



AGENDA ITEM NO.

COUNCIL MEETING 03/25/08
APPROVED BY
DEPARTMENT DIRECTOR
CITY MANAGER

March 25, 2008

FROM: JERRY P. DYER, Chief of Police
Police Department

BY: ROGER ENMARK, Deputy Chief
Administrative Services Division

SUBJECT: APPROVE AN AGREEMENT WITH S & B INVESTMENTS, A GENERAL PARTNERSHIP, FOR CITY'S LEASE/PURCHASE OF AN EXISTING WAREHOUSE FOR DEVELOPMENT AS A JOINT LAW ENFORCEMENT PROPERTY & EVIDENCE STORAGE BUILDING AND MAKE RELATED ENVIRONMENTAL FINDINGS

KEY RESULT AREA

One Fresno

RECOMMENDATION

Staff recommends that the City Council approve a lease/purchase agreement with S & B Investments for an improved warehouse (15,000 sq. ft.) facility located at 2481 Foundry Park Avenue. The triple-net lease agreement runs through January 1, 2009, with a monthly rental obligation of \$7,500 (15,000 sq. ft. @ \$0.50/sq. ft.), and the City has a firm purchase option estimated at \$1,300,000 or MAI appraisal. During the leasing period, the City will improve the warehouse for occupancy of the new Joint Property and Evidence Building.

Staff also recommends that the City Council authorize the City Manager, or his designee, to sign the agreement in substantially the form attached hereto, on behalf of the City.

EXECUTIVE SUMMARY

This is a multi-pronged approach. First, Council is asked to approve a lease/purchase agreement with S & B Investments for the lease with purchase option of a Joint Property & Evidence Building for a term of one year and one day. The lease rental is \$7,500/mo. The City has a first right of refusal on the building at FMV during the term of the lease; and at expiration, the City has a firm purchase option estimated at \$1,300,000. The lease is subject to allocated and available funding and terminable at City's convenience on 90-days notice. The lease allows for City's construction of tenant improvements during the term.

This item asks Council to approve the lease/purchase agreement. Later, Council would be asked to approve architect fees (estimated to be \$75,000).

Once the architect's construction estimates are known, Council will be asked to approve that construction (estimated to be \$750,000). Total improvement costs (architect fees, construction, legal service, relocation, etc.) are estimated to be \$1.1 to \$1.61 million.

Council will be asked to approve the purchase of the building upon conclusion of the lease. The City may purchase the building for an estimated \$1.3 million.

Total project costs (lease, purchase, architect fees, construction, legal service, relocation, etc.) are estimated to be \$2.5 to \$3 million. Changing economic conditions could result in lower or higher construction costs.

Leasing the building will allow the Police Department to begin the improvements immediately and occupy the building within one year. Upon conclusion of the lease and upon purchase option exercise, the City would assume ownership of the building.

The City has conducted an environmental review of this lease as Environmental Assessment No. EA - 08-10, pursuant to the California Environmental Quality Act (CEQA), resulting in a determination that the project is categorically exempt pursuant to Article 19 of the State CEQA Guidelines, Section 15301/Class 1 and Section 15332/Class 32 thereof.

KEY OBJECTIVE BALANCE

These projects best balance the three Key Objectives of Customer Satisfaction, Employee Satisfaction and prudent Financial Management. The hiring of an architect and bidding out the improvements and construction will enable the City to move forward with construction of a Joint Property and Evidence Facility at one location. Currently, the Police Department has property stored at ten different locations. This project will incorporate the space needs outlined in the Public Safety Needs Assessment and will accommodate growth within the Police Department and Fresno County Sheriff's Department through the year 2025.

BACKGROUND

On February 1, 2007, during a meeting of the Fresno City Council and the Fresno County Board of Supervisors, they voted to follow the recommendation of the City/County Evidence Task Force. Among the many recommendations was to have a "single centralized storage facility for all property and evidence with room to accommodate the needs of all Fresno County law enforcement agencies for booking long-term evidence." The purpose of the consolidation was to create greater efficiency and reduce duplication of services.

Currently, the Police Department houses critical evidence in a facility that is combined with the Central District Policing Station. The Police Department is in the process of developing and building a new Central District Policing Station and will be vacating that location. The Fire Department plans to renovate the old facility and make it an operational fire station. In order to facilitate a smooth transition, the Police Department has to remove the property/evidence at the old Central District station and transfer it to a new facility. A new consolidated storage facility has the added benefit of eliminating the multiple storage sites in existence, many requiring lease or rent payments. Currently, the City pays \$13,000 a year for these additional sites.

In 2005, the City of Fresno entered into an agreement with RRM Architects for a space needs assessment for our police facilities. The study found that the Police Department would need approximately 19,000 square feet to accommodate growth through 2025. It is estimated that, in order to accommodate other law enforcement agencies, the Department would need to add approximately 4,500 square feet.

In November of 2007, the Police Department began looking at existing available warehouse space in the downtown area. There are a number of old and new warehouses available, but very few could accommodate the space needs and security requirements for a law enforcement evidence storage building. Four key issues were considered: the outer walls must be concrete construction; the building cannot be shared (i.e., stand alone); it cannot have a drop ceiling; and it must be located reasonably

close to downtown. The majority of the qualified warehouses were either too large or required improvements were too costly.

A building was located at 2481 Foundry Park Avenue that meets all these needs. This new warehouse has 26 foot concrete tilt-up walls and is 15,000 square feet. The interior height allows for a mezzanine level to be added, thereby increasing interior usable space to approximately 25,000 square feet.

On January 23, 2008, the proposal for the lease/purchase of this building was presented to the Public Safety Service Joint Powers Authority. Members of the JPA had an opportunity to ask questions on the proposed site and were in agreement on the direction the Police Department was going. JPA members were each given a packet outlining specifics on the property and a cost-estimate breakdown on the project.

Approval of this agreement will allow the Fresno Police Department to work with the Public Works Department in the hiring of an architect and the completion of construction documents. The next step is the bidding out and hiring of a general contractor to complete the construction of the facility by the end of the year. Total lease, property acquisition, and construction costs are estimated at \$2.5 to \$3 million. Firm numbers on the project will be available once the architect develops cost estimates. Once the estimates are available, they will be presented to Council for approval to move forward with construction.

FISCAL IMPACT

The lease/purchase agreement with S & B Investments will cost the City approximately \$1,390,000. The agreement is in two parts. The term of the lease runs through January 1, 2009, with a monthly rental obligation of \$7,500 (15,000 sq. ft. @ \$0.50/sq. ft.) plus any other costs for maintenance and upkeep. Upon conclusion of the lease, the City may purchase the building for an estimated \$1.3 million.

The Police Department will return to Council for further approval of the architect and construction costs of the improvements for an estimated \$1.1 to \$1.61 million. Total project costs are estimated to be \$2.5 to \$3 million.

The lease rental is funded by General Fund dollars, which can be applied as part of the City's contribution of the Impact Fee match. The purchase and construction improvements can be funded by Impact Fees, Bonds, General Fund, or a combination of all three.

Some savings from existing rental of storage space will be realized once all of the property has been located at one facility (approximately \$13,000).

TPH:pgh
03/20/08

Attachment: Lease Purchase Agreement

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City of Fresno
Police Department
2323 Mariposa Mall
Fresno, CA 93721
Attention: Sergeant Timothy Hahn

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

This Lease Purchase 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.

CITY OF FRESNO

By: _____
Name: _____
Title: _____

LEASE PURCHASE AGREEMENT BETWEEN S&B INVESTMENTS AND CITY OF FRESNO

(Regarding 2481 Foundry Park Avenue, Fresno CA 93725)
APN: 479-030-78, Portions Thereof

THIS LEASE PURCHASE AGREEMENT ("Lease"), made and effective as of [_____, 2008], between S&B INVESTMENTS, a California general partnership ("LESSOR"), and the CITY OF FRESNO, a municipal corporation ("LESSEE") covers improved general office, warehouse and/or secured storage space at the Property described below. The LESSEE has conducted an environmental review of this lease as Environmental Assessment No. EA -08-10, pursuant to the California Environmental Quality Act (CEQA), resulting in a determination that the project is categorically exempt pursuant to Article 19 of the State CEQA Guidelines, Section 15301/Class 1 and Section 15332/Class 32 thereof.

1. GRANT AND DESCRIPTION OF LEASEHOLD. LESSOR owns in fee and hereby leases to LESSEE, in "as is" condition, property known as 2481 Foundry Park Avenue, Fresno, CA 93725, (a portion of APN 479-030-78) consisting of approximately 15,000 sq.ft., as more completely described and depicted in the Exhibit "A," attached hereto and incorporated by reference herein, and hereinafter referred to as the "Premises" or "Property."

2. TERM. LESSOR leases to LESSEE the above described Property for a term commencing on the effective date and ending on January 1, 2009 ("Term"), unless sooner terminated pursuant to the terms of this Lease. Should LESSEE retain possession after the expiration or earlier termination of this Lease, LESSEE shall become a holdover tenant on a month-to-month basis on the same terms and conditions as then in effect and either LESSOR or LESSEE may then terminate the holdover tenancy by giving the other at least thirty (30) days prior written notice in the manner otherwise provided in this Lease

3. RENT. This is a triple net lease. Monthly rent in the amount of Seven Thousand Five Hundred Dollars (\$7500), based upon 15,000 sq. ft. at \$0.50 per square foot, shall be due in advance on the effective date and thereafter on the first day of each month during the Lease and shall be overdue if not paid by the 10th day thereafter, prorated for portions thereof on a 30 day per month basis.

4. UTILITIES. LESSOR, shall provide and LESSEE shall be responsible for the cost of sewage, trash, water, gas and electricity arising from LESSEE's use of the Property.

5. LESSEE IMPROVEMENTS/USE.

A. LESSEE may use the Property for general public purposes including secure storage of police properties and evidence. LESSEE may locate upon the Property trade fixtures and equipment as are necessary in pursuit of LESSEE's permitted use of the Property and such shall at all times remain the property and responsibility of LESSEE. LESSEE may undertake improvements additional to above only (i) upon approval of the LESSOR, which approval shall not be unreasonably withheld, and (ii) at LESSEE's sole cost, expense and risk. LESSEE shall be responsible for all required permits/approvals including any/all associated costs, provided LESSOR shall fully cooperate in this regard. The LESSEE shall be responsible for any damage to the Property caused by installation, operation, and/or removal of LESSEE improvements, fixtures and equipment.

B. LESSEE agrees to comply with all applicable laws, ordinances and regulations in connection with its use of the Property. LESSEE has thoroughly inspected the premises and has determined that said Property is suitable for the intended use of LESSEE and is in compliance with all applicable laws, ordinances and regulations for said use.

C. LESSEE shall not commit any acts on the Property, nor use the Property in any manner that will increase the existing rates for or cause the cancellation of any liability, or other insurance policy insuring the Property or the improvements on the Property. If, following notice and not less than 30 days opportunity to cure, the LESSEE'S occupancy or use of the Property results in an increase in the insurance costs or property taxes, LESSEE will reimburse LESSOR for such increased costs or taxes within thirty (30) days' of LESSOR giving notice to LESSEE of a right to reimbursement under this section and LESSOR providing LESSEE with documentation of increased costs or taxes. LESSEE, following notice thereof, shall, at LESSEE's own cost and expense, reasonably comply with all requirements of LESSOR's insurance carriers that are necessary for the continued maintenance at reasonable rates of liability/other applicable insurance policies on the Property and the improvements on the Property.

D. LESSEE shall not commit any waste or any public or private nuisance upon the Property. LESSEE shall not do anything on the Property that will cause damage to the Property.

E. LESSOR shall retain ownership of all facilities and equipment owned by

LESSOR hereunder on the effective date hereof. Should LESSOR decide to divest itself of such facilities and equipment, LESSEE shall have right-of-first-refusal to purchase such upon payment of the greater of a fair market value as determined by independent MAI appraisals in the manner provided in paragraph 13, or the applicable scheduled Purchase Option Price.

6. MAINTENANCE AND REPAIR.

A. LESSOR shall be responsible for and maintain and repair all capital and structural portions of the Property. LESSEE shall perform only day-to-day routine maintenance and repair of LESSOR owned property. LESSOR shall also be responsible for and continuously maintain the landscaping to the entire property. LESSEE shall reimburse LESSOR for the cost of landscape maintenance for all landscaped portions of the shaded area depicted on Exhibit "A" attached hereto and incorporated herein by this reference, constituting approximately 15,000 sq. feet, at the rate of \$0.50/sq. ft./month.

B. LESSEE, at LESSEE's own expense, shall repair all damage to the Property or to the improvements thereon occasioned by LESSEE's lack of ordinary care. Without limitation by any other provision of this Lease, LESSEE shall be responsible to pay for, or reimburse LESSOR, for all damages, costs, or expenses incurred in connection with installing or removing any alterations or improvements made by LESSEE in connection with this Lease

C. Except as otherwise provided in this Lease, LESSEE shall perform, at LESSEE's sole expense, all repairs and maintenance for all LESSEE owned improvements thereon including any LESSEE installed security and communications systems. Any repairs by LESSEE shall be made promptly with first class materials, in a good and workmanlike manner, and in compliance with all applicable laws of all governmental authorities.

D. Any/all parking spaces, contained within the shaded area as designated on Exhibit "A" are included within the Leased Premises at no additional cost to LESSEE.

E. In the event LESSOR neglects, fails or refuses to commence repairs or maintenance of the Property as afore stated within 30 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 reasonable cost thereof plus reasonable administrative costs from the rent.

7. HAZARDOUS SUBSTANCES.

A. LESSEE shall not cause or permit any Hazardous Materials to be brought upon, kept, used or stored upon the Premises by LESSEE its agents, employees, contractors or invitees in a manner or for a purpose prohibited by any applicable federal, state or local law, regulation, rule or ordinance. LESSEE shall comply with all affirmative legal requirements concerning Hazardous Materials.

B. If LESSEE should breach any obligation provided in subparagraph A above, or if the presence of Hazardous Materials on the Premises results in a release of hazardous substances or materials, or a discharge of a pollutant or contaminant, or any other contamination of the Premises resulting in a potential violation of or incurrence of liability under any applicable federal, state or local law, rule, regulation or ordinance, then LESSEE shall protect, defend indemnify, save and hold LESSOR free and harmless from any and all proximately caused claims, judgments, penalties, fines, losses, liability, costs, damages of every kind whatsoever, including, but not limited to the costs of the investigation of site conditions; response, clean-up, removal and remediation work required by any federal, state or local governmental agency because of Hazardous Materials present on or under the Premises or emanating from the Premises; consultants or experts fees and all other like costs and expenses to the end that LESSOR shall have no cost or other financial responsibility therefore. LESSEE shall promptly take all actions at its sole expense as are necessary to return the Premises to the condition existing prior to the introduction of any such Hazardous Materials to the Premises.

C. LESSEE recognizes any applicable obligations under the California H&S Code to notify LESSOR immediately of any release of a hazardous substance that LESSEE knows, or has reason to believe has or will come to be located on or under the Premises. LESSEE further recognizes its obligations under California Civil Code sections 850, et. seq. to notify LESSOR of any release of a hazardous material of which LESSEE has actual awareness and which is likely to exceed the notification threshold as defined in said sections.

D. The Terms "Hazardous Material" and "Hazardous Substance" shall mean any toxic or hazardous substance, material or waste, or any pollutant or contaminant or infectious or radioactive material now or in the future regulated under Titles 15, 33 and 42 USC, The California H&S Code, Water Code and Civil Code and all other applicable federal, state and local laws, rules, regulations and ordinances now or hereafter in existence.

E. All provisions of this paragraph Seven (7) shall survive the expiration or earlier termination of this Lease Purchase Agreement.

F. Nothing in this paragraph Seven (7) constitutes a waiver of or limitation upon LESSEE's governmental immunities including as set forth in Cal. Gov't Code Section 810 et seq.

8. NON-PERFORMANCE AND TERMINATION. Any event of nonperformance by either party that is not cured within 30 days of written notice thereof (or if not reasonably capable of cure within said 30 days when said cure is not commenced within the 30 day period and diligently continued to completion of cure) shall be an event of default. Upon default, the non-defaulting party may, notwithstanding any other available right/remedy:

A. Terminate this Lease

B. Reasonably make and/or commence making the required performance/repairs, and thereupon be entitled to reimbursement from the defaulting party for the reasonable costs thereof including repair, labor, material and other costs incurred in connection with making the repairs. Such reimbursement shall be due within thirty (30) days of notice of exercise of rights under this subsection and the presentation to the defaulting party of documentation evidencing such costs.

C. Upon any expiration or earlier termination of this Lease, LESSEE shall surrender the Property to LESSOR broom clean and in as good a condition and repair as existed on the date of this Lease, less reasonable wear and tear.

9. LIABILITY. LESSOR shall not be responsible for any injury or damage to any person or property in or about the Property caused by any act, neglect, fault of, or omission of any duty by LESSEE, its agent, servant, employees or invitees. LESSEE agrees to maintain self-insurance in an amount of \$1,000,000 to fund any liability for any act, neglect, fault of or omission of any duty arising out of LESSEE'S use and occupation of the Property. LESSEE is free of liability for loss or damages caused by structural failure, existing defects within and existing environmental conditions of the

Property and any third-party actions. LESSOR shall maintain insurance policies or self-insurance programs to fund its liabilities. Evidence of insurance, Certificates of Insurance or other similar documentation shall not be required of either party under this Agreement unless requested by LESSEE's Risk Manager.

This section shall survive termination or expiration of this Agreement.

10. ADDITIONAL GROUNDS FOR TERMINATION. Without limitation, this Lease may be terminated upon 90 days written notice by LESSEE (i) upon any failure of City Council to allocate funding sufficient in pursuit hereof, (ii) at LESSEE's convenience. Any such termination by LESSEE shall extinguish LESSEE's first right of refusal and purchase option.

11. IMPROVEMENTS/FIXTURES. It is further mutually understood and agreed that any equipment, fixtures or apparatus installed in or on said Property by the LESSEE, shall continue to be the Property of/the responsibility of the LESSEE, LESSEE shall pay any/all taxes/fees resultant, and such shall be removed by the LESSEE, without damage to the Property, at the expiration or earlier termination of this Lease. As to any permanent improvements/fixtures, such may be left upon the Property as mutually agreed by the parties.

12. RIGHT OF ENTRY. LESSOR, or its representatives, shall upon giving LESSEE two (2) hours' notice of intention to enter during normal working hours (6a.m. to 6 p.m.), or twenty-four (24) hours' notice of intention to enter outside of normal working hours, have the right to enter the Property at any time during the term of this Lease for any lawful purpose, provided that entry into the secured criminal evidence property area(s) shall be allowed only upon LESSEE's written consent and subject to all terms/conditions of such consent including without limitation all legal/regulatory requirements.

13. A. PURCHASE OPTION. LESSEE, provided LESSEE is not then in default, shall in its sole discretion have, but shall be under no obligation to exercise a firm option to purchase in fee the improved Property at expiration of this Lease, upon written notice any time during the Term to the LESSOR by the Police Chief and payment of the Purchase Option Price set out below, subject to all of LESSEE'S CEQA process, Site Assessment and review/approval of title information. The parties may agree upon a purchase escrow and terms and conditions thereof. Upon LESSEE'S exercise of the Purchase Option, payment of the PURCHASE OPTION PRICE and satisfaction of LESSEE'S

conditions to close, the LESSOR shall transfer title to the improved Property to LESSEE in fee simple absolute and by grant deed free and clear except for any LESSEE approved title exceptions.

B. PURCHASE OPTION PRICE:

1) The “firm” Purchase Option Price shall be \$1,300,000 or appraised value which ever is higher determined by an MAI appraiser selected by the LESSEE, which appraisal shall be completed not later than 90 days prior to end of the Term. The LESSEE shall bear 100% cost of the appraisal.

2) The LESSOR, at its sole cost and not later than 90 days following LESSEE’s appraisal, may select a second appraiser and obtain a completed second appraisal. In the event of a second appraisal, the Purchase Option Price “appraised value” shall be the first appraisal amount plus the second appraisal amount divided by 2 [(1st appraisal + 2nd appraisal) / 2]

3) The parties acknowledge that the property is in its final stages of construction and that LESSOR must still bring electrical service to the Premises and complete the landscaping. The parties further acknowledge that the \$1,300,000 amount stated in the Purchase Option Price does not include LESSOR’s costs of bringing electrical service to, or the landscaping of the Premises. Therefore, LESSOR’s costs for electrical service and landscaping shall be reflected in the above “firm” Purchase Option Price as determined by appraisal.

4) The parties acknowledge and agree that any portion of the Purchase Option Price that may exceed the appraised value is in consideration of the firm Option hereunder.

C. PARCELIZATION/PARKING ACCESS/FIRE SPRINKLER SYSTEM:

The parties acknowledge and agree that the leasehold Property is part of a larger improved parcel owned by LESSOR. A condition precedent to Purchase Option exercise by LESSEE is a parcel split or lot line adjustment, which shall be at the sole cost of the LESSEE. A further condition precedent is any necessary ingress/egress easement/cross access easement for parking, which shall be at the sole cost of the LESSEE. A further condition precedent is a cost sharing methodology regarding EFSR fire sprinkler system shared between the leasehold improvements and the improvements located on the balance of the

LESSOR's retained property. LESSOR agrees to cooperate in these processes including the filing of any required applications/instruments.

D. PURCHASE ESCROW:

The LESSEE reserves the right in its sole discretion to require a purchase escrow including terms/conditions to close, provided LESSEE shall pay all costs of escrow including title, closing, buyer's title insurance and any transfer tax.

14. ATTORNEY'S FEES. If any action at law or in equity is brought to recover any rent or other sums under this Lease, or for or on account of any breach of or to enforce or interpret any of the covenants, terms, or conditions of this Lease, or for the recovery of the possession of the Property, the prevailing party shall be entitled to recover from the other party as part of prevailing party's costs, reasonable attorney fees, the amount of which shall be fixed by the court and shall be made a part of any judgment rendered. Furthermore, if LESSOR incurs any costs of collection for amounts due to LESSOR by LESSEE, then LESSOR shall be entitled to recover all such reasonable collection costs.

15. VENUE. Venue for any action arising out of or relating to this Lease shall only be in Fresno County, California. The rights and obligations of the parties and all interpretation and performance of this Lease shall be governed in all respects by the laws of the State of California.

16. NOTICES. Any notice required or intended to be given to either party under the terms of this Lease shall be in writing and shall be deemed to be duly given if delivered personally or deposited into the United States mail, with postage prepaid, return receipt requested and addressed to the party at the address set forth on the signature page herein. Either party may change its address for purposes of this paragraph by giving written notice of the change to the other party in the manner provided in this Paragraph.

17. ASSIGNMENT. LESSEE will not assign this Lease and/or the Purchase Option in whole or in part, nor sublet all or any part of the Property, without the written consent of LESSOR.

18. ENTIRETY – SUCCESSION. This Lease represents the entire agreement between the parties with respect to the subject matter hereof, superseding all prior negotiations, representations, and contracts, and constitutes the entire agreement concerning LESSOR's leasing of the Property to LESSEE, the LESSEE'S purchase option and the consideration therefore.

19. BINDING ON SUCCESSORS. All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the respective heirs, executors, administrators, successors and assigns of said parties. No rights, however, shall inure to the benefit of any assignee of LESSEE unless the assignment of such assignee has been approved by LESSOR in writing as provided in Paragraph 17 hereof.

20. AUTHORITY. All individuals executing this Lease on behalf of that entity represent that they are authorized to execute and deliver this Lease on behalf of that entity.

21. QUIET CONDUCT AND POSSESSION. 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.

22. NON-WAIVER/AMENDMENT. 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. This Lease may be modified only by a written amendment signed by the parties' respective authorized agent.

23. 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. COUNTERPARTS. This Lease may be executed in any number of counterparts and each such executed counterpart shall be deemed to be an original instrument, but all such executed counterparts together shall constitute one and the same instrument, and such instrument shall be deemed to have been made, executed, and delivered on the date first herein above written, irrespective of the time or times when the same or any counterparts thereof may have actually been executed and delivered.

25. 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.

26. 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 untenable 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, and 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 untenable 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.

27. 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, 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 untenable only 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 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, 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 27, 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, shall cease as of the date of such notice, and the rent shall be adjusted as of such date.

28. PROPERTY TAXES AND INSURANCE. LESSOR will pay all real estate taxes when due on the Property including the leased Premises and LESSEE's tenant improvements and will maintain fire insurance on the buildings. LESSEE will reimburse LESSOR for any and all real estate taxes assessed against LESSEE's possessory interest, including LESSEE's tenant improvements & any increase in LESSOR's fire insurance caused by LESSEE's activities on the Property, when due, per Section 5 C above.

29. TAX –DEFERRED EXCHANGE. The Parties acknowledge and agree that any disposition by LESSOR hereunder is intended to qualify as an exchange for other property of like kind pursuant to 26 USCS § 1031 (Internal Revenue Code). In order to accomplish the Section 1031 exchange contemplated by this Agreement, notwithstanding any other provision of this Agreement, the recordation and delivery of the grant deeds shall be done at the same time and the transfers hereunder are expressly contingent on the simultaneous transfer of title. City, consistent with Constitutional and local law requirements, agrees to reasonably cooperate in qualifying this transaction as a "tax-deferred" exchange under Internal Revenue Code Section 1031 and the applicable provisions of the California Revenue and Taxation Code, including executing all City Attorney approved escrow instructions, documents, agreements, or instruments reasonably requested by LESSOR, provided that City shall incur no additional liabilities, expenses, or costs as a result of or connected with its pursuit of this Section 29, and further provided that nothing in the Section 29 waives, modifies, or releases obligations and responsibilities of LESSOR under this Agreement.

/// NOTHING FOLLOWS ON THIS PAGE ///

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

LESSOR

LESSEE

S&B INVESTMENTS

CITY OF FRESNO

By _____
Pete Shubin, General Partner

By _____
Chief Jerry Dyer
City of Fresno Police Department

(attach notary acknowledgment to record)

(attach notary acknowledgment to record)

Approved as to legal form:

Attorney for LESSOR

ATTEST:
REBECCA E. KLISCH
City Clerk

By _____
Deputy

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By _____
Deputy

ADDRESSES

LESSOR:

LESSEE:

S&B INVESTMENTS
Attn: Pete Shubin
2478 S. Golden State Blvd.
Fresno, CA 93706

City of Fresno – Police Department
Attn: Sergeant Timothy Hahn
2323 Mariposa Mall
Fresno, CA 93721

Attachment: Exhibit "A" – Description/Depiction of Property