

LEASE AGREEMENT

THIS LEASE (Lease) dated September 29, 2016 by and between CARLULU, LLC., ("Landlord"), and the CITY OF FRESNO, a municipal corporation ("Tenant"), covers office and warehouse space for the following described premises ("Leased Premises"):

5499 E. Hedges Avenue
Fresno, California 93727

- 1. TERM AND OPTION TO RENEW.** Landlord leases to Tenant the Leased Premises for a 121 months (ten years plus one month), commencing on the first working day following delivery of the Certificate of Occupancy by the City to the Landlord, which shall occur no later than December 31, 2016 ("Commencement Date"), and ending 121 months from the Commencement Date ("Initial Term"). Following the Initial Term, Tenant shall have two five-year options to renew this Lease ("Renewal Terms"). The rent shall increase 10% each Renewal Term from the previous term rental rate. Each Renewal Term will be on the same terms and conditions herein. Tenant may exercise one or more of these renewal options by notifying Landlord at least 30 days prior to the end of the then-current Initial Term or Renewal Term. In the event the Certificate of Occupancy is not issued by December 31, 2016, Landlord and Tenant shall negotiate in good faith to amend the terms of this Lease.
- 2. AUTHORITY.** Landlord represents and warrants that it is the owner, or has the legal interest and authority, to Lease the Leased Premises.
- 3. LEASED PREMISES AND USE.** The Leased Premises consists of an approximately 25,000 square foot, free-standing office/warehouse building situated on approximately 1.05 acres known as APN 544-221-19S (the "Property"). The Leased Premises are depicted in Exhibit A. Tenant shall have unrestricted days and hours for access and operations for police department functions to include the housing of the SWAT Bus and personnel, bomb explosive containment vehicle, and other police vehicles and equipment. The facility will also be used to store police evidence and all other legally permitted uses.
- 4. DELIVERY OF LEASED PREMISES.** On the Commencement Date, the Leased Premises shall be delivered as depicted in Exhibit A, with the warehouse and office area in a clean, broom swept and free of all debris condition. All paved areas shall be in good condition.
- 5. INITIAL TERM RENT.** Rent for the Initial Term shall be paid monthly by Tenant in the amount set forth below. All monthly rent payments shall be payable in advance at the Landlord's address as shown on the signature page of this Lease.

Months	Rate/SF/Month
01	\$0.00/square foot/month
02-61	\$0.50/ square foot/month (\$12,500)
62-121	\$0.55/ square foot/month (\$13,750)

6. **OPTION TO PURCHASE.** Commencing on the date that is ten years from the Commencement Date, and continuing throughout the term of the Lease and any Renewal Terms, Landlord hereby grants to Tenant the exclusive right to purchase the Property at a price and under the terms and conditions set forth herein. As consideration for this option, Tenant shall pay Landlord \$100 on the Commencement Date. If Tenant is not in breach of this Lease, it may exercise this option by delivering to Landlord ninety days in advance written notice of its intent to exercise the option. The purchase price shall be established by two separate appraisals paid for by each party and shall not be less than \$1,800,000. If the two appraisals do not produce and agreed to value, a third appraisal shall be ordered and the cost equally shared and that appraisal shall determine the purchase price. Landlord is open to carrying back a note and deed of trust for a period of up to ten years at a marketable interest rate. Upon exercise of this Option to Purchase, Landlord and Tenant shall enter into a purchase and sale agreement in the form attached hereto as Exhibit C.

7. **UTILITIES.** Tenant is responsible for the cost of all water, sewer, garbage, electricity, gas and telephone utility charges for the Leased Premises during the term of the Lease and any Renewal Term. Monthly security monitoring shall be paid by Tenant.

8. **PARKING.** All parking spaces are included within the Leased Premises at no additional cost to Tenant.

9. **MAINTENANCE.** Landlord, at its sole cost and expense, shall be responsible for maintenance and repair of (i) the roof, foundation, structure and exterior walls and floors (excluding floor coverings such as carpet and linoleum) of the Leased Premises; (ii) exterior utility lines to the point of entry into the Leased Premises; (iii) concrete parking and asphalt area in front of the existing building; and (iv) roll up doors, openers and gates. In addition, Landlord shall be responsible for HVAC replacement (excluding routine maintenance and repair) unless replacement is made necessary by the negligence of Tenant. Repair of air conditioning and heating units shall be the responsibility of the Landlord when the total accumulated cost of repair during the life of the Lease or any estimated cost of repair exceeds \$3,000.00, unless replacement is made necessary by the negligence of Tenant.

Tenant, at its sole cost and expense, shall be responsible for maintenance and repair of (i) the interior, non-structural portions of the Leased Premises including but not limited to carpet, painting, glass, windows, and interior walls; (ii) all plumbing, electrical, and mechanical systems (including HVAC) servicing the Leased Premises (excluding replacement); (iii) all other portions of the Leased Premises which are not the responsibility of Landlord, such as grass, landscaping and plants; and (iv) fenced concrete parking and asphalt area on east side of existing building.

10. **MAINTENANCE - NON PERFORMANCE.** In the event the Landlord neglects, fails or refuses to maintain the Leased Premises as afore stated within fifteen days after

written notice has been given by Tenant, Tenant may, at Tenant's sole option, cure any such default by performance of any act, including payment of money, and deduct the cost thereof plus reasonable administrative costs from the rent.

12. **FIXTURES.** Tenant intends to install shelving and a 20x30x16 cold box after taking possession of the Leased Premises. It is mutually understood and agreed that all equipment, fixtures or apparatus installed in or on the Leased Premises for use by the Tenant, as permitted herein, shall continue to be the property of Tenant, and shall be removed by Tenant without recourse upon the expiration or termination of this Lease, provided, however, Tenant shall, at its cost, repair any damage to the Leased Premises or Property caused by such removal. Tenant shall be solely responsible for all maintenance and repairs of its furniture, fixtures, shelving, cabinets, computers and communications equipment.

13. **SIGNAGE.** Landlord will permit Tenant, at Tenant's sole cost and expense, to erect such building, monument or pole mounted signage as permitted by local building code regulations and applicable deed restrictions (if any).

14. **LIABILITY.** Tenant is free of liability for loss or damages caused by structural failure, existing defects within the Leased Premises and any third-party actions.

Tenant will be responsible for loss, damage or injury caused by the negligence or willful misconduct of Tenant or any of its employees, agents or invitees. Landlord will be responsible for any loss, damage or injury caused by the negligence or willful misconduct of Landlord or any of its employees, agents or invitees.

Landlord will not be responsible for damages to the Leased Premises caused solely by Tenant's negligence, willful misconduct, or misuse of said Leased Premises.

Throughout the life of this Lease, Landlord shall pay for and maintain in full force and effect all insurance as required in the attached Exhibit B or as may be authorized or required in writing by Tenant's Risk Manager or his/her designee at any time and in his/her sole discretion.

This section shall survive termination or expiration of this Lease.

15. **SURRENDER OF POSSESSION.** It is mutually understood that upon any termination of the Lease, Tenant will surrender the Leased Premises to Landlord in as good order and condition as when received, except for reasonable wear and tear and any maintenance or repair that is the express obligation of Tenant pursuant to any of the provisions hereof. Any needed repairs will be completed within 15 days of termination, if can reasonably be completed within such duration.

If any needed repairs that are the express obligation of Tenant hereunder are not completed within 15 days, or such other reasonable period if cannot be completed

within such duration, the Landlord may take action needed to make said repairs and Tenant agrees to pay the cost for those repairs within 30 days of receipt of invoice by Landlord.

16. **RIGHT OF ENTRY.** Landlord or its representative, upon reasonable advance notice to Tenant and subject to Tenant's right to accompany Landlord, may enter the Leased Premises during business hours at any time during the term of this Lease to protect, inspect, exercise or investigate any rights of Landlord herein reserved. Subject to the foregoing, Landlord may enter the Leased Premises for the purpose of making any alteration, repair or improvement to said building, or the Leased Premises, when it deems convenient for the maintenance or preservation thereof provided always that the normal business of Tenant or its invitees shall not be unnecessarily inconvenienced.

17. **TERMINATION BY TENANT FOR NON-APPROPRIATION.** The Tenant's obligation to pay the rental payments and any other payment obligations under this Lease shall constitute a current expense to Tenant for Tenant's beneficial use and occupancy of the Leased Premises. The rental payments shall be payable only from current funds, budgeted and appropriated, on deposit in a reserve fund, or otherwise legally available for the rental payments or other Leased Premises costs. This Lease does not create an immediate debt for aggregate rental payments, and is not a pledge of the City's full faith and credit.

During its annual budgeting process, Tenant shall consider, and will use best efforts to appropriate funding to meet its rental payments, maintenance, and other estimated Leased Premises costs under this Lease for the fiscal year under consideration.

In the sole event of non-appropriation relating to this Lease, Tenant shall have the right to terminate this Lease at the end of any fiscal year of Tenant, in the manner and subject to the terms specified in this paragraph. Tenant shall endeavor to give written notice of such termination not less than sixty (60) days prior to the end of such fiscal year, and shall notify Landlord of any anticipated termination. For purposes of this paragraph, "fiscal year" shall mean the twelve month fiscal period of Tenant which commences on July 1 in every year and ends on the following June 30. For purposes of this paragraph, "non-appropriation" shall mean the failure of Tenant or Tenant's governing body to appropriate money for any fiscal year of Tenant sufficient for the continued performance of this Lease by Tenant.

18. **ASSIGNMENT.** Tenant shall not assign its interest under this Lease, or sublet any portion of the Premises, without the prior written consent of Landlord.

19. **QUIET CONDUCT AND POSSESSION.** Landlord or any Tenant of Landlord shall not commit, or suffer to be committed, any waste upon the property upon which the Leased Premises are located, or any nuisance, or do any other act or thing which may or does disturb the quiet enjoyment of Tenant of its occupancy of the building in which the Leased Premises are located or the use of the parking spaces by Tenant.

20. CONDEMNATION. In the event that at any time during the term of this Lease, the Leased Premises or any part thereof shall be taken by eminent domain or condemnation by any public or quasi public authority (or in the event a voluntary conveyance is made by Landlord to such public or quasi public authority by reason of or by threat or imminence of the exercise of said power of eminent domain or condemnation by said authority), the following terms and conditions shall apply:

(a) In the event of a total taking, Tenant's right of possession shall terminate as of the date of taking and rent and other charges provided for in this Lease shall be adjusted as of said date. The entire damage award of the condemnation proceedings shall be paid to Landlord.

(b) In the event of a partial taking of the Leased Premises which renders Leased Premises untenable in whole or in part by Tenant, then Tenant may, by written notice to Landlord within thirty days after the taking by the condemning authority, terminate this Lease upon thirty days' notice to Landlord. This Lease is terminated by Tenant as previously provided in this subparagraph (b), the rent shall be abated from the date of such partial taking and the entire award of the condemning authority shall belong solely and exclusively to Landlord.

(c) In the event of a partial taking of the Leased Premises which does not render the Leased Premises wholly untenable by Tenant and Tenant does not exercise its right to terminate under subparagraph (b) above, there shall be an adjustment of rent hereunder and the entire damage award received for such partial taking shall belong solely to Landlord.

21. DAMAGE OR DESTRUCTION. If the Leased Premises shall be damaged by fire, the elements, unavoidable accident, or other casualty, but is not thereby rendered untenable in whole or in part, Landlord shall, at Landlord's own expense and within thirty days of Tenant's written notification to Landlord of the damage, cause such damage to be repaired, and the rent shall not be abated. If by reason of such occurrence, the Leased Premises shall be rendered untenable only in part, Landlord shall, at Landlord's own expense and within thirty days of Tenant's written notification of Landlord of the damage, cause such damage to be repaired, and the rent meanwhile shall be abated proportionately as to the portion of the Leased Premises rendered untenable from the time of such occurrence until such repairs are completed. If the Leased Premises shall be rendered wholly untenable by reason of such occurrence, Landlord shall, at Landlord's own expense and within sixty days of Tenant's written notification to Landlord of the damage, cause such damage to be repaired, and the rent meanwhile shall be abated in whole from the time of such occurrence until such repairs are completed. Notwithstanding the proceeding provisions of this Section, either party shall have the right, to be exercised by notice in writing to the other within thirty days from and after the date of Tenant's written notification of any such event of partial or total destruction, to elect to terminate this Lease, and in such event, this Lease and the tenancy hereby created hereby shall cease as of the date of such notice, and the rent shall be adjusted as of such date.

22. **PROPERTY TAXES AND INSURANCE.** Tenant will pay all real estate taxes, bonds and assessments when due on the Leased Premises. Tenant, its officials, officers, employees, agents or authorized volunteers shall not be liable to Landlord or its insurer for any damage caused by fire or any of the risks insured against under the property and hazard insurance, unless such fire or other damage is caused by Tenant, its officials, officers, employees, agents, or authorized volunteers. Nothing herein is intended to require Tenant to maintain property and hazard insurance covering the Leased Premises for whatever cause, provided, however, Tenant shall maintain a commercial general liability insurance (through a self-insurance program) providing coverage of \$2,000,000, and shall name Carlulu, LLC., as an additional insured.

23. **DEFAULT.** If either party defaults in the performance of any condition or covenant in this Lease, the other party, at its option, may terminate this Lease, but only if the defaulting party fails to rectify said default within thirty days (except for nonpayment of rent, which shall be ten days) after written notice thereof is served upon the defaulting party by the other party. In the event, however, that any default (except nonpayment of rent) complained of hereunder is of such nature that the same cannot be rectified in such thirty day period as aforesaid, then such default shall be deemed to be rectified if the defaulting party shall have commenced the compliance of the provisions hereof breached by it and in the performance of which it is claimed to be in default within such thirty day period and shall with all diligence prosecute work or perform the particular provisions until the same shall have been fully rectified or performed.

24. **MISCELLANEOUS.**

24.1 **NOTICES.** Notices hereunder to the respective parties shall be deemed delivered if given in writing, mailed with postage prepaid, return receipt requested, addressed to the respective party at the address given on the signature page of this Lease or at such other address as the parties may, from time to time, designate by written notice.

24.2 **ATTORNEY FEES.** In the event of a claim by either party for breach of, or failure to perform, or any inaccuracy in, any of the representations, warranties, covenants, or agreements contained in this Lease, then in any action or proceeding the prevailing party shall be entitled to be reimbursed for all costs, fees, and expenses incurred in connection with prosecuting or defending such claim, including reasonable attorneys' fees.

24.3 **OTHER AGREEMENTS SUPERSEDED, WAIVER, AND MODIFICATION.** This Lease constitutes the entire agreement between the parties pertaining to the subject matter contained in and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. No supplement, modification, or amendment of this Lease shall be binding unless executed in writing by all of the parties. No waiver of any condition or provision shall be enforceable unless made in

writing. Nothing in this Lease shall be construed to give any person or entity other than the parties hereto any rights or remedies.

24.4 GOVERNING LAW AND VENUE. This Lease shall be construed and interpreted in accordance with and governed and enforced in all respects by the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Lease and rights and duties hereunder shall be Fresno County, California.

24.5 HEADINGS. The article and section headings throughout this Lease are provided for convenience only and the words contained therein shall in no way be held to expand, amplify, modify, or aid in the interpretation or construction thereof.

24.6 SUCCESSORS AND ASSIGNS. This Lease shall inure to the benefit of and be binding upon the heirs, executors, administrators, and successors of the parties hereto, but no right or liability or obligation arising hereunder may be assigned by Tenant without prior written consent of Landlord.

24.7 SEVERABILITY. In the event any of the provisions of this Lease shall be declared by a court to be void or unenforceable, then such provision shall be severed from this Lease without affecting the validity and enforceability of any of the other provisions hereof, and the parties shall negotiate in good faith to replace such unenforceable or void provisions with a similar clause to achieve to the extent permitted under law, the purpose and intent of the provisions declared void and unenforceable.

24.8 MEMORANDUM OF LEASE AND PURCHASE OPTION. The Parties shall, concurrent with the execution of this Lease, execute a Memorandum of Lease and Purchase Option in recordable form substantially in the form of attached Exhibit D, which shall thereafter be recorded.

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IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

LANDLORD:

CARLULU, LLC.

By: Carlo J. Mitchell

By: Erinida Mitchell

TENANT:

CITY OF FRESNO,
a municipal corporation

By: _____
Jerry P. Dyer,
Chief of Police

ATTEST:
Yvonne Spence, CMC
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
Douglas T. Sloan
City Attorney

By: Laurie Avedisian-Favini Date 10/12/16
Assistant

ADDRESS OF LANDLORD:

ADDRESS OF TENANT:

Attn: Business Manager
Police Department
2326 Fresno Street
Fresno, CA 93721 Exhibit A

EXHIBIT A
Leased Premises
[attach plans]

EXHIBIT B

INSURANCE REQUIREMENTS

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The fact that insurance is obtained by LANDLORD shall not be deemed to release or diminish the liability of LANDLORD, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify TENANT shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by LANDLORD. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of LANDLORD, contractors, subcontractors, or anyone employed directly or indirectly by any of them.

MINIMUM LIMITS OF INSURANCE

LANDLORD, or any party the LANDLORD subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to TENANT, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY:**
 - (i) \$2,000,000 per occurrence for bodily injury and property damage;
 - (ii) \$2,000,000 per occurrence for personal and advertising injury;
 - (iii) \$4,000,000 aggregate for products and completed operations; and,
 - (iv) \$4,000,000 general aggregate applying separately to the work performed under the Agreement.

UMBRELLA OR EXCESS INSURANCE

In the event LANDLORD purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the TENANT, its officers, officials, employees, agents and volunteers.

LANDLORD shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and LANDLORD shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to on the Certificate of Insurance, and approved by, the TENANT'S Risk Manager or his/her designee. At the option of the TENANT'S Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects TENANT, its officers, officials, employees, agents and volunteers; or
- (ii) At no time shall TENANT be responsible for the payment of any deductibles or self-insured retentions.

Other Insurance Provisions

1. TENANT, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. LANDLORD shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.
2. The coverage shall contain no special limitations on the scope of protection afforded to TENANT, its officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims relating to this Agreement, LANDLORD'S insurance coverage shall be primary insurance with respect to the TENANT, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the TENANT, its officers, officials, employees, agents and volunteers shall be excess of LANDLORD'S insurance and shall not contribute with it. LANDLORD'S shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that

provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

4. Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.
5. All certificates and applicable endorsements are to be received and approved by the TENANT'S Risk Manager or his/her designee prior to TENANT'S execution of the Agreement. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of TENANT, LANDLORD shall immediately furnish TENANT with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of LANDLORD shall also be required to provide all documents noted herein.
6. The Insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice by certified mail, return receipt requested, has been given to TENANT. LANDLORD is also responsible for providing written notice to the TENANT under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, LANDLORD shall furnish TENANT with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for TENANT, LANDLORD shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.
7. These requirements shall survive expiration or termination of the Agreement.

Exhibit C
Purchase Agreement

**AGREEMENT FOR PURCHASE AND SALE OF PROPERTY
AND ESCROW INSTRUCTIONS**

5499 E. Hedges Avenue

CARLULU, LLC., a California Limited Liability Company, hereinafter called the "Seller," without regard to number or gender, hereby offers to sell to the CITY OF FRESNO, a municipal corporation, hereinafter called the "City," the hereinafter described property on the following terms and conditions:

1. All that real property which is the subject of this Agreement, and which is hereinafter for convenience referred to as the "subject property," is presently in fee simple title to that certain parcel of land situated in the County of Fresno, State of California, more particularly described as Assessors' Parcel Number 455-221-19S, with a street address of 5499 E. Hedges Avenue. Further the "subject property" consists of approximately 1.05 acres improved with a free-standing office/warehouse building.

2. The purchase price for the subject property shall be \$_____.

3. Sellers acknowledge that the City has the power to acquire the subject property for public purposes by eminent domain. If title does not pass to the City within the time provided by this Agreement, the City may begin eminent domain proceedings to acquire such possession or title. The parties agree and stipulate that the net sum payable to Sellers hereunder shall be conclusively deemed to be the total just compensation payable in such proceedings, and this Agreement may be filed with the court as stipulation upon which judgment may be entered in the eminent domain proceeding as to the just compensation to be paid to Sellers. Sellers waive all other defenses in said proceeding.

4. Seller represents and warrants that it has the authority to make the offer herein made, and that it holds fee title to said real property and can convey the subject property free and clear of all liens, encumbrances, and restrictions of record upon review and approval of an updated title report.

5. The sale shall be completed through an escrow to be opened at Fidelity National title Company, 8050 N. Palm Avenue, Suite #110, Fresno, Ca. 93711. Phone number is 559-431-8050. Said escrow shall be opened upon the following terms and conditions, and the Sellers and City by their signature to this Agreement make this paragraph their escrow instructions:

- a. The City shall deposit the sum specified in Paragraph 2 of this Agreement and the closing costs in escrow upon receipt of a demand and statement from the title company.

- b. Payment of said sums, less Seller's cost to clear title, if any, may be made to Sellers only when escrow holder possesses and is in a position to deliver to the City a fully executed and acknowledged and recorded grant deed to the subject property and when said escrow holder stands ready to issue to the City a standard title insurance policy guaranteeing a title to said property in the City free and clear of all liens, encumbrances, and restrictions of record, except for those approved in advance in writing by City.
- c. It is understood that Sellers shall be responsible for the payment of all taxes, penalties, redemptions, and costs allocable to the subject property. It is further Seller's responsibility to apply to the County Tax Collector for any refund or decrease in taxes which may be granted.
- d. The escrow fee, cost of policy of title insurance, recording fees (if any), and all other closing costs shall be paid by the City. Sellers will pay any cost to convey the title to the subject property in the condition described in 5.b above.
- e. Disbursements of the purchase price shall be in the amounts, at the times, and in all respects in accordance with the terms and conditions and subject to the limitations of this Agreement.

6. Miscellaneous Provisions:

- a. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provision of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.
- b. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement any rights and duties hereunder shall be in Fresno, California.
- c. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

- d. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability or any one provision in this Agreement shall not affect the other provisions.
- e. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against any party, but rather by construing the terms in accordance with their generally accepted meaning.
- f. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.
- g. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment.
- h. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
- i. Exhibits and Attachments. Each Exhibit and Attachment referenced herein is by such reference incorporated into and made a part of this Agreement for all purposes.
- j. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both the City and the Sellers.

7. Environmental Indemnity Seller shall indemnify, hold harmless, and defend the Buyer, its officers, agents, employees, and volunteers from any liability, loss, fines, penalties, forfeitures, claims, expenses, and costs, whether incurred by the Seller, Buyer, or any other third party, arising directly or indirectly from the release, presence or disposal of any hazardous substances or materials (as now or hereafter defined in any law, regulation, or rule) in, on, or about the Property on or before Closing. This indemnity shall include, without limitation, any claims under the Comprehensive

Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), or any other federal, state or local law whether statutory or common law, ordinance, or regulation. Costs or losses covered will include, without limitation, consultants, engineering, investigator fees, clean up or disposal costs and attorneys' fees, and damages. Upon written notice from the Buyer, the Seller, at Seller's sole cost and expense, shall immediately assume the defense of any claims, suit or action brought against the City by any public body, individual, partnership, corporation or other legal entity, relating to any matter covered by this paragraph. Seller's obligations under this indemnity shall survive the close of escrow and the recording of the grant deed.

8. Time is of the essence of each and every term, condition, and covenant hereof.

This Agreement is executed by the City of Fresno pursuant to authority granted by the Council of the City of Fresno on _____

SELLER:

Carlulu, LLC.
a California limited liability company

BUYER:

City of Fresno,
a municipal corporation

By: _____

By: _____

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By _____
Deputy

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By _____
Deputy

EXHIBIT D
MEMORANDUM OF LEASE

**RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:**

City of Fresno
Police Department
2326 Fresno Street
Fresno, CA 93721
Attention: Business Manager

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

This Memorandum of Lease Agreement is recorded at the request and for the benefit of the City of Fresno and is exempt from the payment of a recording fee pursuant to Government Code Section 6103.

MEMORANDUM OF LEASE
(INCLUDING PURCHASE OPTION)

This Memorandum of Lease is made this ___ day of _____, 20___, between Carlulu, LLC., as Landlord, and the City of Fresno as Tenant.

On _____, Landlord and Tenant entered into that certain Lease Agreement (the "Lease") by which Tenant agreed to lease the subject real property and improvements from Landlord (collectively, the "Premises"). Pursuant to the Lease, Tenant has an option to purchase the Premises as of the date that is ten years from the Commencement Date, as defined in the Lease. The Premises is located at the real property commonly known as 5499 E. Hedges Avenue, Fresno, California, 93727, and is more specifically described as follows:

[Insert legal description and APN 455-221-19S]

This Memorandum of Lease does not constitute the Lease and is only an abbreviated form containing a summary of only a few of the terms. In the event that there is any inconsistency between this Memorandum of Lease and the Lease, the terms of the Lease shall prevail over the terms of this Memorandum of Lease.

CARLULU, LLC.,
a California limited liability company

CITY OF FRESNO
a municipal corporation

By _____

By _____

Bruce Rudd
City Manager

Dated _____

Dated _____

ATTEST:

YVONNE SPENCE, CMC
City Clerk

By _____

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By _____