

AGREEMENT FOR FIRE PROTECTION AND EMERGENCY SERVICES

THIS AGREEMENT FOR FIRE PROTECTION AND EMERGENCY SERVICES (this "**Agreement**") is made this day of _____, 20____, to be effective on _____, 2019, by and between City OF FRESNO, a charter city and municipal corporation ("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 section 13800, et seq. ("**District**"). City and District are sometimes referred to herein collectively as the "**Parties**" or individually as a "**Party**."

RECITALS

A. District currently is a California special district formed under the Fire Protection District Act of 1987 to provide fire protection services within its territorial boundaries. District receives general purpose ad valorem property tax and other revenues calculated based on the taxable value of the real property within such territory.

B. District's territorial limits include the City of Kerman and incorporated areas within the County of Fresno, including areas immediately adjacent to the City.

C. District and City executed a previous service agreement, dated December 20, 2006, as amended, wherein City agreed to provide certain fire protection and emergency services to District within the District's service area (the "**2006 Agreement**"). This Agreement is intended to, and shall, fully replace, cancel, and supersede the 2006 Agreement.

D. District desires to obtain and the City desires to provide full fire suppression in certain unincorporated areas in the northeastern region of the District (referred to as the "**NC Metro Area**"). The NC Metro Area is identified on the map included in **Exhibit A**, attached hereto, and incorporated herein by this reference. District also desires to obtain and City desires to provide dispatching services during the first two years of this Agreement for the entire District's service area.

E. Concurrently with this Agreement, the Parties shall execute an Automatic Aid Agreement, a copy of which is attached hereto as **Exhibit B** and incorporated herein by this reference (the "**Auto Aid Agreement**") for an area along the Highway 99 corridor and the NC Metro Area. Pursuant to Paragraph 5 below, the Auto Aid Agreement shall remain in full force and effect during the term of this Agreement and until which time both parties modify the Auto Aid Agreement or map included in **Exhibit B**.

F. NOW THEREFORE, considering the foregoing recitals, which are incorporated into this Agreement, and for other valuable consideration, the sufficiency of which the Parties acknowledge, the Parties agree as follows:

1. Term. The term of this Agreement shall be three years, beginning on the July 1, 2019 (the "**Service Effective Date**") and ending on the 30th day of June 2022, subject to the provisions of Paragraph 8 (the "**Term**"). During the Term, the Parties shall make reasonable efforts, but not be obligated, to renegotiate this Agreement. All renegotiation efforts, if any, shall occur no less than one-year prior to the expiration of the

Term to ensure that the Parties each have sufficient time to complete a transition of Services, as defined in Section 2 below.

2. Scope and Level of Services. Beginning on the Service Effective Date, City shall provide primary and full fire suppression to District in the NC Metro Area consistent with the services City provides within City's boundaries and consistent with the terms of this Agreement (collectively, the "**Services**"). In providing the Services, City shall diligently maintain and provide continuous and uninterrupted fire suppression services—24 hours per day, 7 days per week—with a standard of care that shall at least be consistent with the City's existing fire suppression standards. The Services shall include, but not be limited to, the following activities:

a. Provide full alarm (for purposes of this Agreement, "full alarm" is defined as (three engines and one truck for a residential fire and three engines and two trucks for a commercial fire) fire assignment to the NC Metro Area (see **Exhibit B**).

b. Perform fire hydrant inspections and maintenance in NC Metro Area (see **Exhibit B**, in accordance with applicable service level objectives.

c. Provide the District with adequate incident reports, service records, including fire service records of activities as may be required by the Insurance Services Office and the California State Fire Marshal, NFIRS, and financial records, as may be required by the District Board of Directors.

d. Participate in other aid agreements and mutual aid with fire protection providers, as City deems necessary/appropriate, for the NC Metro Area. Any request for assistance outside the NC Metro Area or any other area not otherwise identified herein shall be considered a mutual aid request and will go through the Fresno Operation Area request system.

e. Conduct itself in a safe and professional manner.

f. Participate in District's emergency management planning through the Fire Chief or designee.

g. Provide District access to the Computer Aided Dispatch (CAD) server to ensure monthly call summary and other reports for the Services are tracked, and incident reports are completed with the Districts FDID #10040 to allow the District to file reports with the National Fire Incident Reporting System .

3. Dispatching Services. In addition to the Services described in Paragraph 2, all of which shall be provided in the NC Metro Area, City shall provide District with dispatch services covering the District's boundaries during the first two years of this agreement.

4. Services Subject to Condition. City shall use City's vehicles, equipment, apparatus, and sufficient personnel to operate the vehicles, equipment, and apparatus used to provide the Services. City's obligation to provide the Services shall be subject to the condition that reasonably sufficient vehicles, equipment, apparatus, and

personnel shall remain within City to assure adequate fire protection and emergency services to City. Under this condition, if the demands of District exceed the Services which City can provide, City agrees to the use of third-party mutual aid agreements sufficient to meet the existing Service levels and to supplement City's vehicles, equipment, apparatus, and personnel.

5. Auto Aid Agreement. The Auto Aid Agreement shall remain in full force and effect for the Term of this Agreement, and, in the event either Party breaches or terminates the Auto Aid Agreement, this Agreement may be terminated by the other Party pursuant to the conditions of Paragraph 9 herein with the notice provided for herein.

6. Compensation. District shall pay City, in two equal annual installment payments in the months of June and December, on the 1st day of the respective month, of each calendar year for the Term of the Agreement, beginning on June 1, 2019, as follows:

- First Year of Agreement: \$1,003,735 annually
- Second Year of Agreement: \$1,035,102 annually
- Third Year of Agreement: \$1,066,468 annually

The payments shall be made into a specially designated fund to be used only for the payment of the costs of Services provided by City to District pursuant to this Agreement, subject to the receipt of District tax revenue payments from the County of Fresno.

7. 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. If the District does not receive tax revenue payments from the County of Fresno, the City may terminate this Agreement as set forth in Section 9. However, if tax revenue payments to the District are delayed, the District shall provide notice to the City of such delay, which shall identify the District's best reasonable estimate as to when it will make the installment payment to the City.

8. Hold Harmless.

a. To the fullest extent allowed by law, 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 attorneys' 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. To the fullest extent allowed by law, 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 City, District, or any other person, and from any and all claims, demands, and actions in law or equity (including attorneys' 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, on the one hand, and District or any of its officers, officials, employees, agents, or volunteers, on the other hand, 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 between the Parties under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.

d. This Paragraph 8 shall survive termination or expiration of this Agreement.

9. Termination. This Agreement shall be effective for the duration of the Term and shall remain in full force and effect for the entirety thereof unless terminated by 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 Party not cured following 60 days' written notice thereof; or (iii) on nine months' written notice by District, if, during the Term, the revenue streams of District are limited for reasons beyond its control and if, as a result, District is unable to pay the City the Base Annual Fee. The termination of this Agreement shall not impact the enforceability of any other agreements between the Parties.

10. Discrimination. The Parties agree not to discriminate on the basis of race, color, ancestry, national origin, religion, creed, age, disability (mental and physical), sex, gender (including pregnancy, childbirth, breastfeeding or related medical conditions), sexual orientation, gender identity, gender expression, medical condition, genetic information, marital status, military, and veteran status in the performance of this Agreement.

11. 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.

12. Applicable Laws. At all times during the Term, City and 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.

13. 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 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.

14. 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 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

Fire Chief
450 "M" Street
Fresno, California 93721

Copy to:

City Manager
City of Fresno
Fresno Street, Room 2064
Fresno, California 93721-3601

For District

15850 West Kearney Boulevard
Kerman, California 93630

Copy to:

Kenneth J. Price
Baker Manock & Jensen, PC 2600
5260 N. Palm Avenue, Suite 421
Fresno, California 93704

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

15. Captions. 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.

16. Legal Advice. Each Party is represented and bears the costs of its own legal advice.

17. Precedence of Documents. In the event of any conflict between this Agreement and any exhibit or attachment hereto, the terms and conditions 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. No Partnership. Nothing in this Agreement will be deemed to create a partnership, joint venture or similar relationship between City and District, and City does not have any power to bind District. City shall act as an independent contractor in the performance of its duties hereunder.

20. Attorneys' 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 other relief to which the Party may be entitled.

21. Force Majeure. If either Party is prevented from or delayed in complying, either totally or in part, with any of the terms or conditions of this Agreement, excluding any obligation to make payments hereunder, by reason of strike, walkout, lockout, or other labor trouble or shortage not caused by or within the control of either Party, any law, order, proclamation, regulation, ordinance, or requirement of a governmental authority other than the Parties, riot, civil commotion, war, rebellion, or act of God beyond the reasonable control and without the fault of the otherwise defaulting Party (each a "**Force Majeure Event**"), then upon notice to the other Party, the affected terms and/or other requirements of this Agreement shall be suspended during the period of such Force Majeure Event and, unless otherwise set forth herein to the contrary, the Party affected by the Force Majeure Event shall have no liability to the other Party, its affiliates, or any other Person in connection therewith.

22. Modification. This Agreement may not be altered, amended, or modified, except by writing executed by duly authorized representatives of the Parties.

23. Partial Invalidity. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such provision or provisions shall be ineffective to the extent, but only to the extent, of such invalidity, illegality, or unenforceability without invalidating the remainder of such provision or provisions or any other provisions hereof, unless such a construction would be unreasonable.

24. Counterparts. This Agreement may be executed in two or more counterparts, by facsimile or electronic scanning, with originals following by mail or express delivery.

25. Entire Agreement. This Agreement, including all attachments incorporated herein, states the entire agreement between the Parties and supersedes their prior agreement, negotiations, or understandings.

[This space intentionally left blank; signature page follows]

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

CITY OF FRESNO,
A California municipal corporation

NORTH CENTRAL FIRE PROTECTION
DISTRICT,

By: _____
Wilma Quan-Schechter,
City Manager

By: Ken Abrahamian
Name: KEN ABRAHAMIAN

Title: Chairman, Board of Directors

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

APPROVED AS TO FORM
Attorney for District

By: Brandon M. Collet 1/16/19
Senior Deputy City Attorney Date

By: Ken Abrahamian

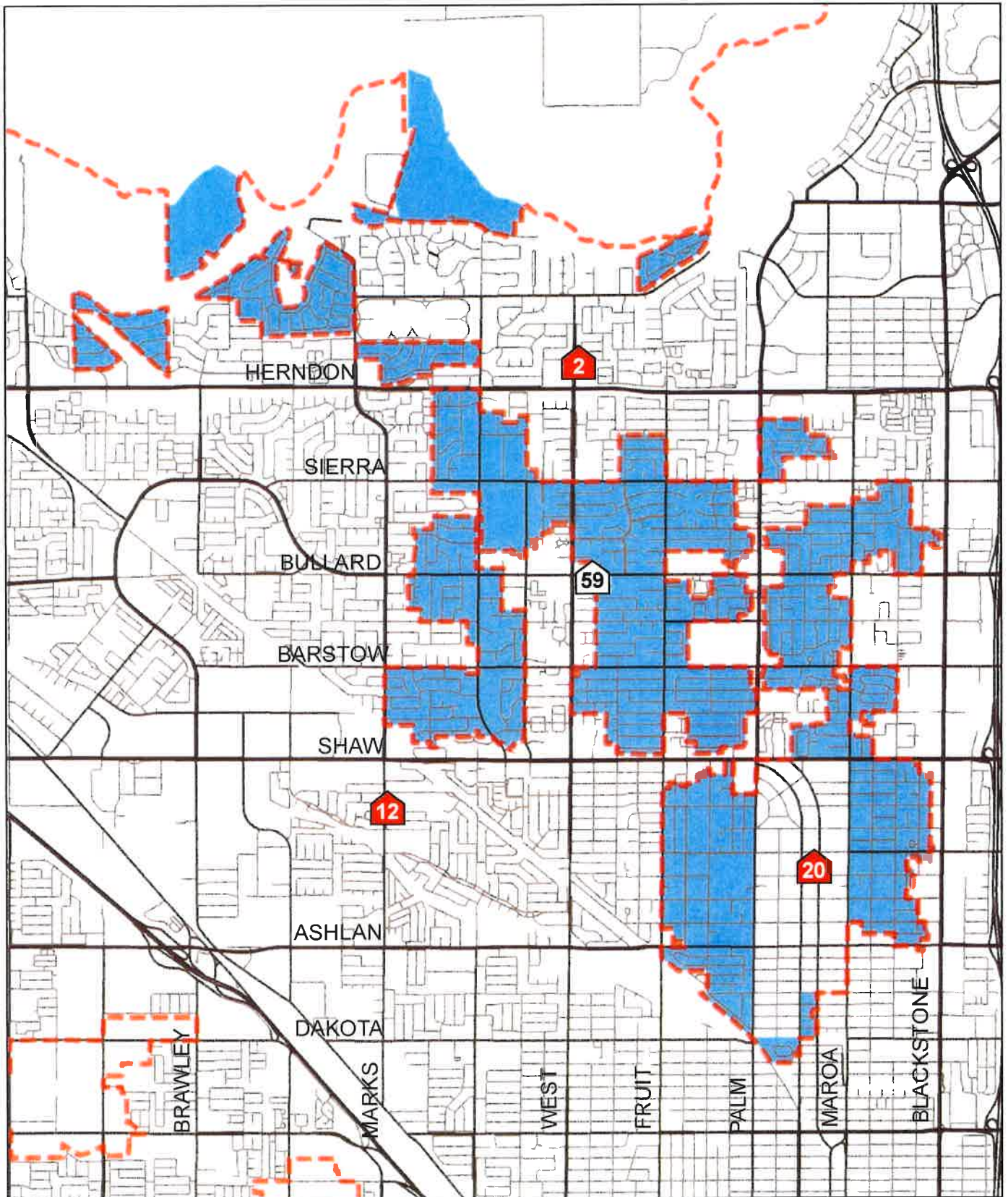
ATTEST:
YVONNE SPENCE, CRM MMC
City Clerk

By: _____
Deputy Date

Attachments:
Exhibit A - Map of the NC Metro Area
Exhibit B - Automatic Aid Agreement

Automatic Aid Service Area Exhibit "A"

North Central Metro Area



Automatic Aid Service Area Exhibit "B"

West of Hwy 99

