

LEASE AGREEMENT

THIS LEASE (Lease) dated _____, 2015 by and between MARK AND TAMI GRAHAM FAMILY TRUST ("Lessor"), and the CITY OF FRESNO, a municipal corporation ("Lessee"), covers office and warehouse space for the following described premises ("Leased Premises"):

5280 and 5282 E. Pine Avenue
Fresno, California 93727

1. **TERM AND OPTION TO RENEW.** Lessor leases to Lessee the Leased Premises for a five year term, commencing on July 1, 2015 and ending June 30, 2020 ("Initial Term"). Lessee shall have the option to renew this Lease for one consecutive 6-month period and six consecutive 1-month periods. Each renewal period will be on the same terms and conditions herein including, without limitation, the monthly rent herein. Lessee may exercise one or more of these renewal options by notifying Lessor at least 30 days prior to the end of the then current initial term or renewal period. Lessee may terminate this lease without cause and at any time upon 30 days prior notice to Lessor.
2. **AUTHORITY.** Lessor represents and warrants that it is the owner, or has the legal interest and authority, to Lease the Leased Premises.
3. **LEASED PREMISES.** The Leased Premises consists of two buildings totaling approximately 10,000 square feet situated on a 24,000 square foot lot at 5280 and 5282 E. Pine Avenue, Fresno, California, 93727, also known as Fresno County Assessor's Parcel 455-205-09.
4. **RENT.** Rent for the Initial Term and any renewal period will be paid monthly by Lessee at the rate of \$4,300.00 four thousand three hundred dollars per month. All monthly rent payments shall be payable in advance at the Lessor's address as shown on the signature page of this Lease.
5. **UTILITIES.** Lessee is responsible for the cost of all electricity, gas and telephone utility charges for the Leased Premises during the term of the Lease. Lessor will pay for municipal water and sewer services and charges.
6. **USE.** Lessee shall use the Leased Premises for the purposes of parking and storage of Police Department utility trailers, horse trailers, SWAT bus, armored rescue vehicle, bomb squad truck, DUI trailer, and traffic unit van along with related and similar vehicles and equipment, including ancillary office or administrative space.
7. **PARKING.** All parking spaces are included within the Leased Premises at no additional cost to Lessee.
8. **MAINTENANCE.** All exterior, interior and roof maintenance, including, but not limited to leak damage, if any, shall be the responsibility of the Lessor. Lessor shall provide air conditioning and heating to the Leased Premises. Lessee is responsible to establish service to heating and air conditioning units with the utility provider.

Repair of air conditioning and heating units shall be the responsibility of the Lessor when the total accumulated cost of repair during the life of the Lease or any estimated cost of repair

exceeds \$800.00. Notwithstanding the foregoing, Lessee may, but is not obligated to, make any repairs except as follows.

It is the responsibility of the Lessee to have the air conditioning and heating units serviced (limited to basic, routine maintenance) and filters changed annually. If for some reason this annual service is not done then it will be the Lessee's responsibility to repair the units up to a total accumulated cost of repair during the life of the Lease of \$800.00.

All exterior landscaping beyond the fenced and gated area will be maintained by the Lessor. All cleaning of the parking lot or small landscape area inside of the fenced area will be the responsibility of the Lessor.

The Lessor is also responsible for the structural condition of the building and the condition of the parking surfaces and agrees that the building will always be maintained in the same condition as originally accepted. The Lessor will maintain all fixtures, doors, rollup doors and swamp coolers in good working condition. Lessee will be responsible for consumable goods (i.e., light bulbs and florescent lamps for the offices and warehouse areas, hand towels, etc.).

9. MAINTENANCE - NON PERFORMANCE. In the event the Lessor neglects, fails or refuses to maintain the Leased Premises as afore stated within fifteen (15) days after written notice has been given by Lessee, Lessee may, at Lessee'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.

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

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

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

It is understood and agreed that Lessor and Lessee shall maintain insurance policies or self-insurance programs to fund their respective liabilities hereunder. Evidence of insurance, e.g., Certificates of Insurance or other similar documentation, shall not be required of either party under this Lease.

This section shall survive termination or expiration of this Lease.

11. SURRENDER OF POSSESSION. It is mutually understood that upon any termination of the Lease, Lessee will surrender the Leased Premises to Lessor 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 Lessee 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 Lessee hereunder are not completed within 15 days, or such other reasonable period if cannot be completed within such duration, the

Lessor may take action needed to make said repairs and Lessee agrees to pay the cost for those repairs within 30 days of receipt of invoice by Lessor.

12. **FIXTURES.** It is further mutually understood and agreed that any equipment fixtures or apparatus installed in or on the Lease Premises by the Lessee, as permitted herein, shall continue to be the property of Lessee, and shall be removed by the Lessee without recourse at the expiration of this Lease. Said fixtures include communications and computer equipment, security systems, office furniture, shelving and cabinets.

13. **RIGHT OF ENTRY.** Lessor or its representative, upon reasonable advance notice to Lessee and subject to Lessee's right to accompany Lessor, 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 Lessor herein reserved. Subject to the foregoing, Lessor may enter the Leased Premises for the purpose of making any alteration, repair or improvement to said building, or the Premises, when it deems convenient for the maintenance or preservation thereof provided always that the normal business of Lessee or its invitees shall not be unnecessarily inconvenienced.

14. **TERMINATION BY LESSEE FOR NON-APPROPRIATION.** The Lessee obligation to pay the rental payments and any other payment obligations under this Lease shall constitute a current expense to Lessee for Lessee'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, Lessee 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, Lessee shall have the right to terminate this Lease at the end of any fiscal year of Lessee, in the manner and subject to the terms specified in this paragraph. Lessee 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 Lessor of any anticipated termination. For purposes of this paragraph, "fiscal year" shall mean the twelve month fiscal period of Lessee 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 Lessee or Lessee's governing body to appropriate money for any fiscal year of Lessee sufficient for the continued performance of this Lease by Lessee.

15. **ASSIGNMENT.** Lessee acknowledges that because of Lessee's unique status as the City of Fresno, that Lessor has agreed to terms and conditions herein, which Lessor would not accept from other tenants. For that reason, this Lease may not be assigned or subleased by Lessee under any circumstances.

16. **QUIET CONDUCT AND POSSESSION.** Lessor or any Lessee of Lessor 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 Lessee of its occupancy of the building in which the Leased Premises are located or the use of the parking spaces by Lessee.

17. 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 Lessor 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, Lessee'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 Lessor.

(b) In the event of a partial taking of the Leased Premises which renders Leased Premises untenantable in whole or in part by Lessee, then Lessee may, by written notice to Lessor within thirty (30) days after the taking by the condemning authority, terminate this Lease upon thirty (30) days notice to Lessor. This Lease is terminated by Lessee 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 Lessor.

(c) In the event of a partial taking of the Leased Premises which does not render the Leased Premises wholly untenantable by Lessee and Lessee 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 Lessor.

18. DAMAGE OR DESTRUCTION. If the Leased Premises shall be damaged by fire, the elements, unavoidable accident, or other casualty, but is not thereby rendered untenantable in whole or in part, Lessor shall, at Lessor's own expense and within thirty (30) days of Lessee's written notification to Lessor 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 untenantable only in part, Lessor shall, at Lessor's own expense and within thirty (30) days of Lessee's written notification of Lessor 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 untenantable from the time of such occurrence until such repairs are completed. If the Leased Premises shall be rendered wholly untenantable by reason of such occurrence, Lessor shall, at Lessor's own expense and within sixty (60) days of Lessee's written notification to Lessor 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 18, either party shall have the right, to be exercised by notice in writing to the other within thirty (30) days from and after the date of Lessee'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.

19. PROPERTY TAXES AND INSURANCE. Lessor will pay all real estate taxes when due on the property including the Leased Premises and will maintain hazard insurance on the buildings.

20. **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 (30) days (except for nonpayment of rent, which shall be ten (10) 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 (30) 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 (30) day period and shall with all diligence prosecute work or perform the particular provisions until the same shall have been fully rectified or performed.

21. **MISCELLANEOUS.**

21.1 **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.

21.2 **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.

21.3 **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.

21.4 **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, except that this Lease shall be given a fair and reasonable construction in accordance with the intention of the parties and without regard to, or aid of, Section 1654 of the California Civil Code. 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.

21.5 **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.

21.6 **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 Lessee.

21.7 **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.

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

LESSOR:

Mark and Tami Graham Family Trust

By: _____
Mark Graham, Trustee

By: _____
Tami Graham, Trustee

LESSEE:

City of Fresno,
a municipal corporation

By: _____
Jerry P. Dyer,
Chief of Police

ATTEST:
Yvonne Spence, CMC
City Clerk

By: _____

APPROVED AS TO FORM:
Douglas Sloan
City Attorney

By: _____
Amanda B Freeman, Date
Deputy City Attorney

ADDRESS OF LESSOR:

5280 and 5282 E. Pine Avenue
Fresno, CA 93727

ADDRESS OF LESSEE:

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