CITY OF FRESNO
City Clerk's Office (Original)

# USE AGREEMENT BETWEEN FRESNO FIRE CHIEF'S FOUNDATION AND FRESNO FIRE DEPARTMENT

## [RE: 2 LEASED ONE-TON PICKUP TRUCKS]

This Use Agreement is entered effective [Jan 1, 2008] by and between the Fresno Fire Chief's Foundation, a California nonprofit public benefit corporation ("FFCF") and the City of Fresno Fire Department ("FFD".)

WHEREAS, the FFCF holds the leasehold interest in two (2) 2007 one-ton pickup trucks, (collectively the "Trucks") as described in/provided for in those two June 19, 2007 Lease Agreements between Bingham Inc./assignees thereof ("Lessor") and FFCF ("Lessee"), (the "Lease(s)") attached hereto and incorporated herein; and

WHEREAS, consistent with its charitable mission the FFCF desires to grant to FFD and FFD desires to accept the right to use the Trucks solely for FFD business upon the terms and conditions herein.

NOWTHEREFORE, in consideration of the above recitals and for other good and sufficient consideration hereby acknowledged the parties agree as follows.

1. Grant of Use Right. FFD is hereby granted the right to use the Trucks in "as is" condition on the effective date hereof and on as "as needed" basis solely for FFD official business, consistent with the Leases respectively. The use rights granted hereunder shall be at no cost to the FFD except as expressly provided in this Agreement. In this regard and without limitation FFD shall have no obligation to make payments under the Leases or either of them. FFD and FFCF have each inspected the Trucks and agree that the Trucks are in generally "new" condition. The parties acknowledge and agree that FFCF reserves to itself the right to use the Trucks for a total of 10 days, provided FFCF shall give FFD reasonable prior notice of FFCD's days of intended use.

2. Obligations of FFD. In consideration of the use rights granted in the Agreement FFD shall:

a. Be responsible for the use, condition and storage of the Trucks, including without limitation the expense of fuel/fluids (as necessary) in pursuit of FFD's use rights.

b. Provide routine maintain to keep the Trucks in good mechanical condition and running order, allowing for reasonable wear and tear

c. Insure (or provide comparable self-insurance covering) the Trucks, adding FFCF as an additional insured there under, with combined limits of liability not to exceed $1,000,000. Provide, as required by the Lease Agreement, evidence of insurance in the name of FFCF.

d. Defend, indemnify and hold harmless the FFCF and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, or by regulatory agency, including but not limited to personal injury, death at any time and property damage) incurred by the FFCF from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising from the negligent acts or omissions of FFD or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement. FFCF shall not be responsible for any losses, costs, claims, demands, liabilities, damages and judgments, including interest, penalties, cost of defense and reasonable attorney's fees which arise out of, result from or relate to the negligence or willful misconduct of FFD or any of its officers, officials, employees, agents or volunteers. This section shall survive termination or expiration of this Agreement.

e. Provide/arrange for routine and warranty maintenance as required by the Leases, consistent with any assignment of manufacturer, dealer and supplier warranties by FFCF to FFD.

3. Obligations of FFCF. FFCF shall:

a. Make the Trucks available for FFD use consistent with the Agreement.

b. Ensure the Trucks are properly licensed.

c. Bear any and all costs under the Leases not allocated to FFD hereunder including without limitation applicable taxes, registration, and Lease payments.

4. Warranties and Certifications of FFCF. FFCF warrants and certifies that:

a. It holds the entire leasehold interest referenced in this Agreement.

b. It is not in default/shall not allow a default under the Leases.

c. This Agreement has been approved by its governing Board and executed by an authorized agent thereof.

5. Term and Termination. This Agreement shall remain in effect for the duration of the Leases and each of them. This Agreement may be terminated by either party as to either or both Leases with or without cause upon 30 days prior notice. In the event of expiration/termination of this Agreement, FFD shall immediately discontinue its use of the Truck(s) and return the Truck(s) to the possession and control FFCF, which shall be FFD's sole obligation upon expiration/termination. The Trucks shall be returned generally in the same condition as when received by FFD except for ordinary wear and tear.

6. Liability Limitation. FFD's cumulative liability to FFCF or any other person from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, or by regulatory agency, including but not limited to personal injury, death at any time and property damage) and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses) shall not exceed $1,000,000.

7. Nature of Relationship between the Parties. The parties are acting solely in an independent capacity. The parties intend that this Agreement provide FFD only with a right to use the Trucks upon the terms and conditions herein. The parties do not intend and nothing in this Agreement constitutes a sale, sublease, assignment and/or assumption and no security interest is created hereunder.

8. Subordination. This Agreement and the rights of FFD under this Agreement are subordinate to the Leases jointly and severally and any/all encumbrances/security interests of record on the effective date hereof.

9. Right to Inspect. FFCF and Lessor shall have the right to inspect the Trucks upon reasonable notice to FFD.

10. Liens. FFD shall not pledge, encumber, create a security interest in, or permit any lien to become effective on the Trucks/either of them.

11. Accident, Loss of Property, or Damage to Property. If the Trucks or either of them is damaged, lost, stolen, or destroyed, or if any person is injured or dies, or if any property is damaged as a result of its use, maintenance, or possession, FFD will promptly notify FFCF and Lessor of the occurrence, and will file all necessary accident reports, including those required by law and those required by insurers of the property.

a. FFD, its employees, and agents will cooperate fully with FFCF and Lessor and all insurers providing the insurance hereunder in the investigation and defense of any claims. FFD will promptly deliver to FFCF and Lessor any documents served on or delivered to FFD, its employees, or its agents in connection with any claim or proceeding at law or in equity begun or threatened against FFD, FFCF and/or Lessor, concerning the Trucks.

12. Notice. Any notices or other communications required or permitted by this Agreement or by law to be served on or given to either party by the other party and/or to Lessor will be in writing and will be deemed duly served or given when personally delivered to any member of *or* the designated agent of the party to whom they are directed, or in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, addressed as provided on the signature page of this Agreement. Either party may change its address for the purpose of this Paragraph by giving written notice of the change to the other party in the manner provided in this Paragraph.

13. Amendment. This Agreement may not be amended, modified, or altered in any

manner except in writing signed by both parties.

14. Entire Agreement. This Agreement and documents incorporated herein/attached hereto constitute the entire agreement between the parties. No agreements, representations, or warranties other than those specifically set forth in this Agreement will be binding on any of the parties unless set forth in writing and signed by both parties.

15. Binding Effect. This Agreement and each of its provisions will be binding on and will inure to the benefit of the respective heirs, executors, administrators, trustees, successors and assigns of the parties to this Agreement.

16. Severability. If any provision of this Agreement or the application of any of its provisions to any party or circumstance is held invalid or unenforceable, the remainder of this Agreement and the application of those provisions to the other parties or circumstances, will remain valid and in full force and effect.

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IN WITNESS WHEREOF, this Agreement has been executed by the parties' authorized agent(s).

| FRESNO FIRE CHIEF'S FOUNDATION | FRESNO FIRE DEPARTMENT |
|---|---|
| By: | By: [ ] |
| Michael P. Slater | Name: [ JOEL ALVAREZ ] |
| Title: CEO | Title: [ DEPUTY CHIEF ] |
| Date: , 2008 | Date: [ MAY 13, 2008 ] |
| By: | By: [ Randy R. Bruegman ] |
| Name: John Heberger | Name: [ Randy R. BRUEGMAN ] |
| Title: CFO | Title: [ FIRE CHIEF ] |
| Date: May 1, 2008 | Date: [ May 13, 2008 ] |
| [Address] | [Address] |
| [ ] | [ 911 H Street ] |
| [ ] | [ Fresno CA ] |
| [ ] | [ 93721 ] |
| LESSOR ADDRESS: | ATTEST: |
| | REBECCA E. KLISCH |
| | CITY CLERK |
| BINGHAM INC. | By: [ Rebecca E Klisch ] |
| Attn: [ Linda Gist ] | Deputy |
| 895 W. Shaw Ave. | 5-15-08 |
| Clovis, CA 93612 | APPROVED TO LEGAL FORM: |
| | JAMES C. SANCHEZ |
| | CITY ATTORNEY |
| | By: [ ] |
| | Deputy |