SUBJECT: AIRPORT LEASE - LOT 49A (B. MICHAEL & ELAINE WALL)

SOURCE: Fire Department/Airport

COMMENT: B. Michael and Elaine Wall are the current lease holders of Lot 49A at the Porterville Municipal Airport. The ten-year lease expired on May 31, 2002. The lease has a five-year option to extend which is not automatic. Mr. and Mrs. Wall were informed that staff would recommend a five-year extension of the lease with a single reasonable modification regarding on-site inspections.

A single sentence in Provision 4a is the only modification to the original agreement approved by Council in 1992. This change has occurred to all lease agreements issued on or after May 1, 2000. The sentence reads “the City reserves the right to conduct on-site inspections for the purpose of compliance with Building Code, Fire Code, and Zoning Ordinance.”

This sentence was added to clarify the City’s intent to inspect for the above stated purposes. Staff has also been informed by the Insurance Commissioner’s Office that the City is NOT protected as an “additional insured” if the Lessee subleases or rents space in their hangar. The tenant must have their own policy listing the City as “additional insured.” The only way staff can verify compliance with a lease agreement and identify renters who do not have insurance is through on-site inspections.

Uniform Fire Code Section 103.3.1.2, and Building Code Section 104.2.3, allow the Fire and Building Inspectors to enter any structure with probable cause or permission. If permission is denied, an inspection warrant must be obtained. The inspections are designed for only two purposes, public safety and lease agreement compliance. Having this language in the lease agreements expedites the inspection process, safeguards significant investments and assets of nearby lease holders and tenants, which they have a right to expect, and protects against the potential loss of City revenues and resources.

Recommendation: That the City Council approve Lease Amendment No. 1, modifying page 2, Provision 4a of the original Lease Agreement, upon execution of said Amendment No. 1 by both Lessee and City.

Attachment: 1) Lease Amendment No. 1
(A copy of original Lease and Assignment was provided to Council under separate cover.
A copy of the lease is available for public inspection in the office of the City Clerk.)
2) Letter of Request
The City of Porterville, a Charter Law City and Municipal Corporation (the “City” or “Lessor”), having entered into a Lease Agreement dated June 1, 1992, with respect to the lease of Lot 49A at the Porterville Municipal Airport, and B. Michael and Elaine Wall, do hereby agree to amend said Agreement, and thereupon to provide for a five (5) year extension of said amended Agreement contingent only on the mutual execution of same, as follows:

A. Page 2, Provision 4a of the Agreement is amended to read as follows:

(4a) Purpose: This Lease is made for the purpose of constructing and operating an existing aircraft hangar to be used for the parking and storage of aircraft and other activities incidental thereto. Lessee shall not use the premises or any part thereof or permit them to be used for any purpose or purposes other than stated above. The City reserves the right to conduct on-site inspections for the purpose of compliance with Building Code, Fire Code, and Zoning Ordinance. Lessee shall not do or permit any act or thing to be done upon the premises which constitutes nuisance or which may disturb the quiet enjoyment of City or any tenant of City on adjacent neighboring property.

Lessee further agrees, within 72 hours from receiving written notice by the City that a nuisance exists, to abate or otherwise cause said nuisance to be cured.

In the event Lessee has not (a) taken corrective action within 72 hours, or (b) filed an appeal with the City Council, City of Porterville, within 72 hours, then City may enter and abate said nuisance at the expense of Lessee without any liability whatsoever to City for monetary loss or anticipated profits of Lessee or others.

Said appeal to the City Council must be made in writing and be received by the City Clerk, 291 N. Main Street, Porterville, California, 93257, within 72 hours after Lessee received notice of said nuisance.

B. The Five-year option stated in Provision 2 of the Lease Agreement, contingent only on execution of this amendment by both Lessee and City, is hereby exercised, thereby extending the Lease Agreement dated June 1, 1992, until, May 31, 2007.

C. This amendment shall be effective on the 6th day of May, 2003.

DATED: May 6, 2003

CITY OF PORTERVILLE

____________________________________
Richard M. Stadtherr, Mayor

ATTEST:

____________________________________
John Longley, City Clerk

LESSEE

By: ______________________________________
B. Michael Wall

By: ______________________________________
Elaine Wall

Approved as to Form:

____________________________________
Julia Lew, City Attorney