

COPY

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THE CITY OF SAN DIEGO

SAN DIEGO MEDICAL SERVICES ENTERPRISE, LLC.

Lease Agreement

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OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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**CITY OF SAN DIEGO
LEASE AGREEMENT**

THIS LEASE AGREEMENT ("Lease") is executed between THE CITY OF SAN DIEGO, a municipal corporation ("CITY"), and SAN DIEGO MEDICAL SERVICES ENTERPRISE, LLC, a California limited liability company ("LESSEE" or "SDMSE"), based upon the following:

- A. On July 14, 2004, the San Diego City Council's Public Safety and Neighborhood Services Committee directed the City Manager to negotiate extensions to the existing Emergency Medical Services (EMS) Agreements between CITY and SDMSE.
- B. On November 15, 2004, the San Diego City Council adopted Resolution 299840 authorizing the extension of the EMS Agreements and approving amendments to the EMS Agreements as recommended by City Manager's Reports 04-219 and 04-244.
- C. SDMSE can no longer use its current ambulance parking area as of February 28, 2005, and must relocate.
- D. As partial consideration for extension of the EMS Agreements and included in the amendments authorized by the City Council, CITY has agreed to lease SDMSE the CITY-owned property located at Aero Drive and Interstate 15 (APN 421-333-04) at no cost for employee and ambulance parking, and the City Council has authorized the City Manager to prepare a lease agreement with SDMSE for that purpose.
- E. Also, as part of the consideration for the EMS Agreements and to ensure uninterrupted operations of the emergency medical services, CITY has agreed to provide funds to SDMSE for improvements necessary to prepare the property for the intended use of ambulance and employee parking in an amount not to exceed Two Hundred Thousand Dollars (\$200,000), upon the terms and conditions set forth in this Lease.
- F. As the property was originally acquired by CITY with Gas Tax Funds, CITY and SDMSE acknowledge that CITY will reimburse the Gas Tax Fund at fair market rent for SDMSE'S use of the Property.

NOW, THEREFORE, CITY and SDMSE agree~~s~~ as follows:

SECTION 1: USES

- 1.1 Premises. CITY leases to LESSEE and LESSEE leases from CITY all of that certain real property situated at the northwest corner of Aero Drive and Interstate 15 (APN 421-333-04), in the City of San Diego, County of San Diego, State of California, consisting of approximately 1.21 acres, and as more specifically described in Exhibit "A" attached to this Lease and by this reference made part of this Lease. The real property is hereinafter called the "Premises."
- 1.2 Uses. It is expressly agreed that the Premises are leased to LESSEE solely and exclusively for the purposes of storage and ~~maintenance~~ of ambulances, other San Diego Fire Department equipment and vehicles, employee parking, and other related uses in accordance with the General Development Plan referenced in Section 6.11 of this Lease, and for other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever.

The use of the Premises for any unauthorized purpose shall constitute a substantial default and subject this Lease to termination at the sole option of CITY.

LESSEE covenants and agrees to use the Premises for the above-specified purposes and to diligently pursue the purposes throughout the term of this Lease. Failure to continuously use the Premises for the purposes, or the use of the Premises for purposes not expressly authorized in this Lease, shall be grounds for termination by CITY.

- 1.3 Related Council Actions. By entering into this Lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Premises. Discretionary action includes but is not limited to rezonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the Premises.

LESSEE shall be solely responsible for processing all land use, development, and construction approvals required for the use and occupancy of the Premises. This Lease shall not be interpreted by any decision maker on any CITY-issued permit or approval to override or dictate the outcome of any findings required for any permit or development approval.

- 1.4 Quiet Possession. LESSEE, performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold, and enjoy the Premises. If CITY for any reason cannot deliver possession of the Premises to LESSEE at the commencement of the term, or if during the Lease term LESSEE

is temporarily dispossessed through action or claim of a title superior to CITY'S, then this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom.

1.5 Easements and Reservations.

- a. CITY reserves all rights, title, and interest in any and all subsurface natural gas, oil, minerals, and water on or within the Premises.
- b. CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- c. CITY has the right to enter the Premises for the purpose of making repairs to or developing municipal resources and services.

However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the Premises and will reimburse LESSEE for physical damages, if any, to the permanent improvements located on the Premises resulting from CITY exercising the rights reserved in this section. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.

- 1.6 Competent Management. Throughout the term of this Lease, LESSEE shall provide competent management of the Premises to the satisfaction of the City Manager. For the purposes of this section, "competent management" shall mean demonstrated ability in the management and operation of a medical vehicle storage lot and related activities in a fiscally responsible manner.

SECTION 2: TERM

- 2.1 Commencement. The term of this Lease shall commence on January 1, 2005, and expire on June 30, 2008. LESSEE may terminate this Lease at any time upon thirty (30) days prior written notice to CITY.
- 2.2 Holdover. Any holding over by LESSEE after Lease expiration or Lease termination shall not be considered as a renewal or extension of this Lease. The occupancy of the Premises after the expiration or termination of this Lease constitutes a month-to-month tenancy, and all other terms and conditions of this Lease shall continue in full force and effect.
- 2.3 Surrender of Premises. At termination of this Lease for any reason, LESSEE shall execute, acknowledge, and deliver to CITY, within five (5) days after written

CITY demand, a valid and recordable quitclaim deed covering all of the Premises. The Premises shall be delivered free and clear of all liens and encumbrances and in a decent, safe, and sanitary condition.

If LESSEE fails or refuses to deliver the required deed, CITY may prepare and record a notice reciting LESSEE'S failure to execute this Lease provision, and the notice will be conclusive evidence of the termination of this Lease and all LESSEE'S rights to the Premises.

SECTION 3: RENT

3.1 Rent. CITY and LESSEE acknowledge that the consideration for this Lease is derived from the EMS Agreements existing between CITY and LESSEE, the mutual benefit to the parties in meeting the operational needs of LESSEE, and enabling LESSEE to continue providing emergency medical services in the City of San Diego, and, specifically, CITY'S obligation under Section 5.6 of the Third Amended and Restated Agreement between CITY and LESSEE to provide fleet facility parking at the Premises at no cost to LESSEE.

3.2 Gas Tax Fund Reimbursement. The Premises are located on property acquired by CITY for streets and roads purposes using Gas Tax Funds governed by California Streets and Highways Code sections 2101 *et seq.* The Premises are not currently required for any transportation related purposes and are vacant. In fulfillment of CITY'S obligation under the EMS Agreements to provide the Premises to LESSEE at no cost, CITY agrees to pay the fair market rental value of the property to the Gas Tax Fund to accommodate a non-transportation use on the Premises. CITY and LESSEE agree that the current fair market rent for the Premises is Two Thousand Two Hundred Fifty Dollars (\$2,250) per month. CITY shall pay this amount on a monthly basis from its General Fund to the Gas Tax Fund.

CITY shall review and reassess the fair market rent for the Premises on an annual basis and shall adjust the monthly payment consistent with the fair market rental value on the respective anniversary date of the Lease.

3.3 Tenant Improvements. LESSEE shall be solely responsible for the planning, construction, and completion of improvements on the Premises as set forth in LESSEE'S General Development Plan, referenced in Section 6.11 of this Lease, and attached as an exhibit to this Lease ("Tenant Improvements"). The Tenant Improvements shall consist primarily of hardscape, landscape, fencing, and related security equipment and shall not include any of LESSEE'S personal property, trade fixtures, furnishings, equipment, or similar items. As set forth below, and to enable LESSEE to meet its operational needs and commence operations on the

Premises in January 2005, CITY agrees to make certain funds immediately available for the Tenant Improvements, which funds shall be reimbursed by LESSEE to CITY during the first year of this Lease.

- a. Tenant Improvement Allowance. CITY shall provide LESSEE an allowance in an amount not to exceed Two Hundred Thousand Dollars (\$200,000) ("Tenant Improvement Allowance") to construct and install only the Tenant Improvements.

The Tenant Improvement Allowance shall be made available to LESSEE for the reimbursement of actual costs incurred by LESSEE in designing, preparing, planning, obtaining the approval of, constructing, and installing the Tenant Improvements and for no other purpose. Except as otherwise expressly provided herein, CITY shall have no obligation to contribute the Tenant Improvement Allowance unless and until the General Development Plan has been approved by CITY and LESSEE has submitted itemized receipts reflecting actual costs incurred for approved items. CITY shall approve or reject a request for reimbursement within ten (10) business days of receipt.

- b. Tenant Improvement Allowance Reimbursement. LESSEE shall reimburse CITY for all amounts paid by CITY as Tenant Improvement Allowance at the monthly rate of Sixteen Thousand Six Hundred Sixty-Seven Dollars (\$16,667) per month, beginning February 1, 2005, until paid in full. In the event that LESSEE has not fully reimbursed CITY by January 31, 2006, LESSEE and CITY agree that CITY may, at its option and in addition to and without waiving any other remedies CITY may have, offset the amount owing against any amounts due and owing by CITY to LESSEE.
- c. Limit on CITY'S Liability. LESSEE and CITY expressly agree that CITY is not and shall not be a party to any contract or agreement entered into by LESSEE related to the Tenant Improvements. The parties further agree that CITY has no obligation to pay for Tenant Improvements on the Premises and will provide the Tenant Improvement Allowance in consideration for LESSEE'S need to move its current operations and the CITY'S and LESSEE'S interest in the ability of LESSEE to continue its operations without interruption. In making the Tenant Improvement Allowance available, CITY seeks to benefit CITY and LESSEE only. There are no third-party beneficiaries to this Section 3.3 of the Lease.

- 3.4 Inspection of Records. LESSEE agrees to make any and all records and accounts available to CITY for inspection at all reasonable times so that CITY can determine LESSEE'S compliance with this Lease. These records and accounts

will be made available by LESSEE at the Premises and will be complete and accurate showing all income and receipts from use of the Premises. LESSEE'S failure to keep and maintain records and make them available for inspection by CITY is a breach of this Lease and cause for termination. LESSEE shall maintain all records and accounts for a minimum period of five (5) years. This section shall survive expiration or earlier termination of this Lease.

- 3.5 Unauthorized Use Charge. LESSEE shall pay CITY one hundred percent (100%) of the gross receipts for any service or use that is not permitted by this Lease. This payment is due within thirty (30) days of billing by CITY. The existence of the one hundred percent (100%) charge in this clause and the payment of this charge or any part of it, does not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default LESSEE for participating in or allowing any unauthorized use of the Premises. CITY shall deposit any unauthorized use charges into the Gas Tax Fund.

SECTION 4: ASSIGNMENT/DEFAULT

- 4.1 Time is of Essence; Provisions Binding on Successors. Time is of the essence for all of the terms, covenants, and conditions of this Lease, and, except as otherwise provided in this Lease, all of the terms, covenants, and conditions of this Lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.
- 4.2 Assignment and Subletting. LESSEE shall not assign this Lease or any interest in this Lease and shall not sublet the Premises or any part of this Lease, or any right or privilege appurtenant to this Lease, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the Premises or any part thereof, without the prior written consent of the City Manager in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any assignment or subletting without CITY'S consent shall be void and shall, at the option of CITY, terminate this Lease. This Lease shall not, nor shall any interest therein, be assignable as to the interest of LESSEE by operation of law, without the written consent of the City Manager. Any sublease shall be at fair market rent with one hundred percent (100%) of the rental payments deposited by CITY into the Gas Tax Fund.

"Assignment" for the purposes of this section shall include any transfer of any ownership interest in this Lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners, or principals.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this Lease which are applicable to the rights acquired. The City Manager may require, as a condition to approval of any sublease of the majority portion of the leasehold or any assignment that this Lease or the requested sublease otherwise be revised to comply with standard CITY lease requirements that are then current. Pursuant to City Charter Section 225, the City Manager must review and approve every person or entity which will have an interest in this Lease as a sublessee or assignee.

4.3 Encumbrance. LESSEE shall not encumber this Lease, its leasehold estate, or its improvements thereon by deed of trust, mortgage, chattel mortgage, or other security instrument during the term of this Lease.

4.4 Defaults and Remedies.

a. Default. In the event that:

- (1) LESSEE fails to make any payment required under this Lease when due and fails to make full payment within three (3) days following written notice from CITY; or
- (2) LESSEE defaults in the performance of any covenant or condition required by this Lease to be performed by LESSEE and fails to cure the default within thirty (30) days following written notice from CITY; or if any such default is not curable within thirty (30) days, and LESSEE fails to commence to cure the default(s) within the thirty (30)-day period and diligently pursue such cure to completion; or
- (3) LESSEE voluntarily files or has involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
- (4) LESSEE is adjudicated a bankrupt; or
- (5) LESSEE makes a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming rights through LESSEE, immediately terminate this Lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the Premises or to possession of the Premises; and CITY may enter and take possession of the Premises.

Provided, however, in the event that any default described in Subsection 4.4a.(2) above is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this Lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues the cure to completion.

- b. Abandonment by LESSEE. Even though LESSEE has breached the Lease and abandoned the Premises, this Lease shall continue in effect for so long as CITY does not terminate this Lease, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.
- c. Waiver. Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this Lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the Premises is CITY owned and held in trust for the benefit of the citizens of the City of San Diego and that any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times have the legal right to require the cure of any default when and as the defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after the default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

- 4.5 Eminent Domain. If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE will be as follows:
 - a. In the event the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
 - b. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the Premises is unsuitable for the Lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

- c. In the event of a partial taking, if, in the opinion of CITY, the remaining part of the Premises is suitable for continued Lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the Premises taken.
- d. Award. All monies awarded in any taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled but limited to any award attributable to the taking of, or damages to, LESSEE'S then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- e. Transfer. CITY has the right to transfer CITY'S interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the Premises in accordance with this Lease.
- f. No Inverse Condemnation. The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

SECTION 5: INSURANCE RISKS/SECURITY

- 5.1 Indemnity. LESSEE agrees to defend, indemnify, protect, and hold CITY, its elected officials, officers, employees, agents, and representatives harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE'S employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the development or operation of the leasehold or the work and operations to be performed under this Lease, and all expenses of investigating and defending against same; provided, however, that LESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, employees, agents, and representatives.

5.2 Insurance.

- a. LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:
 - (1) Commercial general liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence. This policy shall cover all bodily injury, including death, and property damage suffered by any party or parties from acts or failures to act by CITY or LESSEE or by authorized representatives of CITY or LESSEE on or in connection with the use or operation of the Premises. The policy shall be written on an occurrence form.
 - (2) Fire, extended coverage, and vandalism insurance policy on all insurable property on the Premises in an amount to cover one hundred percent (100%) of the replacement cost. Any proceeds from a loss shall be payable jointly to CITY and LESSEE.
- b. LESSEE'S responsibility to maintain said insurance also includes the following:
 - (1) Additional Insureds. All insurance policies will, by separate endorsement, name "The City of San Diego, its elected officials, officers, employees, agents, and representatives" as additional insureds, protect them against any legal costs in defending claims, and will not terminate without sixty (60) days prior written notice to CITY. All insurers must be licensed to do business in the State of California, rated "A-VI" or better by AMBest and acceptable to CITY. In the event the insurer(s) is/are a surplus lines carrier, it must be included in the current LESLI list and acceptable to CITY. All policies will be in effect on or before the first day of the Lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the Premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance policy must be provided prior to CITY'S execution of the Lease and will remain on file with CITY during the entire term of the Lease. At least thirty (30) days prior to the expiration of each policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this Lease.
 - (2) Modification. CITY, at its discretion, may require the revision of amounts and coverages at any time during the term by giving

LESSEE sixty (60) days prior written notice. CITY'S requirements shall be designed to assure protection from and against the extent of risk existing on the Premises. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Lease.

- (3) Accident Reports. LESSEE shall report to CITY any accident causing more than Ten Thousand Dollars (\$10,000) worth of property damage or any serious injury to persons on the Premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses, and other pertinent information.
- (4) Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s), and rate of interest. The reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection b.(4), if LESSEE fails or refuses to take out or maintain insurance as required in this Lease or fails to provide the proof of insurance, CITY has the right to declare this Lease in default without further notice to LESSEE, and CITY shall be entitled to exercise all legal remedies in the event of such default.

- 5.3 Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the Premises within ten (10) days of the fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Premises shall be damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of the damage and to restore the Premises to the condition which existed prior to the damage; or, at CITY'S option, LESSEE agrees to clear and remove from the Premises all debris resulting from the damage and rebuild the Premises in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to the

damage, using for either purpose the insurance proceeds as set forth in Section 5.2, Insurance, of this Lease.

LESSEE shall commence preliminary steps toward performing repairs, restoration, or replacement of the Premises shall be commenced by LESSEE within thirty (30) days, and shall commence the required repairs, restoration, or replacement within a reasonable time.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

- 6.1 Acceptance of Premises. By signing this Lease, LESSEE represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making this Lease. LESSEE further acknowledges that the Premises are in the condition called for by this Lease, that CITY has performed all work with respect to the Premises, and that LESSEE does not hold CITY responsible for any defects, whether apparent or latent, in the Premises, including the presence of any hazardous wastes.
- 6.2 Entry and Inspection. CITY reserves and shall always have the right, but not the obligation, to enter the Premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Premises, or to inspect the operations conducted on the Premises. In the event that such entry or inspection by CITY discloses that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, but not the obligation, after ten (10) days written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep the Premises in a decent, safe, healthy, and sanitary condition. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Lease imposed on CITY.
- 6.3 Maintenance. LESSEE agrees to assume full responsibility and cost for the operation, maintenance, and repair of the Premises throughout the term. LESSEE shall make all repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with the General Development Plan described in Section 6.11, General Development Plan, of this Lease and with all applicable laws. All applicable codes and standards of CITY and other government agencies shall be observed in all maintenance, repairs, and replacements on the Premises.

6.4 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the Premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this Lease to maintain the Premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations.

6.5 Utilities. LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the Premises. All utilities shall be installed underground.

6.6 Liens. LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Premises and the costs of defending against claims, including reasonable attorneys' fees.

If improvements, alterations, or repairs are made to the Premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:

- a. take all actions necessary to record a valid release of lien, or
- b. file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

6.7 Taxes. LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the Premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the Premises, including any licenses or permits. LESSEE recognizes and agrees that this Lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on such interest, and that LESSEE shall pay all possessory interest taxes. LESSEE further agrees that payment for such taxes, fees, and assessments will not reduce any rent due CITY.

6.8 Signs. LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising

without the prior written consent of CITY. If any such unauthorized item is found on the Premises, LESSEE agrees to remove the item at its expense within twenty-four (24) hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE'S cost.

- 6.9 Ownership of Improvements and Personal Property. At the end of the term of this Lease, should an emergency medical services provider other than LESSEE be selected during the Request for Proposals process in 2008, all improvements constructed on the Premises by LESSEE pursuant to the General Development Plan approved by City, including any amendments, shall remain LESSEE'S property, which either CITY or the new provider shall be required to purchase at LESSEE'S original cost as long as LESSEE has maintained all capital improvements in their original condition. Value and condition of the capital improvements shall be determined by the City Manager. In no event shall the cost to purchase the improvements exceed Two Hundred Thousand Dollars (\$200,000). LESSEE shall remove its vehicles and any other personal property from the Premises at Lease termination.

If, however, LESSEE terminates this Lease or abandons the Premises prior to June 30, 2008, all improvements constructed on the Premises by LESSEE pursuant to the General Development Plan approved by City, including any amendments, shall be the property of CITY, and LESSEE shall have no right, title, or interest in such improvements.

- 6.10 Unavoidable Delay. If the performance of any act required of CITY or LESSEE is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, the party shall be excused from performing that act for the period equal to the period of the prevention or delay. In the event LESSEE or CITY claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of the fact within ten (10) days after the beginning of any claimed delay.
- 6.11 General Development Plan. LESSEE agrees to develop the Premises in accordance with the General Development Plan approved by the City Manager, which plan is attached hereto and by this reference made part of this Lease. The general contents and provisions of the General Development Plan are described in Section 9.2 of this Lease. The City Manager or his designee shall have the authority to authorize changes to the General Development Plan provided that the basic concept may not be modified without City Council approval and a document evidencing any approved changes shall be filed in the Office of the City Clerk. Failure by LESSEE to comply with the General Development Plan shall constitute a major default and subject this Lease to termination by CITY. The City Manager,

in his sole discretion, may approve an extension to the date specified for construction completion in the General Development Plan of up to one (1) year without further City Council approval.

- 6.12 Hazardous/Toxic Waste. LESSEE shall not allow the release of hazardous substances in, on, under, or from the Premises. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704-1 and by this reference is incorporated in this Lease.

In the event of any release of a hazardous substance, LESSEE shall be responsible for all costs of remediation and removal of such substances in accordance with all applicable rules and regulations of governmental authorities.

LESSEE agrees to assume the defense of, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE'S operations on the Premises, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.

If LESSEE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Premises, LESSEE shall give written notice to the City Manager within ten (10) days of receipt of such knowledge or cause for belief. Provided, however, if LESSEE knows or has reasonable cause to believe that the substance is an imminent and substantial danger to public health and safety, LESSEE shall notify the City Manager immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. LESSEE will notify the City Manager immediately of any notice of violation received or initiation of environmental actions or private suits relative to the Premises. In addition, LESSEE and LESSEE'S sublessees shall not utilize or sell any hazardous substance on the Premises without the prior written consent of CITY.

At any time within the twelve (12) months before the expiration or earlier termination of this Lease, LESSEE, at CITY'S sole option, shall cause an environmental assessment of the Premises to be completed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The

environmental assessment shall be obtained at the sole cost and expense of LESSEE and shall establish what, if any, hazardous substances exist on, in, or under the Premises, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then said environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes and estimates of the cost of such remediation or removal. LESSEE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved and shall be solely responsible for all costs and expenses incurred.

- 6.13 Best Management Practices. CITY and LESSEE are committed to the implementation of programs to manage activities on the Premises in a manner which aids in the protection of San Diego's precious water resources. LESSEE shall comply with the Best Management Practices ("BMP") including the Stormwater Pollution Prevention Plan ("SPPP") approved by CITY'S Stormwater Management Program. LESSEE shall submit for review and approval by the City Manager or designee, within ninety (90) days of the effective date of this Lease, BMP and SPPP that will control erosion and reduce the amount of pollutants and other sediments discharged from the Premises. The BMP and SPPP will be reviewed periodically by CITY. Upon written notice from the City Manager requesting an update of the BMP, LESSEE shall submit updated BMP and SPPP for City Manager review and approval within ninety (90) days of receipt of notice. LESSEE shall implement any necessary changes to the BMP and SPPP as a result of any review by CITY to ensure compliance with any changes in laws or regulations.

When the BMP and SPPP have been developed and implemented by LESSEE, it is crucial that the practices be enforced and maintained. It is LESSEE'S responsibility to inform employees, contractors, subcontractors, agents, and vendors of the BMP and SPPP.

SECTION 7: GENERAL PROVISIONS

7.1 Notices.

- a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to LESSEE as follows:

San Diego Medical Services Enterprise
Attention: Paul Cloward, Administrative Supervisor
10405 San Diego Mission Road, Suite 200
San Diego, CA 92108;

and to CITY as follows:

City Manager
Attention: Will Griffith, Real Estate Assets Director
City Administration Building
202 "C" Street, M.S. 9B
San Diego, CA 92101-4155;

- b. Any party entitled or required to receive notice under this Lease may by like notice designate a different address to which notices shall be sent.
- c. Notice served pursuant to the terms of this Section 7.1 shall be effective upon personal service or two (2) days after service by mail.

- 7.2 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the Premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at LESSEE'S sole cost and expense. In addition, LESSEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any law, statute, ordinance, or regulation.
- 7.3 CITY Approval. The approval or consent of CITY, wherever required in this Lease, shall mean the written approval or consent of the City Manager or designee unless otherwise specified, without need for further resolution by the City Council.
- 7.4 Nondiscrimination. LESSEE agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in LESSEE'S use of the Premises, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
- 7.5 Compliance with CITY'S Equal Opportunity Contracting Program. LESSEE acknowledges and agrees that it is aware of, and will comply with, City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), Equal Employment Opportunity Outreach Program, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated herein. LESSEE and all of its subcontractors are individually

responsible to abide by its contents.

LESSEE will comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. LESSEE will not discriminate against any employee or applicant for employment on any basis prohibited by law.

LESSEE submitted and CITY acknowledges receipt of a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that LESSEE will take to achieve CITY'S commitment to equal employment opportunities.

LESSEE agrees to insert the foregoing provisions in all subcontracts for any work covered by this Lease so that such provisions will be binding upon each subcontractor. LESSEE agrees that compliance with EEO provisions flowing from the authority of both parties will be implemented, monitored, and reviewed by CITY'S Equal Opportunity Contracting Program staff.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.

- 7.6 Partial Invalidity. If any term, covenant, condition, or provision of this Lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
- 7.7 Legal Fees. In the event of any litigation regarding this Lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorneys' fees.
- 7.8 Number and Gender. Words of any gender used in this Lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.
- 7.9 Captions. The Lease Outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Lease. The numbers of the paragraphs and pages of this Lease may not be consecutive. The lack of consecutive numbers is intentional and shall have no effect on the enforceability of this Lease.

- 7.10 Entire Understanding. This Lease contains the entire understanding of the parties. LESSEE, by signing this Lease, agrees that there is no other written or oral understanding between the parties with respect to the Premises. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself. Each of the parties in this Lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Lease.

The failure or refusal of any party to read the Lease or other documents, inspect the Premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this Lease will be valid unless it is in writing and signed by all parties.

- 7.11 CITY Employee Participation Policy. It is the policy of CITY that all CITY contracts, agreements, or leases with consultants, vendors, or lessees shall include a condition that the contract, agreement, or lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if the contractor or LESSEE employs an individual who, within the twelve (12) months immediately preceding the employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the contractor or LESSEE. It is not the intent of this policy that these provisions apply to members of the City Council.

- 7.12 Drug-free Workplace. LESSEE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the leasehold and specifying the actions that will be taken against employees for violations of the prohibition.
- b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) LESSEE'S policy of maintaining a drug-free workplace.
 - (3) Any available drug counseling, rehabilitation, and employees assistance programs.

- (4) The penalties that may be imposed upon employees' for drug abuse violations.
- c. LESSEE shall include in each sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.
- 7.13 Disabled Access Compliance. LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the Premises comply with the 1990 Americans with Disabilities Act and Title 24 of the California Code of Regulations (Building Code) as defined in Section 18910 of the California Health and Safety Code and any other applicable federal, state, or local regulations hereafter enacted protecting the rights of people with disabilities.
- 7.14 Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive the expiration or termination of the Lease.
- 7.15 Controlling Agreement. If there are any inconsistencies or conflicts between the terms of this Lease and the terms of the Third Amended Emergency Medical Services Agreement between LESSEE and CITY dated December 1, 2004, and the Third Amended Service Agreement between LESSEE and CITY dated December 1, 2004, the terms and provisions of the Third Amended Emergency Medical Services Agreement and of the Third Amended Service Agreement shall control and supersede the terms of this Lease.

SECTION 8: SIGNATURES

8.1 Signature Page.

This Lease is executed by CITY, acting by and through its City Manager pursuant to City Council Resolution No. ^{R-}299934, and by LESSEE, acting by and through its lawfully authorized officers.

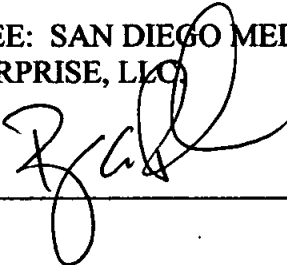
THE CITY OF SAN DIEGO

Date 12-29-04

By 

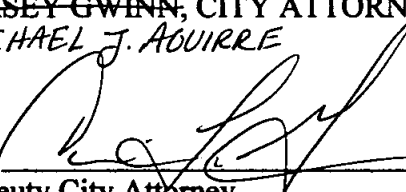
LESSEE: SAN DIEGO MEDICAL SERVICES,
ENTERPRISE, LLC

Date 23 Nov 04

By 

APPROVED as to form and legality this 14th day of January, 2005.

CASEY GWINN, CITY ATTORNEY
MICHAEL J. AGUIRRE

By 
Deputy City Attorney

PC/cj

11/10/04

L:\GLEESON\LEASES--READ\San Diego Med Services Ent\LEASE-SANDIEGOMEDICALSERVICESENTERPRISELIC_1.wpd

SECTION 9: EXHIBITS

9.1 Parcel Map(s) - Exhibit "A".

(See Page 22a.)

422
2
SHT. 1

422
3
SHT. 2

421-33
SHT 2 OF 2
1" = 200'

INTERSTATE 15

11-SD-15

POR. 42
LOT 42
LOT 43

CAL. CHC. RTE. 3, DIV. 3 RELOC.

MURPHY CANYON RD

10/4/00 DJB

CHANGES				
BLK	OLD	NEW	YR	CUT
333	18	18	1-12	1901
	15	15	1-12	10030
	6	7	15	16 89 1935
	16	17	18	92 1569
	18	18	10	92 1655
	2	3	PG 41	94 54
	1	3	19	01 1185
	1	5	13	19 01 1185

A N80°35'20"E 16.12
B N68°57'40"E 20.72

41
SHT. 2

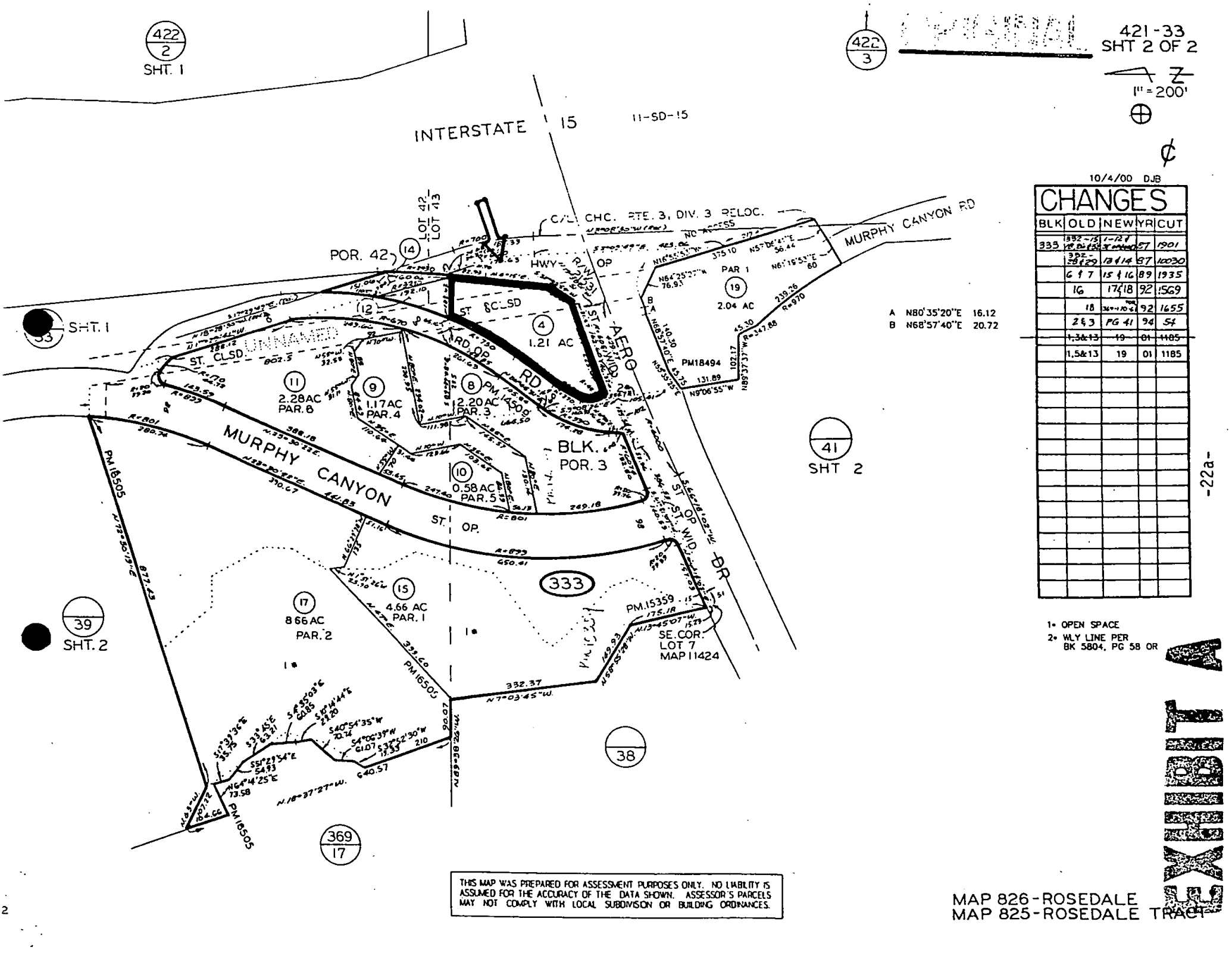
-22a-

- 1- OPEN SPACE
- 2- WLY LINE PER BK 5804, PG 58 OR

TRAIL

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN. ASSESSOR'S PARCELS MAY NOT COMPLY WITH LOCAL SUBDIVISION OR BUILDING ORDINANCES.

MAP 826-ROSEDALE
MAP 825-ROSEDALE TRACT



9.2 General Development Plan Outline.

The General Development Plan consists of:

- a. Plot Plan
- b. Development Schedule
- c. Estimated Construction Costs
- d. Financial Plan
- e. Landscape Plan
- f. Others as applicable

and is attached hereto and made part of this Lease.

GENERAL DEVELOPMENT PLAN

Operational Annex Estimated Construction Costs & Development Schedule San Diego Medical Services Enterprise, L.L.C. Nov-04

Cost Estimate

Phase I	Planning	\$12,000	Completion Date	12/10/2004
	Preliminary Architectural	\$5,000		
	Survey with Water Run-Off Survey	\$3,500		
	Grading Permit	\$0	Unknown City to Provide Cost	
	Landscape Architect	\$3,500		
Phase II	Site Preparations	\$70,500	Completion Date	01/31/2005
	Montgomery Field Clean-Up	\$2,000		
	Electrical Permit	\$0	Unknown City to Provide Cost	
	Water & Sewer Permit	\$0	Unknown City to Provide Cost	
	Electrical Tie In	\$5,000		
	Water Tie In	\$6,500		
	Sewer Tie In	\$20,000		
	Lighting & Power	\$30,000		
	Auxillary Power Unit	\$5,000		
	Shore Power Plugs x15	\$2,000		
Phase III	Paving	\$38,800	Completion Date	02/11/2005
	Paving w/ Permeable Asphalt	\$36,800		
	Line/Symbol Painting	\$2,000		
Phase IV	Completion	\$78,099	Completion Date	02/18/2005
	Trailer w/ Restrooms	\$29,000		
	ADA Compliant Ramp	\$12,101		
	Fencing	\$14,998		
	Security Gates - 20ft	\$14,000		
	Landscaping	\$8,000		
		<u>\$199,399</u>		
	Take Possesion of Land	01/03/05		
	Transfer of Vehicle & Equipment	02/26/05		

San Diego Medical Services Enterprise, L.L.C.

General Landscape Plan – APN # 421-333-0400

San Diego Medical Services Enterprise, LLC intends to develop the entire site located at Aero Drive & Interstate 15, as listed above, to blend with existing developments and infrastructure currently in the area.

Perimeter

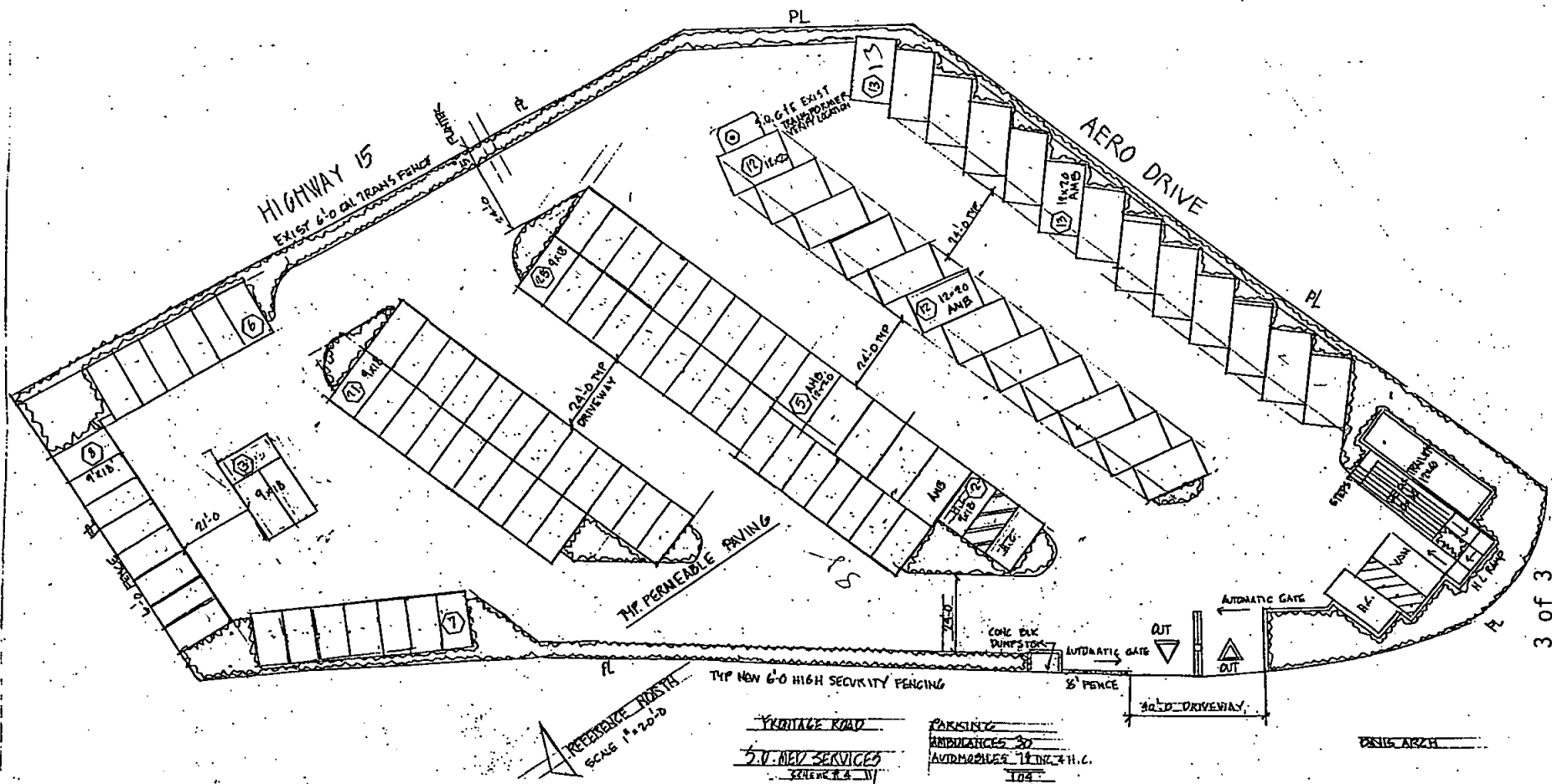
The northwestern perimeter of the property will contain a landscaped vegetation strip 4-5 feet wide. This strip will contain lower growing, drought resistant ground cover with trees and other shrubbery to conceal security fencing. Mulch will be utilized for moisture preservation.

The eastern perimeter of the property will utilize existing State of California (Caltrans) landscaping and fencing.

The southern perimeter of the property will contain security fencing with privacy shade/curtain and appropriate ground cover and trees to blend development in with existing properties.

Interior

Interior landscaping will be contained in parking islands as depicted by the plot map



RECEIVED
04 NOV 26 AM 10:44
CITY CLERKS OFFICE
SAN DIEGO, CA

RESOLUTION NUMBER R- 299934

ADOPTED ON DEC 07 2004

WHEREAS, on July 14, 2004, the Public Safety and Neighborhood Services Committee directed the City Manager to negotiate extensions to the existing Emergency Medical Services [EMS] Agreements between the City and San Diego Medical Services Enterprise, LLC [SDMSE]; and

WHEREAS, on November 15, 2004, the San Diego City Council adopted Resolution No. R-2005-509 authorizing the extension of the EMS Agreements to June 30, 2008, and approving amendments to the EMS Agreements as recommended by City Manager's Reports No. 04-219 and No. 04-244; and

WHEREAS, the Federal Aviation Administration [FAA] has advised that SDMSE must relocate from the space that it currently uses for ambulance and employee parking at Montgomery Field by February 28, 2005; and

WHEREAS, as part of the amendments authorized by the City Council on November 15, 2004, and as part of the consideration for extension of the EMS Agreements, the City has agreed to lease SDMSE the City-owned property located at Aero Drive and Interstate 15 (APN 421-333-04), consisting of an unimproved 1.21 acre lot, at no cost, for employee and ambulance parking; and

WHEREAS, pursuant to the Council's direction, the City and SDMSE have negotiated a lease for a term of three and one-half years (January 1, 2005 to June 30, 2008) for the storage

and maintenance of ambulances, other San Diego Fire Department equipment and vehicles, employee parking, and other related uses; and

WHEREAS, pursuant to the Council's direction, under the proposed terms of the lease, SDMSE will pay no rent but will develop the site at its expense consistent with a development plan to be approved by the City Manager and including fencing, paving, lighting, and a portable building, at an estimated cost of \$200,000; and

WHEREAS, under the proposed terms of the lease, as partial consideration for the extension of the EMS Agreements and to ensure uninterrupted operations of the emergency medical services, the City will advance funds currently available in the City's EMS Program Fund to SDMSE for improvements necessary to prepare the property for the intended use of ambulance and employee parking in an amount not to exceed \$200,000, upon the terms and conditions set forth in the lease agreement on file in the office of the City Clerk as Document No. RR- 299934; and

WHEREAS, the vacant lot to be leased to SDMSE was acquired by the City with Gas Tax Funds, under the proposed terms of the lease, City will pay the fair market rental value for the property of \$2,250 per month, adjusted annually, to compensate the Gas Tax Fund for this non-transportation use; and

WHEREAS, the City's valuation staff has determined the fair market rental value of the Property is \$2,250 per month; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. That the City Manager is authorized to execute, for and on behalf of the City of San Diego, a lease agreement with San Diego Medical Services Enterprise, LLC, for the construction, operation, and maintenance of an ambulance and employee parking lot on 1.21

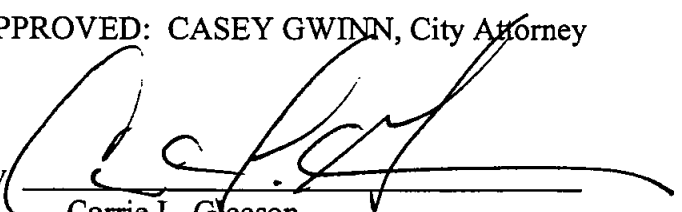
acres of City-owned vacant land located at the northwest corner of Aero Drive and Interstate 15 for a term of three and one-half years at no rent with the fair market rent of \$2,250 per month, adjusted annually, to be paid by the City from the General Fund to the Gas Tax Fund, all under the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. RR- 299934.

2. That the City Auditor and Comptroller is authorized to transfer the fair market rental value for the property (currently \$2,250 per month, to be adjusted annually) from the General Fund—EMS Program, Fund No. 100, to the Gas Tax Fund, Fund No. 302191, on a monthly basis during the pendency of the lease.

3. That the City Auditor and Comptroller is authorized to expend an amount not to exceed \$200,000 from the General Fund—EMS Program, Fund No. 100, to be used solely and exclusively for necessary tenant improvements, pursuant to the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as Document No. RR- 299934.

APPROVED: CASEY GWINN, City Attorney

By


Carrie L. Gleeson
Deputy City Attorney

CG:mm
11/23/04
Job Order: 221228
Or.Dept:READ
R-2005-634
MMS-1130

Passed and adopted by the Council of The City of San Diego on December 7, 2004, by the following vote:

YEAS: PETERS, ZUCCHET, ATKINS, MAIENSCHIN, FRYE,
MADAFFER, AND MAYOR MURPHY.

NAYS: NONE.

NOT PRESENT: INZUNZA.

VACANT: DISTRICT FOUR.

AUTHENTICATED BY:

DICK MURPHY

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(Seal)

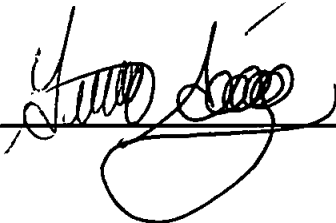
By: GIL SANCHEZ, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-299934, passed and adopted by the Council of The City of San
Diego, California on December 7, 2004.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(SEAL)

By: , Deputy

GENERAL DEVELOPMENT PLAN

Operational Annex Estimated Construction Costs & Development Schedule San Diego Medical Services Enterprise, L.L.C. Nov-04

Cost Estimate

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		<u>\$199,399</u>		
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San Diego Medical Services Enterprise, L.L.C.

General Landscape Plan – APN # 421-333-0400

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Perimeter

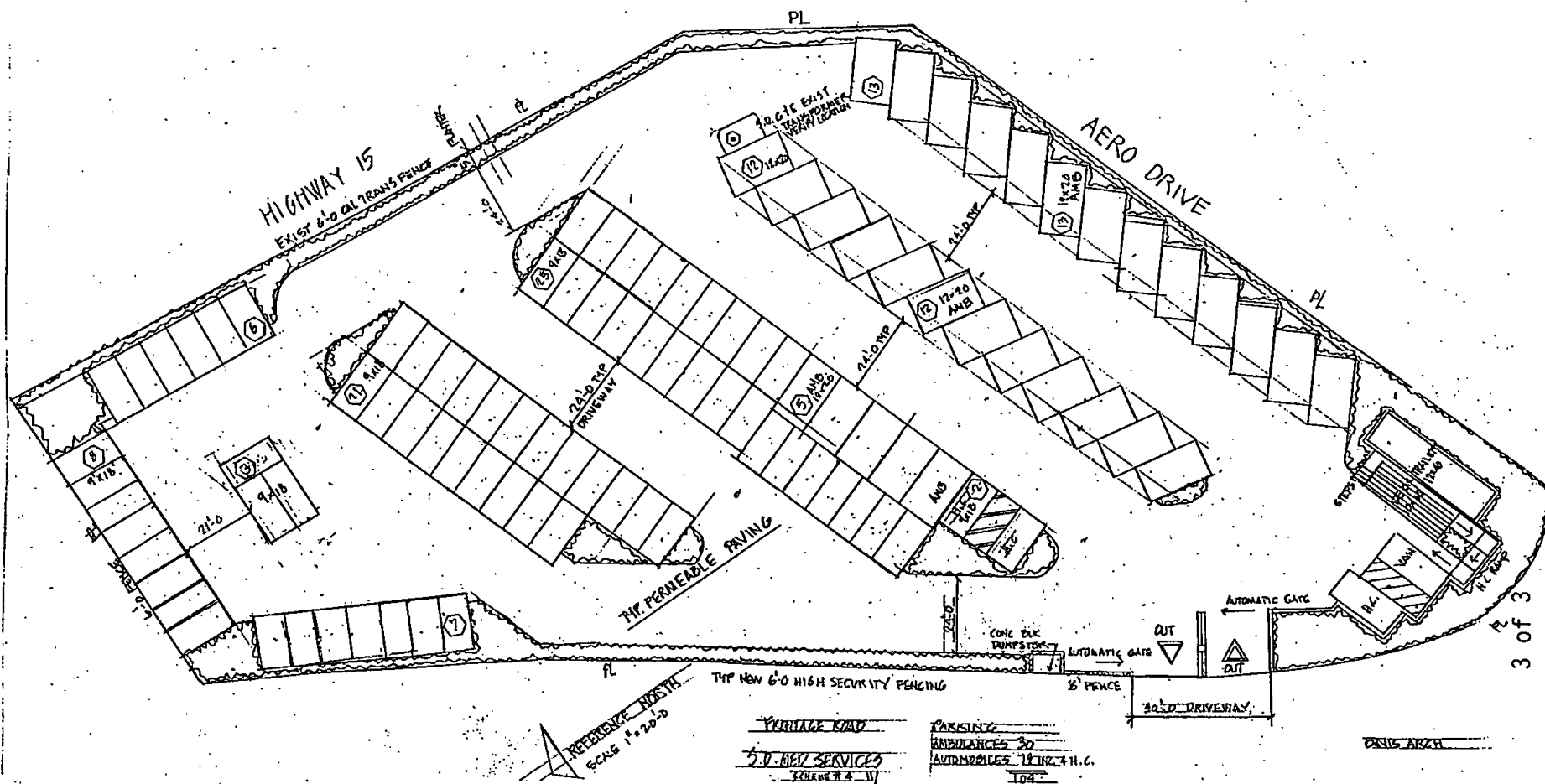
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The southern perimeter of the property will contain security fencing with privacy shade/curtain and appropriate ground cover and trees to blend development in with existing properties.

Interior

Interior landscaping will be contained in parking islands as depicted by the plot map



RESOLUTION NUMBER R- 299934

ADOPTED ON DEC 07 2004

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WHEREAS, pursuant to the Council's direction, the City and SDMSE have negotiated a lease for a term of three and one-half years (January 1, 2005 to June 30, 2008) for the storage

and maintenance of ambulances, other San Diego Fire Department equipment and vehicles, employee parking, and other related uses; and

WHEREAS, pursuant to the Council's direction, under the proposed terms of the lease, SDMSE will pay no rent but will develop the site at its expense consistent with a development plan to be approved by the City Manager and including fencing, paving, lighting, and a portable building, at an estimated cost of \$200,000; and

WHEREAS, under the proposed terms of the lease, as partial consideration for the extension of the EMS Agreements and to ensure uninterrupted operations of the emergency medical services, the City will advance funds currently available in the City's EMS Program Fund to SDMSE for improvements necessary to prepare the property for the intended use of ambulance and employee parking in an amount not to exceed \$200,000, upon the terms and conditions set forth in the lease agreement on file in the office of the City Clerk as Document No. RR- 299934; and

WHEREAS, the vacant lot to be leased to SDMSE was acquired by the City with Gas Tax Funds, under the proposed terms of the lease, City will pay the fair market rental value for the property of \$2,250 per month, adjusted annually, to compensate the Gas Tax Fund for this non-transportation use; and

WHEREAS, the City's valuation staff has determined the fair market rental value of the Property is \$2,250 per month; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. That the City Manager is authorized to execute, for and on behalf of the City of San Diego, a lease agreement with San Diego Medical Services Enterprise, LLC, for the construction, operation, and maintenance of an ambulance and employee parking lot on 1.21

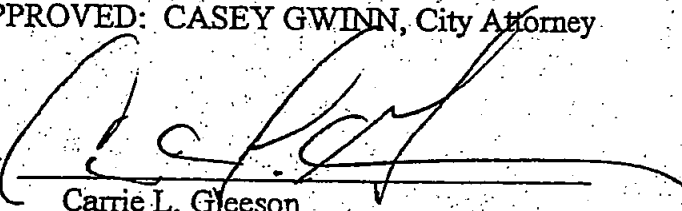
owned vacant land located at the northwest corner of Aero Drive and Interstate 15
m of three and one-half years at no rent with the fair market rent of \$2,250 per month,
adjusted annually, to be paid by the City from the General Fund to the Gas Tax Fund, all under
the terms and conditions set forth in that lease agreement on file in the office of the City Clerk as
Document No. RR- 299934

2. That the City Auditor and Comptroller is authorized to transfer the fair market
rental value for the property (currently \$2,250 per month, to be adjusted annually) from the
General Fund—EMS Program, Fund No. 100, to the Gas Tax Fund, Fund No. 302191, on a
monthly basis during the pendency of the lease.

3. That the City Auditor and Comptroller is authorized to expend an amount not to
exceed \$200,000 from the General Fund—EMS Program, Fund No. 100, to be used solely and
exclusively for necessary tenant improvements, pursuant to the terms and conditions set forth in
that lease agreement on file in the office of the City Clerk as Document No. RR- 299934

APPROVED: CASEY GWINN, City Attorney

By


Carrie L. Gleeson
Deputy City Attorney

CG:mm

11/23/04

Job Order: 221228

Or.Dept:READ

R-2005-634

MMS-1130

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO

READ #109

TO: CITY ATTORNEY	2. FROM (ORIGINATING DEPARTMENT): Real Estate Assets Department	1. CERTIFICATE NUMBER
4. SUBJECT: Lease Approval – San Diego Medical Services Enterprise, LLC		3. DATE: November 22, 2004

5. FOR INFORMATION, CONTACT (NAME & MAIL STA.): GIBSON/Crawford	6. TELEPHONE NO.: MS# 51A	7. CHECK HERE IF BOX 1472A "DOCKET" SUPPORTING INFORMATION HAS BEEN COMPLETED ON PAGE 2: ☐
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8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	100	100		9. ADDITIONAL INFORMATION / ESTIMATED COST:
DEPT.	601	601		Cost to City: Approx. \$ 27,000 per year from General Fund to Gas Tax Fund; and not to exceed \$200,000 for tenant improvements. Job: 221228 cc: Dept. Docket Clerk
ORGANIZATION	4751	4751		
OBJECT ACCOUNT	4222	4222		
JOB ORDER	004751	004751		
C.I.P. NUMBER				
AMOUNT	\$13,500	\$200,000		

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
X	DEPARTMENT DIRECTOR	<i>[Signature]</i>	11-23-04	X	CITY MANAGER HERGUNG MENDES	<i>[Signature]</i>	11/23/04
X	DSD/EAS	<i>[Signature]</i>	11-23-04	X	AUDITOR	<i>[Signature]</i>	11-22-04
X	EOCP	<i>[Signature]</i>	11-23-04	X	CITY ATTORNEY	<i>[Signature]</i>	11-24-04
X	FINANCIAL MGMT	<i>[Signature]</i>	11/23/04	X	ORIGINATING DEPARTMENT	<i>[Signature]</i>	11/24/04
X	EMS PROGRAM	<i>[Signature]</i>	11/23/04		MGR. DOCKET COORD:		COUNCIL REP.
					RULES COMMITTEE	☐ CONSENT	☐ ADOPTION
						☐ REFER TO:	DATE:

11. PREPARATION OF:	☒ RESOLUTIONS	☐ ORDINANCE(S)	☐ AGREEMENT(S)	☐ DEED(S)
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1. Authorizing the City Manager to execute a 3½-year lease agreement with San Diego Medical Services Enterprise, LLC, a California limited liability company, to construct, operate, and maintain an ambulance and employee parking lot on 1.21 acres of City-owned vacant land at the northwest corner of Aero Drive and Interstate 15 at a monthly land rental of \$2,250 to be paid by the City from the General Fund – EMS Program to the Gas Tax Fund.
2. Authorizing the Auditor and Comptroller to transfer the fair market value for the property, currently \$2,250 per month, from the General Fund – EMS Program (Fund 100) to the Gas Tax Fund (Fund 302191) on a monthly basis during the term of the lease.
3. Authorizing the Auditor and Comptroller to expend an amount not to exceed \$200,000 from the General Fund – EMS Program (Fund 100) to be used solely and exclusively for necessary tenant improvements to prepare the property located at the northwest corner of Aero Drive and Interstate 15 for the intended use of an ambulance and employee parking lot.

REPORT TO COUNCIL

11A. MANAGER'S RECOMMENDATIONS:

Adopt the resolutions.

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S):

6

COMMUNITY AREA(S):

Kearny Mesa

ACTION REQUESTED BY:

Real Estate Assets Department Director

DOCUMENT SUBMITTED:

Lease in triplicate for execution by the City Manager

DESCRIPTIVE LOCATION:

Northwest corner of Aero Drive and Interstate 15

ENVIRONMENTAL IMPACT:

This activity is exempt from CEQA pursuant to State CEQA Guidelines, Section 15061(b)(3). This

determination is predicted on Section 1500 of the Guidelines which provides direction to lead agencies on the appropriate timing for environmental review. The use or disposition of this property will require further review under the provisions of CEQA.

HANDLING:

DO NOT RECORD. Return two duplicate originals of lease to Real Estate Assets Department, Attention: Paul T. Crawford, M.S. 51A, for further handling.

DATE ISSUED:

REPORT NO.

ATTENTION: Council Docket of

SUBJECT: Lease Approval – San Diego Medical Services Enterprise, LLC

REFERENCE: City Manager's Report 04-219, Issued October 4, 2004
City Manager's Report 04-244, Issued November 10, 2004

SUMMARY

Issues – Should the City Manager enter into a 3½-year lease agreement with San Diego Medical Services Enterprise, LLC, to construct, operate, and maintain an ambulance and employee parking lot on City-owned vacant land at the northwest corner of Aero Drive and Interstate 15?

Manager's Recommendation – Authorize execution of the lease.

Other Recommendations – None

Fiscal Impact – \$2,250 monthly/\$27,000 yearly will be paid from General Fund 100 to Gas Tax Fund 302191. An expenditure of \$200,000 or less from the General Fund may be necessary in 2008 to purchase the parking lot improvements if a new Emergency Medical Services provider is selected. Funds for the \$27,000 yearly lease payments and the tenant improvement allowance of up to \$200,000 will come from the anticipated savings to the annual Medicare subsidy.

BACKGROUND

On July 14, 2004, the City Council's Public Safety and Neighborhood Services Committee directed the City Manager to negotiate extensions to the existing Emergency Medical Services (EMS) Agreements between the City and San Diego Medical Services Enterprise, LLC (SDMSE). On November 15, 2004, the City Council adopted Resolution 299840 authorizing the extension of the EMS Agreements and approving amendments to the EMS Agreements as recommended by City Manager's Reports 04-219 and 04-244. SDMSE currently leases space

at Montgomery Field for ambulance and employee parking. The Federal Aviation Administration (FAA) recently denied the City's request to allow SDMSE continued use of this property for non-aeronautical use. The FAA has advised that SDMSE must relocate from the Montgomery Field property by February 28, 2005.

DISCUSSION

As partial consideration for extension of the EMS Agreements and included in the amendments authorized by the City Council, the City has agreed to lease SDMSE the 1.21-acre City-owned property located at Aero Drive and Interstate 15 at no cost for employee and ambulance parking, and the City Council has authorized the City Manager to prepare a lease agreement with SDMSE for that purpose. SDMSE will develop the site at its expense as an ambulance and employee parking lot with fencing, paving, lighting, and a portable building, estimated to cost \$200,000. Also, as part of the consideration for the EMS Agreements and to ensure uninterrupted operations of the emergency medical services, the City Manager recommends that the City advance funds to SDMSE for improvements necessary to prepare the property for the intended use of ambulance and employee parking in an amount not to exceed \$200,000, upon the terms and conditions set forth in the lease. Pursuant to the terms of the lease, SDMSE will reimburse the City for this tenant improvement allowance during the first year of the lease.

Proposed for approval is a 3½-year parking lease to coincide with the remaining term of SDMSE'S contract. Since the vacant lot to be leased to SDMSE is the remnant from a street project and was acquired by the City with Gas Tax Funds, there is a legal requirement to pay fair market rent to the Gas Tax Fund for using the site for a non-transportation purpose. The monthly rent will be \$2,250 based on a land value of \$285,000, as determined by City staff appraisal. As part of the agreement with SDMSE, the City will deposit the monthly rent from the General Fund into the Gas Tax Fund. Additionally, if the City does not renew the emergency medical services contract with SDMSE in 2008, the next contractor or the City will be required to purchase the parking lot improvements from SDMSE, the value to be determined by the City.

ALTERNATIVES

Do not approve the proposed lease agreement.

Respectfully submitted,


William T. Griffith
Real Estate Assets Director


Approved: Richard Mendes
Deputy City Manager

GRIFFITH/PTC

I:\WPO\2004\CRAWFORD\MR- SAN DIEGO MEDICAL SERVICES.doc

CERTIFICATE OF UNALLOTTED BALANCE

ORIGINATING

DEPT. NO.:

Amount: _____ Fund: _____

Purpose: _____

Date: _____ By: _____

ACCOUNTING DATA

TOTAL AMOUNT

Not to Exceed: \$213,500.00

Purpose: Authorizing the expenditure for a lease agreement with San Diego Medical Services Enterprise, LLC for tenant improvements, in an amount not to exceed \$213,500.00.

Date: November 23, 2004

By: Leonard J. Alfuentes
AUDITOR AND COMPTROLLER'S DEPARTMENT

TOTAL AMOUNT

\$213,500.00

FUND OVERRIDE ☐

AC 2500531

DOCKET SUPPORTING INFORMATION
CITY OF SAN DIEGO

EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION

DATE:

November 23, 2004

SUBJECT: Lease Approval – San Diego Medical Services Enterprise, LLC

GENERAL CONTRACT INFORMATION

Recommended Contractor: San Diego Medical Services Enterprise, LLC with Rural/Metro of San Diego
Amount of this Action: \$ 200,000
Funding Source: City
Goal: 15% Voluntary Subconsultant Participation

SUBCONSULTANT PARTICIPATION

No subcontractor participation for this action.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity Required

Rural/Metro of San Diego submitted a Work Force Report for the San Diego County employees dated October 5, 2004, with a total of 352 employees. The current Work Force Analysis reflects under representations as follows:

African Americans in Technical
Asians in Technical
Filipinos in Professional, Technical, Administrative Support
Females in Management & Financial, Technical

Staff has requested Contractor to submit an EO Plan which describes equal employment policies and practices including reasonable goals and timetables that are expected to remedy the identified under representations.

ADDITIONAL COMMENTS

The *Work Force Analysis* is attached.

Stacey Stevenson
EOC Deputy Director by ABQ



THE CITY OF SAN DIEGO

MANAGER'S REPORT

DATE ISSUED: November 10, 2004 REPORT NO. 04-244

ATTENTION: Honorable Mayor and City Council
Agenda of November 15, 2004

SUBJECT: Extension of Emergency Medical Services (EMS) Agreements

REFERENCE: City Manager's Report 04-219, dated October 4, 2004
City Manager's Report 04-153, dated July 9, 2004

SUMMARY

Issue - 1) Should the Mayor and City Council approve the extension of the Emergency Medical Services Agreements to continue services currently provided by San Diego Medical Services Enterprise (SDMSE), L.L.C?

2) Should the Mayor and City Council direct the City Manager to prepare a lease agreement with SDMSE for property located at Interstate 15 and Aero Drive for ambulance and employee parking?

Manager's Recommendation – 1) Approve the continuation of the Emergency Medical Services Agreements to continue services currently provided by SDMSE.

2) Direct the City Manager to prepare a lease agreement with SDMSE for property located at Interstate 15 and Aero Drive for ambulance and employee parking.

Physicians Oversight Board Recommendation – Extend the Emergency Medical Services agreements to continue services currently provided by SDMSE.

Emergency Medical Services Oversight Board Recommendation – Extend the Emergency Medical Services agreements to continue services currently provided by SDMSE.

Other Recommendations – Fire Fighters Local 145 who participated in the contract discussions, endorses the recommendations.

Fiscal Impact – Based on anticipated Insurance Savings, the annual City subsidy of \$650,000 will be eliminated. The Medicare/Medi-cal offset will be capped at \$250,000 per fiscal year beginning in Fiscal Year 2006.

BACKGROUND

The current EMS Agreement term is from July 1, 2002 through June 30, 2005 and includes a provision to extend the term for three additional years to June 30, 2008.

On July 14, 2004 the Public Safety and Neighborhood Services (PS&NS) Committee approved the City Manager's recommendation to continue paramedic services provided by SDMSE and, directed the City Manager to negotiate extensions to the Emergency Medical Services agreements associated with the provision of paramedic services.

Negotiations proceeded with representatives from the City Manager's Office, San Diego Fire-Rescue Department (SDFD), Rural/Metro Corporation, SDMSE, Fire Fighters Local 145 (Local 145), the Municipal Employees Association (MEA), and the City Attorney's Office.

As a result of negotiations, on October 6, 2004 City Manager's Report 04-219 (attached), which outlined proposed changes to the Emergency Medical Services Agreements, was presented to the PS&NS Committee. The Committee voted unanimously to approve the continuation of paramedic services provided by SDMSE including contractual changes outlined in the report.

DISCUSSION

Subsequent to the October 6, 2004 PS&NS meeting, additional information was received which slightly modifies the original proposal outlined in City Manager's Report 04-219. The following details the changes occurring after the October 6, 2004 meeting that are proposed:

- **TERM**
 - All agreements will be extended beginning December 1, 2004 for a period of three years and seven months ending June 30, 2008. This change is occurring in order to lock-in favorable insurance rates and immediately implement proposed system enhancements.

- **INSURANCE**

- As a result of receiving additional insurance information, Fiscal Year 2005 City savings previously anticipated to be utilized for the purchase of Mobile Data Computers (MDC's) for Basic Life Support (BLS) ambulances, and to help fund improvements to the parking site located at Aero Drive and Interstate 15, will not be realized.
- SDMSE will be responsible for placing MDC's on BLS units.
- A lease agreement will be prepared for the parking site located at Aero Drive and Interstate 15 for ambulance and employee parking. The City will provide SDMSE with a tenant improvement allowance up to \$200,000 for Capital Improvements to the site. SDMSE will repay the allowance through monthly lease payments beginning January 1, 2005 over a period of 12 months.

- **RESPONSE TIMES**

- At the PS&NS Committee meeting on October 6, 2004, Council member Frye moved that if at anytime during the term of the SDMSE extension, SDFD is no longer responsible for dispatching 9-1-1 medical emergencies, the provision regarding response time requirements will be re-evaluated by the City and SDMSE.
- Council member Frye's recommendation has been incorporated into the EMS contracts.

SUMMARY

San Diego Medical Services Enterprise, L.L.C. is a unique and successful provider of emergency medical services and medical transportation. The unique blend of public and private philosophies, combine to bring out the best of both service delivery types.

ALTERNATIVE:

1. Do not accept the recommendations and direct the City Manager to continue negotiations with SDMSE.

Respectfully submitted,

Donna Goldsmith
EMS Program Manager

Approved: Richard Mendes
Deputy City Manager

MENDES/GOLDSMITH

Attachments: 1. City Manager's Report #04-219
2. City Manager's Report #04-153

THE CITY OF SAN DIEGO

EQUAL OPPORTUNITY CONTRACTING PROGRAM

1010 SECOND AVENUE • FIFTH FLOOR • SAN DIEGO, CALIFORNIA 92101
(619) 533-4464 • FAX: 633-4474

WORK FORCE REPORT

The objective of the Equal Employment Opportunity Program is to ensure that contractors doing business with the City, or receiving funds from the City, will not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to the following employment, promotion, or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship.

NO OTHER FORMS WILL BE ACCEPTED CONTRACTOR IDENTIFICATION

Type of Contractor: ☐ Construction ☐ Vendor/Supplier ☐ Financial Institution ☐ Lessee/Lessor
☐ Consultant ☐ Grant Recipient ☐ Insurance Company ☒ Other

Name of Company: Rural/Metro of San Diego

AKA/DBA: _____

Address (Corporate Headquarters, where applicable): 8401 E. Indian School Road

City Scottsdale County Maricopa State AZ Zip 85251

Telephone Number: (480) 606-3886 FAX Number: (480) 606-3268

Name of Company CEO: Jack Brucker

Address(es), phone and fax number of company facilities located in San Diego County (if different from above):

Address: 10405 San Diego Mission Road, Suite 200

City: San Diego, California Zip: 92108

Telephone Number: (619) 280-6060 FAX Number: (619) 280-6644

Type of Business: Emergency Services Type of License: _____

The Company has appointed: Elaine Wong as its
Equal Employment Opportunity Officer (EEOO). The EEOO has given the authority to establish, disseminate, and
enforce the equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: 8401 E. Indian School Road, Scottsdale AZ 85251

Telephone Number: (480) 606 3266 FAX Number: (480) 606 3268

For Firm's: ☐ San Diego Work Force and/or ☐ Managing Office Work Force

I, the undersigned representative of Rural/Metro of San Diego
(FIRM NAME)

San Diego County California State

hereby certify that the information provided herein is true and correct. This document was executed on this day of
October 5 2004

(Authorized Signature)

Phil Forgione
(Printed Authorized Signature Name)

