

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease"), made and entered into on this 19th day of February, 2013, by and between the CITY OF MERCED, a California Charter Municipal Corporation (hereinafter referred to as "Tenant"), and THOMAS E. KALJIAN, Trustee of the KALJIAN FAMILY REVOCABLE TRUST (hereinafter referred to as "Landlord").

WITNESSETH:

1. LEASED PREMISES. Landlord hereby leases to Tenant and Tenant hereby hires from Landlord those certain premises outlined on "Exhibit A" attached hereto and made a part hereof (hereinafter called "Premises"), together with those appurtenances specifically granted in this Lease. The Premises are a part of an industrial parcel known as Assessor's Parcel Number 059-410-027 and commonly referred to as 450 Grogan (Westernmost building closest to Grogan Avenue) and 460 Grogan (Easternmost building to be leased by Police Department), Merced, California. The Leased Premises shall consist of the exclusive use of the easternmost building, 460 Grogan Avenue, which is approximately 10,410 \pm SF, 4 designated parking spaces abutting to the southwest corner of said building and approximately 1.12 \pm acres as delineated on the attached "Exhibit A," as well as the non-exclusive use for ingress and egress of the common area portions delineated on said "Exhibit A."

2. TERM. The term of this Lease shall be for a period of five (5) years (said term hereinafter called the "Lease Term"). The Lease Term and the rent shall commence upon mutual execution of this Lease, and shall continue for sixty (60) months thereafter.

In the event that funding no longer exists for the vehicle impound program, Tenant shall have the option to be released from its lease obligation by first giving Landlord a NOTICE OF INTENTION TO VACATE THE PREMISES at least 120 days in advance of the date of cancellation of the Lease. Tenant's exercise of this option shall be without penalty. Any holding over after the expiration of the Lease Term shall be considered a month-to-month tenancy.

3. RENT. Tenant shall pay Landlord as follows:

Months 1-12	\$ 3,750 per month
Months 13-24	\$ 3,750 per month
Months 25-36	\$ 3,875 per month
Months 37-48	\$ 4,000 per month
Months 49-60	\$ 4,124 per month

Rental payments are due in advance on the first day of the month. Rent payments shall be made payable to "C.T. Kaljian Ranches."

4. LEASE RATE MARKET ADJUSTMENT. During Lease Rate Months 25 – 36, the Landlord may opt to reevaluate the Lease Rate for Months 37 – 48 and Months 49 – 60 to adjust to market fluctuations. Any adjustment to the original Lease Rate requires mutual consent by the Landlord and Tenant. If Tenant and Landlord are unable to reach an agreement as to the fair market rent, the fair market rent shall be determined by an appraiser selected by the mutual agreement of Tenant and Landlord. If Tenant and Landlord are unable to agree on an appraiser, Tenant and Landlord shall each select an appraiser to render an opinion as to the fair market rent. If the two appraisers so selected are unable to agree upon the fair market rent, they shall mutually select a third appraiser to render an opinion as to the fair market rent. The base rent shall then be determined by taking the average of the two appraisal figures that are the closest to each other. Each party shall pay the fees of the appraiser it selects and one-half of the fees of the third appraiser.

5. OPTION TO RENEW. Tenant shall have the option to renew the Lease for an additional term of five (5) years commencing at the expiration of the initial Lease Term. In order for the Tenant to exercise its Option to Renew the Lease, the Tenant must notify the Landlord, in writing, at least 120 days prior to the expiration of the Lease of its intention to renew.

(a) If Tenant exercises its option to extend as provided, then on January 1, 2017, the rent shall be adjusted to correspond to the fair market rent for the Premises, as determined by the mutual agreement of Tenant and Landlord. If Tenant and Landlord are unable to reach an agreement as to the fair market rent, the fair market rent shall be determined by an appraiser selected by the mutual agreement of Tenant and Landlord. If Tenant and Landlord are unable to agree on an appraiser, Tenant and Landlord shall

each select an appraiser to render an opinion as to the fair market rent. If the two appraisers so selected are unable to agree upon the fair market rent, they shall mutually select a third appraiser to render an opinion as to the fair market rent. The base rent shall then be determined by taking the average of the two appraisal figures that are the closest to each other. Each party shall pay the fees of the appraiser it selects and one-half of the fees of the third appraiser. The fair market rent so determined shall be adjusted on January 1, 2013 and January 1, 2014 by the percentage change in the CPI since January 2012.

(b) In no event shall the adjusted rent fall below the monthly rent payable during the preceding year.

6. USE. The Premises shall be used as a vehicle impound and evidence storage facility and for related uses.

7. ALTERATIONS, REPAIRS AND MAINTENANCE. Tenant shall not make any alterations to, or changes to, the Premises without the prior written consent of Landlord. Tenant shall give fifteen (15) days prior written notice to Landlord before contracting for any work or repairs to the Premises that might subject the Premises to any mechanic's, materialmen's, or other lien, for the purpose of enabling Landlord to post notices of non-responsibility, and Tenant shall cause any such lien which secures any labor, services, materials or supplies alleged to have been furnished Tenant to be fully discharged and released at the time performance of the secured obligation matures or becomes due, except for furnishings, trade fixtures, signs and equipment. All alterations, improvements and changes to the Premises made by Tenant shall be the property of Tenant and may be removed upon termination at Tenant's option.

Unless otherwise indicated upon the date of possession, Tenant acknowledges that the Premises are in good order and repair. Tenant shall at its own expense maintain the Premises in good and safe condition, including glazing, electrical wiring, and plumbing. Tenant shall be responsible for changing filters on the HVAC system as needed but no less than once every three (3) months and for having the HVAC system serviced annually. Tenant shall also be responsible for providing the Merced City Fire Department with required flow test reports. The costs incurred for normal routine maintenance of the HVAC system and fire sprinkler system, as well as any costs occasioned by Tenant's negligence and improper usage of the HVAC system and fire sprinkler system shall be borne by

the Tenant. Any other costs associated with repairs to the HVAC system and fire sprinkler system shall be the responsibility of the Landlord.

Tenant shall also maintain in good condition the exterior paving and landscaping that are for the Tenant's exclusive use and are part of the Leased Premises. The Premises shall be surrendered, at the termination of the Lease, in as good as condition as received, normal wear and tear excepted. Tenant shall be responsible for all repairs required, except the roof, exterior walls, structural foundations, and the HVAC repairs or replacements as noted above. No improvement or alteration of the Premises shall be made without the prior written consent of the Landlord, which shall not be unreasonably withheld. Prior to the commencement of any substantial repair, improvement, or alteration, Tenant shall give Landlord at least two (2) days written notice in order that Landlord may post appropriate notices to avoid any liability for liens. Tenant may, upon termination, remove all of its trade fixtures, but shall pay for all costs necessary to repair any damage to the Premises occasioned by the removal.

8. **SIGNS.** If Tenant desires to install signage on or about the exterior of the Premises, Landlord and Tenant are to pre-agree upon design and dimension of the signs to be affixed upon the Premises for the duration of the Lease Term. Consent or approval by Landlord will not be unreasonably withheld. The cost incurred for said signs and for their installation shall be borne by the Tenant.

9. **UTILITIES AND SERVICES.** Tenant shall pay for all gas, heat, light, power, air conditioning maintenance, waste removal, janitorial service, telephone service, and all other services supplied to the Premises.

10. **LANDLORD'S ACCESS TO PREMISES.** Due to the sensitive nature of the police operations to be conducted on the premises, access must be restricted. Should Tenant fail to exercise its option to renew the Lease, then during the last one hundred twenty (120) days of the Lease, Landlord shall have access to the Premises for the purpose of installing "to let" or "to lease" signage and for showing the property to Landlord's leasing agents and to prospective Tenants, and/or their agents. Otherwise, Landlord, or Landlord's agents, may only visit the Premises to effect repairs that are the responsibility of Landlord throughout the Lease Term. Any access to the Premises will only be allowed by first giving a minimum of twenty-four (24) hours advance notice to the Chief of Police or his designee and with the understanding that all visitors will have to be accompanied by a Tenant representative.

11. **LIABILITY OF LANDLORD AND TENANT.** Landlord shall be liable to Tenant and shall defend (with legal counsel selected by Landlord, but who must be reasonably acceptable to Tenant) and indemnify Tenant for any damage by plumbing, gas, water, steam, sprinkler or other pipe and sewerage system, or by the bursting, running or leaking of any tank, washstand, closet or other pipes in or about the Premises caused by defective materials or workmanship, or from accidents or negligence of Landlord. Tenant agrees to indemnify and save Landlord harmless from any and all claims arising from any act, omission or negligence of Tenant or its contractors, licensees, agents, servants, employees or invitee's arising from any accident, injury or damage whatsoever to any person or property occurring in, on or about the Premises.

12. **INSURANCE.**

(a) **Landlord Insurance.** Landlord shall maintain hazard insurance covering one hundred percent (100%) replacement cost of the improvements throughout the Lease Term. Landlord's insurance will not insure Tenant's personal property or leasehold improvements.

(b) **Tenant Insurance.** Tenant shall at Tenant's expense (unless self insured in which case Tenant shall provide Landlord with a certified letter so stating) maintain public liability insurance, including bodily injury and property damage, insuring Tenant and Landlord with a minimum coverage of one million dollars (\$1,000,000) combined single limits. If not self insured, Tenant shall provide Landlord with a Certificate of Insurance showing Landlord as additional insured. The policy shall require ten (10) days written notice to Landlord prior to cancellation or material change of coverage.

13. **TAXES.** Landlord shall pay all property taxes when they become due. Tenant shall reimburse Landlord, within fifteen (15) days of receipt of a copy of the tax bill, for fifty percent (50%) of the real property taxes and one hundred percent (100%) of all of the personal property taxes attributable to the Tenant's personal property and the tenant improvements made for or on behalf of the Tenant.

14. **DEFAULT.** The happening of any of the following events shall constitute a default of this Lease by Tenant:

(a) Tenant's interest, or any part of its interest, in this Lease is assigned or transferred, either voluntarily or by operation of law; or

(b) A voluntary or involuntary petition in bankruptcy, or for reorganization, or for an arrangement, is filed by or against Tenant, or any member of Tenant if Tenant is a partnership or joint venture, or Tenant is adjudicated bankrupt or insolvent, or a receiver is appointed of the business or of the assets of Tenant, or Tenant makes a general assignment or any assignment for the benefit of its creditors; or

(c) Tenant, after notice, fails to remedy any default in the payment of any sum due under this Lease within fifteen (15) days after such notice or in keeping of any term, covenant or condition of this Lease with all reasonable dispatch, in any event not exceeding thirty (30) days after such notice; or

(d) Tenant abandons or vacates the Premises.

15. **ATTORNEY'S FEES AND COSTS.** In any action or proceeding involving a dispute between Landlord and Tenant arising out of this Lease, the prevailing party shall be entitled to reasonable attorney's fees and costs.

16. **WAIVER.** No failure of Landlord to enforce any term of this Lease shall be deemed to be a waiver. No purported waiver of any provision of this Lease shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought.

17. **NOTICES.** Any notice which either party may or is required to give, shall be given by mailing the same, postage prepaid, to Tenant at 678 West 18th Street, Merced, California 95340, with a copy to City Attorney, City of Merced, 678 West 18th Street, Merced, California 95340 or to Landlord at 645 Pacheco Boulevard, Los Banos, California 93635, or at such other place as may be designated by the parties from time to time. Notice shall be effective five (5) days after mailing, or immediately upon personal delivery.

18. **HOLDING OVER.** In the event it becomes necessary for Landlord to evict Tenant from the Premises, Tenant agrees to reimburse Landlord for any and all costs and expenses, including attorney fees, and to be liable to Landlord for any and all damages.

19. **ORDINANCES AND STATUTES.** Tenant shall comply with all statutes, ordinances, and requirements of all municipal, state, and federal authorities now in force or which may later be in force.

20. **LANDLORD'S WARRANTY OF TITLE.** Landlord represents and warrants that:

(a) Landlord is the sole owner in fee simple of the Premises and has full right and power to grant the estate demised and to execute and perform this Lease; and

(b) The Premises will remain free and clear of all encumbrances that could adversely affect Tenant's leasehold estate.

21. **QUIET ENJOYMENT.** Landlord covenants and agrees that so long as Tenant observes and performs all the agreements and covenants required of it hereunder, Tenant shall peaceably and quietly have, hold, and enjoy the Premises for the term of the Lease without any encumbrance or hindrance by Landlord.

22. **DAMAGE.** Tenant shall be responsible for any damage to Landlord's Premises which may result from Tenant's activities conducted on the Premises.

23. **EXHIBITS.** The Exhibits attached hereto are incorporated herein by this reference as if set forth in full.

24. **MISCELLANEOUS PROVISIONS.**

(a) *Entire Agreement.* This Lease and exhibits hereto contain the complete, final, entire and exclusive expression of the agreement between the parties hereto, and is intended by the parties to completely state the agreement in full. Any agreement or representation respecting the matters dealt with herein or the duties of any party in relation thereto not expressly set forth in this Lease shall be null and void.

(b) *Section Headings.* The section headings contained in this Lease are for convenience and identification only and shall not be deemed to limit or define the contents to which they relate.

(c) *No Reliance on Other Parties.* All parties to this Lease declare that, prior to the execution of this Lease, they have informed themselves of sufficient relevant data, either through experts or other sources of their own selection in order that they might intelligently exercise their own judgment in evaluating the contents of this Lease and making the decision to execute it. The parties each represent and acknowledge that in executing this Lease, they do not rely and have not relied upon any representation or statement not set forth herein made by any other party to this Lease with regard to the subject matter, basis or effect of this Lease.

(d) *Construction.* The provisions of this Lease shall be liberally construed to effectuate its purpose. The language of this Lease shall be construed simply according to its plain meaning and shall not be construed for or against any party, as each party has participated in the drafting of this Lease. Whenever the context and construction so require, all words used in the singular shall be deemed to be used in the plural, and vice versa.

(e) *Governing Law.* The validity and interpretation of this Lease shall be governed by the laws of the State of California without giving effect to the principles of conflict of laws. Any action pursuant to this Lease shall be brought exclusively in state courts for Merced County.

(f) *Counterparts.* This Lease may be executed in multiple counterparts, each of which so fully executed counterpart shall be deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterpart executed by the other party to this Lease is in the physical possession of the party seeking enforcement thereof.

(g) *Authority to Execute.* Each party hereto expressly warrants and represents that he/she/they has/have the authority to execute this Lease on behalf of his/her/their corporation, partnership, business entity, or governmental entity and warrants and represents that he/she/they has/have the authority to bind his/her/their entity to the performance of its obligations hereunder.

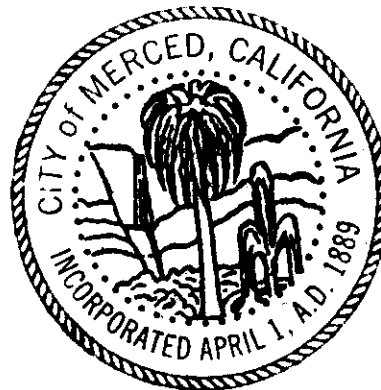
IN WITNESS WHEREOF, the parties have caused this Lease Agreement to be executed on the date first above written.

TENANT
CITY OF MERCED
A California Charter Municipal Corporation

BY: John M. Bramble
City Manager

ATTEST:
JOHN M. BRAMBLE, CITY CLERK

BY: [Signature]
Assistant Deputy City Clerk



APPROVED AS TO FORM:

BY: Kelley C. Turner 1-28-13
City Attorney Date

v-9573 203-434 PO#: 108700
ACCOUNT DATA:

BY: [Signature] 2/20/13

Verified by Finance Officer
Funds Available MK 2/19/13
001-1003-522-21-00
\$18,750.00

0.*
3,750.*
5.*
18,750.*

LANDLORD
THE KALJIAN FAMILY REVOCABLE
TRUST

BY: Thomas Kaljian
(Signature)

Thomas E. Kaljian, Trustee
(Type Name)

Taxpayer I.D. No. 94 6062567

Business License No.: _____

ADDRESS: 645 Pacheco Boulevard
Los Banos, CA 93635

TELEPHONE: (209) 826-8864

FACSIMILE: (209) 826-1846

E-MAIL:

TKaljian@LosBanosRealEstate.com

**Lease Subject Building & Yard
450 Grogan Avenue - Bldg #2
Merced, CA**

**Subject Yard
+/- 1.1 ac.**

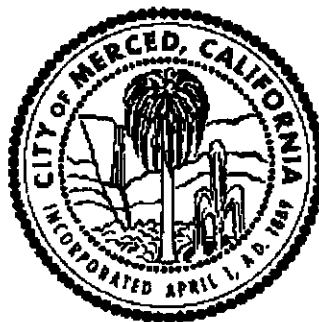
**Subject Building
+/- 10,500 sf**

EXHIBIT A

Novus

Agenda Item:

Meeting Date:

ADMINISTRATIVE REPORT Print

TO: City Manager
FROM: Frank Quintero, Director of Economic Development
DATE: 02/03/2013
SUBJECT: Lease Agreement Between the City of Merced and the
Kaljian Family Revocable Trust

REPORT IN BRIEF

Request to approve a Five-year Lease Agreement for a +/-10,410 square foot warehouse and +/-1.12 acre yard for use by the Merced Police Department with the Kaljian Family Revocable Trust

RECOMMENDATION:

City Council: Adopt a Motion:

- 1) Approving a Lease Agreement between the City of Merced and the Kaljian Family Revocable Trust for the facility and yard at 460 Grogan Avenue; and,
- 2) Authorizing the City Manager to execute the necessary documents.

ALTERNATIVES:

1. Approve, as recommended by staff; or,
2. Approve, subject to other than recommended by staff (identify specific findings and/or conditions amended to be addressed in the motion); or,
3. Deny; or,

4. Refer to staff for reconsideration of specific items (specific items to be addressed in the motion); or,

5. Continue to a future meeting (date and time to be specified in the motion).

AUTHORITY:

Charter of the City of Merced, Section 200.

DISCUSSION:

The Office of Economic Development has negotiated a Lease Agreement with Kaljian Family Revocable Trust for a +/-10,410 square foot warehouse and +/-1.12 acre storage yard on behalf of the Merced Police Department. Currently, the Police Department are using the building and yard for evidence storage, and are paying \$7,468.94 on a month to month basis. The proposed Lease Agreement reflects a starting market lease rate of \$3,750 per month increasing o \$4,124 per month at the beginning of the fifth year.

History and Past Actions:

The original Lease Agreement for the subject facility and storage yard ran from May 1997 to May 2002 between the City of Merced and John Bankson. The Lease Agreement was assigned to the Kaljian Family Revocable Trust in June 1999 as a result of a land sale. The Lease was then extended for five years ending in April 2007. Another lease extension followed ending in May 2011. Currently, the Police are occupying the subject site on a month to month basis.

Several tenant improvements were made during the term of the original lease to accommodate the variety of items stored. Security systems have also been installed to protect the items contained at the warehouse.

Description:

Notable terms of the proposed Lease Agreement are as follows:

Premises: The subject site includes a +/- 10,410 square foot warehouse and +/- 1.12 acre storage yard.

Term: Five (5) years with a Five (5) year option.

Rent:	Months	1-12	\$3,750 per month
	Months	13-24	\$3,750 per month
	Months	25-36	\$3,875 per month
	Months	37-48	\$4,000 per month
	Months	49-60	\$4,124 per month

Lease Rate Market Adjustment: During months 25-46, the Landlord (Kaljian) may opt to re-evaluate the Lease Rate for the final two years to adjust to market fluctuations. Any adjustment to the original Lease Rate requires mutual consent of the Landlord (Kaljian) and Tenant (City).

Use: Evidence storage.

Utilities: Cost of utilities such as gas, power, telephone, and so on are the responsibility of the Tenant (City).

Budget/Appropriate Action:

The proposed Lease Agreement represents nearly a 50% reduction in the existing lease rate. The rent and use of the warehouse and storage yard is regularly budgeted and paid from account 001-1003-522-21-00 (Police Department Rents and Leases).

Respectfully Submitted,

Frank Quintero, Director of Economic
Development

Reviewed,

Norman Andrade, Chief of Police

Approved By,

John M. Bramble, City Manager

ATTACHMENTS:

Attachment 1 - Kalijan Lease Agreement 2013

