deemed to be duly given if delivered personally or deposited into the United States mail, with postage prepaid, return receipt requested, and addressed to the party at the address set forth on the signature page herein. Either party may change its address for purposes of this paragraph by giving written notice of the change to the other party in the manner provided in this Paragraph.

16. ASSIGNMENT. LESSEE will not assign this Lease in whole or in part, nor sublet all or any part of the Property.

17. ENTIRETY – SUCCESSION. This Lease represents the entire agreement between the parties with respect to the subject matter hereof, superseding all prior negotiations, representations, and contracts, and constitutes the entire agreement concerning DISTRICT's leasing of the Property to LESSEE and the consideration therefore.

18. BINDING ON SUCCESSORS. All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the respective heirs,

executors, administrators, successors, and assigns of said parties. No rights, however, shall inure to the benefit of any assignee of LESSEE unless the assignment of such assignee has been approved by DISTRICT in writing as provided in Paragraph 17 hereof.

19. AUTHORITY. All individuals executing this Lease on behalf of that entity represent that they are authorized to execute and deliver this Lease on behalf of that entity.

20. SPECIAL PROVISIONS REGARDING ENVIRONMENTAL. Nothwithstanding anything else in this Lease, the following environmental provisions shall control:

A. Definition: The term "Hazardous Substances," as used in this Lease shall include, without limitation, flammables, explosives, radioactive materials, asbestos, polychlorinated biphenyls (PCBs), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, petroleum and petroleum products, and substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental authority.

B. Restrictions: LESSEE SHALL NOT cause or permit to occur:

(1) Any violation of any federal, state, or local law, ordinance, or regulation now or hereafter enacted, related to environmental conditions in, on, under or about the Property, or arising from LESSEE's use(s) or occupancy(ies) thereof, including, but not limited to, soil and ground water conditions; or

(2) The use, generation, release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Substance in, on, under or about the Property, or the transportation to or from the Property of any Hazardous Substance, EXCEPT WHERE: (1) such use, generation, release, manufacture, refining, production, processing, storage, or transportation shall be necessary in pursuit of or incidental to LESSEE's rights and privileges hereunder, or (2) DISTRICT's advance written consent to any such use, generation, release, manufacture, refining, production, processing, storage, or transportation shall have first been requested in writing and received by LESSEE. Any and all such authorizations/consents

of DISTRICT shall be deemed given subject to and conditioned upon LESSEE's fully and faithfully complying with any and all federal, state, or local statutes, laws, ordinances, rules, and/or regulations, now or hereafter enacted, applicable to the use, generation, manufacture, refining, production, processing, transport, transfer, storage, disposal, and/or sale of that/those Hazardous Substances to which any such authorization/consent of DISTRICT may, in any way whatsoever, be deemed to apply.

(3) DISTRICT's consent/approval shall not be required for the use, storage, and disposal of materials/supplies containing hazardous substances where such materials/supplies shall be lawfully available to BOTH the general public and LESSEE through commercial retail outlets so long as:

(a) such materials/supplies are NOT for A Resale, are obtained periodically but frequently enough to preclude the storage of unreasonable quantities of such on the Property, and are for use by LESSEE or LESSEE's employees, agents, representatives, contractors, or subcontractors in the performance of LESSEE's normal day-to-day and/or periodic housekeeping and routine, recurring maintenance activities on the Property (e.g., commercial cleaning products [soaps/detergents/solvents] and furniture and floor waxes); and

(b) so long as the use, storage, and disposal of any and all of such materials/supplies shall be in full compliance with any and all federal, state, and local statutes, laws, ordinances, codes, rules, and regulations applicable thereto now or hereafter enacted (including, without limitation, any and all Occupational Safety and Health statutes, laws, codes, rules, and regulations of the Federal Government and the State of California).

(4) LESSEE, at the written request of DISTRICT, must make available for inspection and copying, at DISTRICT's cost and expense, upon reasonable notice and at reasonable times, any or all of the documents and materials LESSEE has prepared to satisfy the requirements of any Environmental Law(s) or submitted to any governmental

regulatory agency; provided, that such documents and materials relate to environmental issues or Environmental Laws and are pertinent to the Property.

(5) DISTRICT must have access to the Property upon notice to LESSEE and at reasonable times, to inspect the same in order to confirm LESSEE is using the Property in accordance with Environmental Laws. The costs of any testing deemed necessary by the DISTRICT as a result of an environmental inspection in order to establish compliance as above, will be the responsibility of the LESSEE.

(6) If LESSEE receives a notice of violation for an alleged failure to comply with an applicable Environmental Law from the regulatory agency responsible for implementation of said Environmental Law, and LESSEE fails to correct the alleged noncompliance within a reasonable period or does not appeal the Notice of Violation, then DISTRICT, in addition to its rights and remedies provided elsewhere within this Lease, may enter the Property upon reasonable written notice to LESSEE and at reasonable times, and take all reasonable and necessary measures as required by Environmental Laws, at LESSEE's expense, to ensure compliance with Environmental Laws.

(7) LESSEE must not store, use, or dispose of any Hazardous Materials on the Property, except those Hazardous Materials used in the ordinary course of LESSEE's authorized uses hereunder, unless LESSEE first secures the written authorization of the DISTRICT, which shall not be unreasonably withheld, and complies with any reasonable conditions DISTRICT may impose, which reasonable conditions shall be consistent with Environmental Laws, including the submission to DISTRICT of all Material Safety Data Sheets for the Hazardous Materials to be stored. Failure of the DISTRICT to respond to a request for authorization within ten (10) business days from receipt of the request shall be deemed approval.

(8) In the event of LESSEE's knowledge of a release or threatened release of Hazardous Materials, as defined under this Section, into the environment relating to

or arising out of LESSEE's use or occupancy of the Property, LESSEE must notify the DISTRICT immediately after release. In the event any written claim, demand, action, or notice is made against LESSEE regarding LESSEE's failure or alleged failure to comply with any Environmental Laws, LESSEE must notify DISTRICT in writing and must provide DISTRICT with copies of any written claims, demands, notices, or actions so made.

(9) LESSEE must undertake such steps to remedy and/or remove any Hazardous Materials and any other environmental contamination that arises out of LESSEE's use of the Property that are necessary and required by Environmental Laws to protect the public health and safety and the environment from actual or potential harm as determined by the responsible regulatory agency and to bring the Property into compliance with all Environmental Laws. Such work must be performed at LESSEE's expense. The DISTRICT must cooperate with the LESSEE so as not to inhibit such work. LESSEE must submit to DISTRICT its proposed plan for completing such work at the time submitted to responsible regulatory agency. Upon reasonable written notice to LESSEE, DISTRICT must have the right to review and inspect all such work at any time using consultants and representatives of its choice at DISTRICT's cost and expense.

(10) The LESSEE shall maintain any/all fuel systems and oil water separators to prevent discharge of petroleum contaminants into the waterways that would negatively impact the DISTRICT's National Pollutant Discharge Elimination System permit, if any. Outside use of soaps, surfactants, or materials that would ultimately enter the storm water and negatively impact the DISTRICT's NPDES permit, if any, is prohibited. The LESSEE will be responsible for immediately containing spills and immediately cleaning/remediation any release that can or will impact the storm water systems. Any release or spill, whether or not of a quantity reportable under Environmental Law must be reported to the DISTRICT immediately, if it cannot or will not be cleaned up prior to entering any storm water systems. In the event a release is determined to be beyond the LESSEE's ability to safely address or should the

release present an immediate hazard to life or property, the LESSEE shall immediately notify the DISTRICT.

(11) The LESSEE shall be responsible for regularly monitoring, testing, and inspecting any and all of its regulated storage tanks, underground storage tanks (UST) and above ground storage tanks (AST), in accordance with all applicable Environmental Laws. The LESSEE shall immediately notify the DISTRICT of any release(s) as defined by the applicable environment laws.

(12) In addition to the indemnification set forth elsewhere in this Lease, LESSEE hereby indemnifies and agrees to defend and hold harmless DISTRICT, its agents, partner, officer, representatives, and employees, from all costs, claims, demands, actions, liabilities, complaints, fines, citations, violations, or notices of violation arising from or attributable to: (i) the presence of Hazardous Materials at the Property or the subsurface thereof in excess of levels allowable by Environmental Laws or the violation of any Environmental Laws due to LESSEE's management of Hazardous Materials into the environment (as environment is defined in CERCLA); or (ii) any material breach by LESSEE of any of its warranties, representations, or covenants in this Section provided, that, LESSEE shall have no obligation under subsection (i) of this Subsection if the presence of Hazardous Materials at the Property or the subsurface thereof arises from activities not under the management, control, or authorization of the LESSEE. LESSEE's obligations hereunder will survive the termination or expiration of this Lease, and will not be affected in any way by the amount of, or the absence in any case of, covering insurance, or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Property or any part thereof, except that, in the event that DISTRICT recovers funds from insurance carriers in connection with claims associated with (i) and (ii) above, DISTRICT may not recover the same funds from LESSEE.

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IN WITNESS WHEREOF, the parties have executed this Lease at Fresno, California, the day and year first written.

DISTRICT

NORTH CENTRAL FIRE PROTECTION DISTRICT

By_____
President, Board of Directors

By_____
Lonnie Downs, Fire Chief

Approved as to legal form:

_____
Attorney for DISTRICT

ATTEST:
REBECCA E. KLISCH
City Clerk

By _____
Deputy

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By _____
Deputy

LESSEE

CITY OF FRESNO

By_____
Andrew T. Souza, City Manager

By_____
Randy R. Bruegman, Fire Chief

DISTRICT:

North Central Fire Protection District
Attn: Fire Chief
15850 W. Kearney Blvd.
Kerman, CA 93630-9335

LESSEE:

City of Fresno Fire Department
Attn: Fire Chief
450 M Street
Fresno, CA 93721-3083

Attachment: Exhibit "A" – Description/Depiction of Property - Station 45 Inventory

RRC:eb(40213eb/RRC)2.13.07