

Agenda Item: ID#17-1633

Date: 12/4/17

FRESNO CITY COUNCIL



Supplemental Information Packet

Agenda Related Item(s) – ID#17-1633

Contents of Supplement: Red-lined Service Agreement for the Protection and Emergency Services

Item(s)

Actions pertaining to North Central Fire Protection District:

Approve the Fifth Amendment to Service Agreement between the City of Fresno and the North Central Fire Protection District for Fire Protection and Emergency Services

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

SERVICE AGREEMENT FOR FIRE PROTECTION AND EMERGENCY SERVICES

THIS AGREEMENT is made this _____ day of _____, 2006, by and between the CITY OF FRESNO, a charter city and municipal corporation hereinafter referred to as "CITY," and the 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," the promises and agreements of each being in consideration of the promises and agreements of the other.

RECITALS

- (1) DISTRICT currently is the primary provider of fire protection service and receives general purpose ad valorem property tax and other revenues from within its territorial limits, such tax revenue being based on application of the combined "parent zone" and applicable "ZONE 1" rates to the taxable value of the real property within such territory.
- (2) DISTRICT'S current territorial limits include certain unincorporated territory in DISTRICT'S service area which are surrounded by incorporated areas of the CITY.
- (3) Current and future expansion of CITY'S incorporated territory will include the detachment of territory from DISTRICT'S service area and the transfer of such territory to CITY, and will result in the loss of significant *ad valorem* property tax revenues for the District, the impact of which is presently partially mitigated by the "TRANSITION AGREEMENT" which the parties have executed, dated as of November 29, 2005.
- (4) The parties have negotiated this "Service Agreement for Fire Protection and Emergency Services" (the "Agreement") in light of the foregoing facts and in order to enhance the fire protection services, equipment and staffing available for the residents of the DISTRICT.
- (5) By this Agreement, the parties intend to provide for the continued independence of the District's Board of Directors and the services provided by the CITY, as described in this Agreement, shall be subject to the direction of the Board of Directors of the District.
- (6) The parties wish to provide a clear means of administration and dispute resolution for purposes of this Agreement.

The parties agree as follows:

1. ~~Term. The term of this Agreement is thirty (30) years, beginning of the 1st day of July 2007 and ending on the 30th day of June 2037, subject to the provisions of Paragraph 8.~~ Term. The base term of this Agreement shall begin on the 1st day of July 2007 and end on December 31, 2017. However, the "fixed price" term of this Agreement shall commence on January 1, 2018 and end on June 30, 2019 (the "Fixed Compensation Term") subject to the provisions of Paragraph 8.

2. Scope of Services:

A. The CITY agrees to provide fire protection and emergency services to the DISTRICT consistent with the services provided within the CITY. In providing these services the CITY shall:

- 1) Provide primary response fire protection and emergency services throughout the DISTRICT in a manner consistent with this Agreement and within the staffing and response guidelines established in the service level criteria set forth in Appendix A, including the use of the CITY'S vehicles, equipment, apparatus, and sufficient personnel to operate the vehicles, equipment, and apparatus. These services shall be provided subject to the condition that reasonably sufficient vehicles, equipment, apparatus, and personnel shall remain within the CITY to assure adequate fire protection and emergency services to the CITY. Under this condition, if the demands of the DISTRICT exceed the services which the CITY can provide, the CITY agrees to the use of third party mutual aid agreements may be necessary to supplement the CITY'S vehicles, equipment, apparatus, and personnel.
- 2) Use due diligence to maintain continuous (twenty-four [24] hours per day, seven [7] days per week) and uninterrupted fire protection and emergency services which shall at least be consistent with the standards set forth in the service level criteria in Appendix A. Under no circumstances is the CITY liable to the DISTRICT for an interruption or failure of service caused by acts of God, unavoidable accident, or other circumstances beyond the control of the CITY through no fault of its own.
- 3) The services described in paragraph 1) of this section shall include the following activities:
 - (i) Review building and construction plans for compliance with applicable fire codes and ordinances of the DISTRICT.
 - (ii) Investigate fires within the DISTRICT.
 - (iii) Review and propose fire codes and ordinances for adoption by the DISTRICT, subject to the provisions of Paragraph 20.
 - (iv) Perform inspections in the DISTRICT in accordance with the Department's service level objectives.

(v) Enforce applicable fire codes, ordinances, regulations, and statutes for the District. The DISTRICT hereby delegates to the CITY authority to issue citations for such purposes.

(vi) Conduct a fire prevention and education program within the DISTRICT.

(vii) Maintain, for the DISTRICT, adequate fire service records of activities as may be required by the Insurance Services Office and the California State Fire Marshal, and financial records, as may be required by the DISTRICT Board of Directors.

(viii) Participate in mutual aid agreements and instant aid with fire protection providers who are contiguous with DISTRICT, as approved by both the City and the DISTRICT, as necessary/appropriate.

(ix) Take all reasonable steps to maintain all of its apparatus, equipment, and its entire system in a good state of repair and shall at all times conduct its operations under this Agreement in a safe and professional manner.

(x) Participate in the DISTRICT'S emergency management planning through the Fire Chief or designee.

(xi) Prepare reports for and take action for those matters shown on Appendix "D" and such other matters as reasonably requested by the DISTRICT Board from time to time, except for those matters assigned to the District's Business Manager, as set forth on Appendix "F".

(xii) Designate an individual to act as the DISTRICT "Fire Chief", subject to DISTRICT approval as the point of contact for residents of the DISTRICT and for DISTRICT Board Members.

(xiii) Insure that the DISTRICT Fire Chief attend all special and regular meetings of the DISTRICT Board of Directors, and represents the Board at all other City, County and Regional meetings of Fire Chiefs.

(xiv) Insure DISTRICT compliance with its contractual obligations by managing the contracts listed in Appendix "E", provided legal and financial obligations remain with District. CITY expressly does not assume these contracts or any of them.

B. The CITY agrees to provide the DISTRICT with monthly call summary and other reports for the fire protection services and emergency services provided.

- C. The CITY shall keep the DISTRICT informed of all new developments, issues, or concerns affecting the operations of the CITY that impact CITY's performance of this Agreement. CITY shall endeavor to notify the DISTRICT in advance of any public announcement concerning such CITY operations. The DISTRICT shall endeavor to notify the CITY of any developments or issues concerning tile Agreement in advance of any public announcement on the subject.
 - D. The City shall cooperate with the District's Business Manager in all assigned duties, as set forth on Appendix "F".
3. Compensation. The DISTRICT agrees to pay the CITY a base annual fee in two annual installments on December 31st and April 30th of each year, beginning on December 31, 2007, subject to the receipt of the DISTRICT tax revenue payments from the County of Fresno, as shown on Appendix B, subject to the following adjustments:
- A. The adjustments are:
 - 1) The base annual tee may be adjusted by approval of the parties to meet decreased service level demands resulting from annexation of DISTRICT service area.
 - 2) The base annual fee may be adjusted by approval of the parties to meet increased service level demands.
 - 3) The base annual tee shall be adjusted for the change in All Urban Consumers California CPI for the previous year or the % of DISTRICT tax revenue growth whichever is less.
 - 4) In the event that a portion of the territory of DISTRICT is annexed to CITY, such territory shall be excluded from this Agreement upon detachment, and at the next installment payment as defined in this paragraph 3, the base annual fee shall be permanently reduced by the amount of tax revenue (including the ad valorem tax and the Zone 1 voter approved tax) generated from the annexed area from/after the date of detachment. The amount of the reduction shall be the amount received by the DISTRICT in the tax year immediately preceding the annexation. The DISTRICT shall remit to the CITY any post-detachment tax revenues received by it within 30 days thereof.
 - B. None of the provisions of this Agreement shall be construed to create in the DISTRICT either party any right, interest, or ownership in any real or personal property of the CITY other used for the performance of this Agreement.

C. If during the term of this Agreement the revenue streams of the DISTRICT and/or the CITY are limited for reasons beyond their respective control and if, as a result the CITY is unable to provide the level of service described in Section 2 above, and/or if DISTRICT is unable to pay CITY for the established levels of service, either party may terminate the Agreement by notice as described in Section 8 (iv) and request best efforts renegotiation and/or service transition.

D. This agreement is subject to any applicable constitutional and charter taxing or debt limitations and is contingent upon the annual appropriation of funds. Upon failure to appropriate the funds necessary for this Agreement, notice as described in Section 8 shall be given and both parties will immediately negotiate a service transition and/or enter best efforts renegotiation, subject to Transition Agreement revival as provided hereunder.

D-E. Effective January 1, 2018 and continuing for the remainder of the Fixed Compensation Term, Paragraphs 3.A (1), 3.A (2) and 3.A (3), as well as 3.C., and 3.D. shall be of no further force or effect. During the Fixed Compensation Term, the District shall make equal monthly payments of \$600,000.00 to the City totaling \$10.8 million into a specially designated fund to be used only for the payment of the cost of services provided by the City to the District pursuant to the terms of this Service Agreement. The Parties expressly agree that the compensation to be paid by District to the City during the Fixed Compensation Term fully pays the cost of providing the services required of the City pursuant to the terms of this Service Agreement and shall be the entire amount due and owing by the District to the City under the Service Agreement as amended. The amount of compensation shall not be increased or decreased unless a Party is in breach of the Service Agreement or as provided in Section 3.A (4) of the Service Agreement (detachment of lands from the District). Each monthly payment during the Fixed Compensation Period shall be due and owing by District to the City by the first day of each month but may be paid up to the fifth-day of each month without penalty. In the event that the District fails to transmit such funds to the City by the fifth-day of the month, the District shall have an additional 30-day cure period without penalty to ensure that all amounts then due are paid to the City. In the event that the District fails to make payment after the cure period, the District shall be in breach of this Agreement unless the District can demonstrate to the City's reasonable satisfaction that the delay in payment was not caused by any delay on the District's part.

4. ~~Financial Review. Each year, the chief financial officers or designees of both agencies will review the costs associated with providing fire protection and emergency services to protect against cost shifting between agencies. The financial officers will produce a report to the elected officials that describes the outcome of the financial review, by not later than May 30th.~~
5. Legal Advice. Each party will be represented by and bear costs of its respective counsel.

6. Transition:

A. Employees: Employees of the DISTRICT who are currently employed by the DISTRICT shall have the option of transferring employment to CITY effective July 1, 2007, as described in Appendix C.

1) Except and to the extent otherwise provided herein, all DISTRICT employees who transfer to CITY employment shall be governed by the terms and conditions of the Charter of the CITY, the Fresno Municipal Code, the Administrative Order manual, the Salary Resolution and other rules and regulations of the CITY.

2) Employees of the DISTRICT who elect to transfer to CITY employment shall be placed into a job classification and bargaining unit commensurate with their DISTRICT duties and at the rate of pay as shown on Appendix "C." Non-safety DISTRICT employees shall be required to complete a CITY job application specifying their relevant knowledge, skills and abilities. All transferring DISTRICT employees must meet CITY minimum qualifications and eligibility criteria to be eligible for promotion to higher classes or ranks. All DISTRICT employees who transfer to CITY employment shall be fingerprinted prior to employment and subject to Department of Justice clearance prior to commencement of employment.

3) Except and to the extent otherwise expressly provided herein, the DISTRICT will be and remain responsible for all vested welfare, retirement and pension obligations (including pension obligation bonds, if any) and liabilities, existing on transition date, including the obligation to pay off the "severance bank" for those employees shown on Appendix "C" and to satisfy any remaining "longevity pay" obligations for those employees shown on Appendix "C."

4) DISTRICT will transfer DISTRICT leave balances remaining at time of separation to CITY for all employees who transfer employment to CITY as outlined in this Section 6 and Appendix C.

(a) Sick Leave – all DISTRICT employees shall carry over their current balance of sick leave hours (maximum of 2160 hours) which shall be their starting CITY balance at the time of transition to the CITY, provided that as to sworn management employees (Battalion Chiefs and DISTRICT Fire Chief) the DISTRICT shall pay to the CITY the value of those transferred sick leave hours above 240 hours multiplied by forty percent (40%) of the employee's existing hourly rate of pay at the time of retirement from the CITY;

(b) Vacation Leave - all DISTRICT employees shall carry over their current balance of vacation hours (maximum of 216 hours) which shall be their starting CITY balance at the time of transition to the CITY;

(i) Transitioning employees shall accrue applicable CITY vacation or annual leave hours based on their combined total years of service to the DISTRICT and the CITY in accordance with the respective Memorandums of Understanding.

(c) Holiday Leave - all sworn DISTRICT employees shall be paid by the DISTRICT for any holiday leave balance prior to transfer of employment to the CITY.

5) DISTRICT employees who transfer employment to the CITY shall be entitled to all applicable benefits to which CITY employees are entitled including under CITY reciprocity agreement(s) and Memorandums of Understanding with each respective bargaining unit. DISTRICT and DISTRICT employees shall provide all certifications, documentation and information reasonably required by the CITY for transfer of employment to the CITY, including without limitation a HIPAA certificate of creditable coverage.

6) Employees of the DISTRICT who have not completed or satisfied the terms of their probation, as of the date of the transfer, shall be required to satisfactorily complete their probation as CITY employees in accordance with CITY standards.

(i) DISTRICT dispatchers who transfer to CITY employment shall be required to successfully complete a background investigation and a probationary period with the Police Department. Dispatchers who do not successfully complete the background investigation or their probation shall be offered CITY employment in one available CITY position for which they meet the minimum qualifications with similar rate of pay.

7) Any DISTRICT employee who has suffered a work related injury or illness prior to the date of transition shall be entitled to receive medical and/or other workers' compensation benefits required by law from and through the DISTRICT before and after the date of transition. Any work related injury or illness occurring after the transition data shall be administered through the CITY's workers' compensation program.

8) The DISTRICT shall transfer the personnel files of all transitioning employees to CITY at the time of transition.

9) All safety DISTRICT employees shall be covered by the existing Memorandums of Understanding between the CITY and the International Association of Firefighters (Basic Unit and Management Unit) as outlined in Appendix "C," in addition to the following terms and conditions:

(i) Salaries – DISTRICT employees will begin at the "A" step of the salary range for each respective rank;

(ii) Seniority On the Job – DISTRICT employees will be placed at the bottom of the current seniority list in the same order they held with DISTRICT at time of transfer of employment to CITY;

(iii) Seniority In Rank - DISTRICT employees will be placed at the bottom of the current seniority list in each rank, in the order that will reflect their seniority in rank with the DISTRICT as of the time of transfer of employment to the CITY;

(iv) Assignments – DISTRICT employees may remain in their respective DISTRICT stations until the next occurring station draw.

(v) Movement Through Steps – For the first 5 years after transition, DISTRICT employees shall move from the "A" step of the salary range for each respective rank to the "A" step upon 1 year of paid status at the "N" step. Movement to each higher step of the salary range for each respective rank shall also be upon completion of one year of paid status at the lower step.

B. Facilities and Equipment. Fire protection and emergency services facilities and equipment owned by the DISTRICT shall be available for the use by the CITY at no cost to the CITY (except for stations 45 and 47) during the term of this Agreement. DISTRICT shall retain ownership of all facilities and equipment owned by DISTRICT on July 1, 2007. Should DISTRICT decide to divest itself of facilities, fire equipment or apparatus, CITY shall have right-of-first-refusal to purchase said equipment apparatus or facilities at its fair market value. The parties shall conduct an initial inventory such facilities and equipment variously identifying assets including general condition, operational status and interface/interoperability issues and costs. Any required modifications/fitting out (including without

limitation as to Mobile Data Terminals) not otherwise provided for in this Agreement shall be accomplished only as agreed to by parties in writing.

C. Reserves. DISTRICT will maintain sufficient funds in reserve to replace fire apparatus and vehicles based upon the DISTRICT replacement schedule.

D. Apparatus Maintenance. Generally, CITY will maintain DISTRICT owned apparatus and equipment regularly used by the CITY hereunder. CITY will pay for parts and labor for apparatus maintenance up to twenty thousand dollars (\$20,000) per year, and DISTRICT will be billed for all apparatus maintenance costs that exceed this amount. ~~The initial \$20,000 threshold shall be adjusted annually by the index described in paragraph 3.A.(3) of this Agreement.~~ Labor will be billed at an hourly rate based upon the wage and benefits of a Fire Equipment Mechanic II. IF DISTRICT transitions ownership of equipment and apparatus to CITY, DISTRICT and CITY will establish an equitable formula for adjusting maintenance costs. Operating costs for fuel and tires shall be borne by the DISTRICT for District Apparatus.

E. Facilities and Utilities. The cost of utilities (electric, gas, water, sewer, trash and telecom) for DISTRICT facilities will be the responsibility of the DISTRICT, provided that:

1) The CITY shall provide routine/emergency maintenance for the DISTRICT'S facilities necessary to keep such in a state of good repair; and

2) DISTRICT will pay for such routine facility maintenance not exceeding thirty thousand dollars (\$30,000) per year; maintenance costs exceeding said amount must be prior approved by the DISTRICT except in emergency situations imperiling life or property. ~~The initial \$30,000 threshold shall be adjusted annually by the index described in paragraph 3.A.(3) of this Agreement.~~

F. Small tools and equipment. The DISTRICT will budget and fund twenty-eight thousand dollars (\$28,000) per year for replacement or addition of small tools and equipment. Anything above that amount will be borne by the CITY. ~~The initial \$28,000 threshold shall be adjusted annually by the index described in paragraph 3.A.(3) of this Agreement.~~

G. Turnout Equipment. DISTRICT shall budget and fund fifty thousand dollars (\$50,000) in year 1 of this Agreement for a second set of turnout gear/equipment for each transitioning DISTRICT firefighting position. DISTRICT shall budget and fund Twenty Thousand Dollars (\$20,000) in each subsequent year of this Agreement for replacement of turnout gear and equipment. ~~The initial \$20,000 threshold shall be adjusted annually by~~

the index described in paragraph 3.A. (3) of this Agreement. The City shall, at the end of the Fixed Compensation Term, retain any turnout equipment purchased with District funds pursuant to the Service Agreement as amended. The City shall reimburse the District at the current fair market value for any turnout equipment purchased with District funds and shall return to the District any money deposited pursuant hereto, but not used for, the purchase of turnout equipment.

H. Emergency Communications. CITY will provide DISTRICT with dispatch services.

I. Insurance. Each party shall be responsible for providing insurance policies or self-insurance programs to fund liabilities on the facilities and equipment it owns. Evidence of Insurance, Certificates of Insurance or other similar documentation shall not be required of either party under this Agreement.

J. Facility/Apparatus Identity. The facilities and apparatus of the DISTRICT shall be numbered, identified and marked in the manner mutually agreed upon by the parties.

K. Prorations. The foregoing dollar amounts shall be prorated in the first year of this agreement, except for the cost of turnout equipment in Section 6.G.

7. Hold Harmless.

A. The CITY shall indemnify, hold harmless and defend DISTRICT 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, including but not limited to

personal injury, death at any time and property damage) incurred by DISTRICT, CITY or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to arise directly or indirectly from the negligent or intentional acts or omissions of CITY or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement.

B. DISTRICT shall indemnify, hold harmless and defend CITY 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, including but not limited to personal injury, death at any time and property damage) incurred by the CITY, DISTRICT or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to arise

directly or indirectly from the negligent or intentional acts or omissions of DISTRICT or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement.

C. In the event of concurrent negligence on the part of CITY or any of its officers, officials, employees, agents or volunteers, and DISTRICT or any of its officers, officials, employees, agents or volunteers, the liability for any and all such claims, demands and actions in law or equity for such losses, fines, penalties, forfeitures, costs and damages shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.

D. This section shall survive termination or expiration of this Agreement.

8. Termination. This Agreement shall be effective beginning July 1, 2007, and shall remain in full force and effect until the earlier of (i) termination by mutual written agreement of the parties, (ii) termination by a non-breaching party for the nonperformance of the other not cured following thirty (30) days written notice thereof (iii) June 30, 2037 or (iv) on nine (9) months written notice by either party, if given pursuant to paragraph 3.C.. In the event of termination, the "Transition Agreement" between the parties, dated as of November 29, 2005, shall again become effective retroactive to date one year prior to the date of termination.

8. During the Fixed Compensation Term, the Service Agreement shall remain in full force and effect until the earlier of (i) termination by mutual written agreement of the Parties, (ii) termination by a non-breaching party for the nonperformance of the other not cured following thirty (30) days written notice thereof, or (iii) June 30, 2019. Within sixty (60) days of termination of the Service Agreement, the District and the City shall execute a fire transition agreement and mutual/instant aid agreements that are materially similar to other such agreements entered into between other fire protection districts or agencies, as the case may be, and the City of Fresno.

9. Master Agreement. This agreement shall serve as the "Master Agreement" for fire protection and emergency services and transition of annexed/detached DISTRICT service area. Upon signing the parties agree that, as to the subject matter hereof this Agreement shall control any inconsistent portions of all other Agreements if any between the parties, and shall specifically supersede and suspend obligations under the "Transition Agreement" between the CITY and the DISTRICT, dated as of November 29, 2005. The DISTRICT and CITY will explore other opportunities for entering into additional mutually beneficial agreements during the effective life of this Agreement and as long as neither party is in default, CITY and DISTRICT and each of them covenant that they will not directly or indirectly oppose annexations to CITY.

10. Renewal. Each party agrees to give not less than twelve (12) months notice to the other prior to the expiration of this Agreement of intention to renegotiate the Agreement.

A. If a party has notified the other of its intent to renegotiate this Agreement, the parties agree that prior to the termination of this Agreement, they will negotiate in good faith concerning the possible renewal of this Agreement or the making of a new Agreement

- B. If a party has notified the other of its intent to renew or renegotiate this Agreement and renewal or successful renegotiation has not been completed before the end of this contract period, this Agreement shall be automatically extended for 90 days to allow continuing negotiations, upon terms and conditions then in effect. This Agreement may be extended further by mutual agreement for additional increments up to 90 days each.

During the Fixed Compensation Term, the Parties shall make reasonable efforts, but not be obligated, to renegotiate the Service Agreement. All renegotiation efforts, if any, shall occur no less than six (6) months prior to the expiration of the Fixed Compensation Term.

11. Discrimination. The parties agree not to discriminate on the basis of race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, or source of income in the performance of this Agreement.
12. Waiver of Breach. A waiver of any breach of any provision of this Agreement by either party shall not operate as a waiver of any subsequent breach of the same of any other provision of this Agreement.
13. Applicable Laws. At all times during the term of this Agreement, the CITY and the DISTRICT shall comply with all applicable laws, ordinances, rules, and regulations of the United States of America, the State of California, including all agencies and subdivisions thereof.
14. Dispute Resolution. The parties desire, if possible, to resolve disputes, controversies, and claims ("Disputes") arising out of this Agreement without litigation. To that end at the written request of a party, each party shall appoint a knowledgeable, responsible management representative to meet and negotiate in good faith to resolve any Dispute arising under this Agreement. The parties intend that these negotiations be conducted by non-lawyer, business representatives. The discussions shall be left to the discretion of the representatives.
- A. If the negotiations do not resolve the Dispute within sixty (60) days of the initial written request, the Dispute may be submitted to non-binding mediation with a mediator chosen by mutual agreement of the parties.

B. Each party shall bear its own cost of these dispute resolution procedures. The parties shall equally share the fees of the mediation and the mediator.

15. Notice. All notices, reports, or demands required to be given in writing under this Agreement shall be deemed to be given when delivered personally to the person designated below, or his successor, or when five (5) days have elapsed after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid, or on the next addressed business day if sent by express mail or overnight air courier to the party to which the notice is being given, as follows:

For City of Fresno

For DISTRICT

Fire Chief
450 "M" Street
Fresno, CA 93721

15850 W. Kearney
Blvd. Kerman, CA
9363

Copy To:
City Manager - City of
Fresno 2600 Fresno Street,
Room 2064
Fresno, CA 93721-3601

Such addresses may be changed by either party upon written notice to the other party given as provided in this section.

- 16, Captions. The paragraph captions and headings in this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement
17. Precedence of Documents. In the event of any conflict between the body of this Agreement and any exhibit or attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the exhibit or attachment. Furthermore, any terms or conditions contained within any exhibit or attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.
- 18, Third Party Beneficiaries/Independent Capacity. This Agreement shall not be assigned and shall not be construed or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action hereunder for any cause whatsoever. The parties are acting in an independent capacity in pursuit of this Agreement.
19. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of

this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses in addition to any other relief to which such party may be entitled.

20. Advisory Committee. Following the execution of this Agreement, the parties agree to create a committee to review applicable DISTRICT service area, codes and fees and present recommendation back to the North Central Fire Protection Board.