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Agenda Items: ID#19-11159 (4-B)

2019 AUG 20 P 3:46

Date: 8/22/2019

CITY OF FRESNO
CITY CLERK'S OFFICE

FRESNO CITY COUNCIL



Late Submission Information Packet

Agenda Related Item(s) – ID#19-11159 (4-B)

Item(s)

Approve License Agreement for Satellite Office Space for District 7 – Councilmember Esparza

Contents: Amended License Agreement (Distributed at Dais)

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

updated

19-11159

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MANCHESTER CENTER License Agreement

2019 AUG 20 P 12: 37
CITY OF FRESNO
CITY CLERK'S OFFICE

1. Parties And Date. This License Agreement ("Agreement") is entered into effective July 31, 2019 ("Effective Date") by and between Omninet Properties Manchester Center, LLC, a Delaware limited liability company ("Licensor") and the City of Fresno, a municipal corporation, by and through Nelson Esparza, Councilmember District 7 ("Licensee").

2. Nature Of Agreement. The parties mutually warrant, represent and agree that their intent in making this Agreement is to enter into a license and not to enter into a lease. Licensee acknowledges that the foregoing warranty, representation and agreement is a material factor inducing Licensor to enter into this Agreement and further agrees that Licensee will not assert, at any time or in any forum: that this Agreement creates a landlord-tenant relationship; that the license is irrevocable for any reason; or that Licensor is estopped to revoke the license for any reason.

3. Term Of Agreement. This Agreement commences on August 1, 2019 the Effective Date and shall continue to July 31, 2020 (the "Term"). Provided that, Licensor shall have the right, in its sole and absolute discretion, with or without cause, to terminate this Agreement and the Term and to take exclusive possession of the Premises upon seven (7) days' notice to Licensee, which may be oral or written, and the Term shall automatically terminate on the date specified in the notice. Licensee must vacate the Premises and remove all of Licensee's personal property not less than twenty-four (24) hours following the end of the Term. If Licensee fails to do so, Licensor shall have the right to enter the Premises and to remove and store Licensee's personal property, and all costs of removal and storage shall be paid by Licensee to Licensor on demand. Licensee shall not have the right to terminate this Agreement prior to expiration of the Term.

4. Premises. During the Term, Licensee is permitted to use the space identified as 1901 E. Shields Ave., Suite O212 in 623 sf. (the "Premises") in Manchester Center (the "Center"), Fresno, California. The space is further identified in Exhibit "A" attached hereto and incorporated herein. Licensor may, in its sole and absolute discretion, require Licensee to relocate to substitute space within the Center (the "Substitute Premises"), on five (5) days written notice. Licensee may elect to reject accept the Substitute Premises, by written notice to Licensor given within this five (5) day period, and if Licensee gives such notice, the Term shall end. If Licensee does not reject the Substitute Premises, this Agreement shall be amended by addendum to identify the Substitute Premises. There is no limit on the number of times Licensor may require Licensee to move to Substitute Premises. All provisions of this Agreement shall apply to Licensee's use of Substitute Premises, and all references herein to "Premises" shall be deemed to include "Substitute Premises", unless context requires otherwise.

5. License Fee And Security Deposit.

5.1.1. For use of the Premises, Licensee shall pay Licensor \$1.00 base rent ("License Fee"). The License Fee shall be paid in advance by check made payable to Manchester Center and mailed or delivered to 1901 East Shields Avenue, #200, Fresno, CA 93726. The License Fee for any partial month shall be pro rated. Licensee shall pay a late charge equal to ten percent (10%) of the overdue amount for any Licensee Fee payment received after the fifth (5th) day of the month.

5.1.2. To secure Licensee's performance of all Licensee's obligations, Licensor shall retain deposit on hand upon execution of this Agreement (the "Security Deposit"). Licensor shall have the right to commingle the Security Deposit with Licensor's general funds and to retain any and all interest and earnings on the Security Deposit. If Licensee breaches or fails to perform any of Licensee's obligations under this License, Licensor has the right, in its sole and absolute discretion, to use or retain all or any portion of the Security Deposit to cure the breach and to compensate Licensor for any damages

sustained by Licensor. Licensor shall have the right to apply all or any portion of the Security Deposit to repair or clean the Premises after Licensee vacates the Premises (including carpet cleaning, if applicable). If the Security Deposit is used or retained by Licensor during the Term, then within five (5) days after written demand from Licensor, Licensee shall deposit with Licensor sufficient cash to restore the Security Deposit to its original amount. Licensor will prepare an itemized listing of all charges and deductions from the Security Deposit and mail the Security Deposit, less any portion used or retained by Licensor, to Licensee by mail, without interest, within ten (10) working days after the end of the Term.

6. Use. Licensee is authorized to use the Premises solely for the following purpose, and Licensee shall not use the Premises for any other purpose:

The business use of: Nelson Esparza, Councilmember District 7 satellite office

Licensee warrants and represents it has the right to use such names and that Licensee's use will not infringe upon or interfere with the rights of any third party to use of the names. Licensee shall not change any trade name or service name without Licensor's prior written consent and this Agreement will be amended to reflect any such change.

7. Common Areas.

7.1. The common area (the "Common Area") of the Center is that part of the Center designated by the Licensor from time to time for the common use by all tenants and patrons. This includes facilities, parking areas and decks, sidewalks, landscaping, curbs, truck ways and delivery passages, malls, loading areas, private streets and alleys, lighting facilities, drinking fountains, meeting rooms, public rest rooms and the like, all of which are subject to Licensor's sole management and control, and shall be operated and maintained in such a manner as Licensor in its sole and absolute discretion may determine. Licensor reserves the right to change the dimensions and location of the Common Area or any of the appurtenances thereto, may change the type of any buildings, construct additional buildings and stores, or make additions or deletions to any existing building and make other improvements in the Center of any type whatsoever. Licensor reserves the right to restrict portions of the Common Area that provide parking for automobiles in its sole and absolute discretion. It further reserves the right to dedicate portions of the Common Area, or other portions of the Center, (excepting the Premises) for street, park, utility and other purposes. Licensee, its employees, customers and patrons shall have the non-exclusive right to use the Common Area as determined from time to time, such use to be in common with Licensor, other tenants of the Center and other persons entitled to use the same, and subject to such reasonable rules and regulations governing its use. Licensor may from time to time prescribe and make changes including the designation of specific areas in which Licensee's and its employee's vehicles may be parked. Upon Licensor's request, Licensee shall furnish a complete list of the license numbers of all vehicles operated by Licensee and its employees.

7.2. If any vehicle operated by Licensee or any of Licensee's employees is parked in any part of the Center other than the specific area designated by Licensor for employee parking, Licensor may cause such vehicles to be removed to such other location, either within or beyond the Center, using such means as may be necessary to accomplish that purpose, and Licensee shall pay all costs for such removal and shall further indemnify and hold Licensor harmless, defend and protect from any and all claims arising from such removal.

7.3. Licensee shall not solicit business or display merchandise in the Common Area, distribute handbills or flyers, or take any action that would interfere with the rights of other persons using the Common Area. Licensor may temporarily close any part of the Common Area for such a period of time as may be necessary to make repairs or alterations to or prevent the public from obtaining prescriptive rights.

8. Government Regulations And Other Obligations Of Licensee. Licensee, its employees, contractors and agents shall comply with all applicable federal, state and local laws and regulations. All persons entering upon the Premises pursuant to the Agreement do so at their own risk, and shall comply with any and all reasonable rules and regulations of the Center. Licensee shall cause such persons to observe all fire and smoking regulations and codes and shall use the means necessary to ensure that no fires are lighted on the Premises and that no firearms are brought thereon. Additionally, alcoholic beverages are not permitted on the Premises.

9. Maintenance And Condition Of Premises. Licensee has inspected the Premises and accepts it "as is" with no representation or warranty by Licensor regarding the condition of the Premises or its suitability for Licensee's use. Licensee shall make not any physical changes to the Premises or any portion of the Center ("Licensee Improvements") without Licensor's prior written consent, which may be granted or withheld in Licensor's sole and absolute discretion. Any request by Licensee must include written plans and specifications for proposed Licensee Improvements. Licensee shall be solely responsible for obtaining and paying the cost of necessary governmental permits, licenses, or approvals. Licensor shall have no obligation to pay all or any part of the cost of Licensee Improvements. Licensee is responsible for all damage caused in or to the Premises and the Center by Licensee, its employees, agents and contractors. If Licensee, its employees, agents or contractors cause any damage upon entering into or departing from the Center or Premises or upon being required to vacate the Premises, Licensee shall be liable to pay the costs to repair or restore the Premises and every portion thereof to the same condition as existed prior to Licensee's entry onto the Premises.

10. Liens. Licensee shall not cause any mechanic's lien, material men's, contractor's or subcontractor's liens, claims or demands, resulting from work performed or materials furnished to be filed against the Premises, the Center or Licensor. Licensee expressly agrees to indemnify and hold harmless Licensor, its agents, officers, contractors, and employees harmless from all liability for any and all such liens, claims and demands, together with the cost of defense and reasonable attorney's fees and all costs and expenses in connection therewith. Notwithstanding anything to the contrary set forth herein, if Licensee in good faith contests the validity of any lien, then Licensee shall, at its sole expense, defend itself and Licensor against the same, and shall pay and satisfy any adverse judgment that may be rendered. Licensor may require Licensee to procure and record a surety bond or other acceptable security, reasonably satisfactory to Licensor and the court in an amount at least equal to the contested lien, claim, or demand, indemnifying Licensor against liability for the same, and holding the Premises free from the effect of the lien or claim. Licensor reserves the right at any time and from time to time to post and maintain on the Premises or any portion thereof or improvement thereon, such notices of non-responsibility or otherwise as may be necessary to protect itself against liability from all liens and claims.

11. Insurance. Prior to, and at all times after initially entering upon the Premises for the purpose stated herein, Licensee, at its sole expense shall maintain a policy or policies of insurance meeting the following minimum requirements:

(a) Fire with extended coverage endorsements, vandalism and malicious mischief and/or all risk, available from time to time in an amount adequate **but not less than Forty Thousand Dollars (\$40,000)** covering Licensee's merchandise, improvements, and trade fixtures.

(b) General public liability insurance, with product liability endorsement, with such limits as may reasonably be requested by Licensor from time to time, **but not less than One Million Dollars (\$1,000,000)**, for bodily injury or death to any person, injury and/or death to any number of persons in any one incident, and for property damage in any one occurrence; and which shall contain a provision that Licensor, although named as an additional insured, shall nevertheless be entitled to recovery under such policy or policies for any damage to Licensor or its authorized representatives by reason of the acts or omissions of Licensee or its authorized representatives

(c) Workers' Compensation insurance in compliance with California law.

All insurance required under this Agreement shall be affected under enforceable policies issued by insurers of recognized responsibility and licensed to do business in the State of California. All policies shall provide that they may not be subject to cancellation or material change which affects Licensor except upon at least thirty (30) days prior written notice to Licensor at the address for Notices. All public liability, property damage and other casualty policies shall be written as primary policies and shall not be contributing with any coverage which Licensor shall carry, except Licensee's obligations to carry the insurance provided herein may be bought within the coverage of a so-called blanket policy or policies of insurance carried and maintained thereunder as its interest may appear. Provided that, the coverage afforded Licensor will not be reduced or diminished by reason of the use of such blanket policy of insurance, and provided further, that the requirements of this Section 11 are otherwise satisfied. **Prior to occupancy, Licensee shall furnish the Management Office with a certificate of insurance for general public liability insurance, which shall name OMNINET PROPERTIES MANCHESTER CENTER, LLC as additional insured's.**

12. Waiver Of Subrogation. The parties release each other, and their respective authorized representatives from any claims for damage to the Premises, or the Center, and to Licensee's trade fixtures and personal property, Licensee's improvements, and alterations of either Licensor or Licensee in or on the Center that are caused by or result from risk insured against under any insurance policies carried by the parties and in force at the time of any such damage to the extent of the available insurance proceeds. Each party shall cause each fire insurance policy carried by it to be written to provide that the insurance waives all right of recovery by way of subrogation against either party in connection with any damage covered by any policy.

13. Hold Harmless And Indemnification.

13.1. Licensee shall store its property in and shall occupy the Premises and all other portions of the Center entirely at its own risk. Licensor shall not be responsible or liable at any time for any damage to Licensee's merchandise, equipment, fixtures, or other personal property or to Licensee's business from any cause whatsoever. Licensee agrees to hold Licensor and its authorized representatives, harmless from all damages arising from or out of any occurrence in, upon, at, or from the Premises, the occupancy or use by Licensee of the Premises, or any part of the Center, resulting from the acts or omissions of Licensor, its authorized representatives, employees and contractors. Licensor shall not be responsible or liable to Licensee or to those claiming by, through or under Licensee for any damage to either person or property that may be occasioned by or through the acts or omissions of third parties. Licensor shall not be responsible or liable for any defect in any building or Common Areas in the Center or any of the equipment, machinery, utilities, appliances, or apparatus therein, nor shall it be responsible or liable for any damage to any person or to any property of Licensee or other person caused by or resulting from leakage of water, or sewage in any part of the Premises, including the roofs, walls and floors, or for any damage caused by or resulting from Acts of God or the elements, failure of a public utility in supplying service to Premises, any acts of war, riot, civil disturbance or labor unrest, or for any damage caused by or resulting from any defect or negligence in the occupancy, construction operation or use of any of the Premises, building machinery, apparatus, or equipment by any other person or by or from the acts of negligence of any occupant of the Premises. Licensee shall promptly notify Licensor in case of fire or accident in the Premises or defects therein or in any fixture or equipment. Licensee releases Licensor from all claims of every kind resulting in loss of life, personal or bodily injury or property damage and waives all such claims against Licensor, except as may be prohibited by then-current law.

13.2. Licensee shall indemnify and hold harmless Licensor, and its officers, employees, attorneys and agents from any claim, liability, loss, damage, costs, expenses (including attorneys' fees), award, fines, or judgments arising from or relating to Licensee's occupancy or use of the Premises or any breach of a warranty, representation, or covenant given by Licensee herein.

14. Remedies. Upon breach of this Agreement by Licensee, Licensor may seek all remedies available under the law or in equity, including, but not limited to, filing a summons and complaint for damages for any compensable default or non-compliance, or an action for specific performance or injunction. All remedies herein or by law or equity shall be cumulative and not exclusive. Licensor's rights shall survive termination of this Agreement.

15. Entry To Premises. Licensor, its authorized representatives, employees, agents, and independent contractors, shall be entitled to enter and inspect the Premises, or any portion thereof, or Licensee Improvements or work of Licensee thereon, at any time and from time to time.

16. Cost Of Enforcement. In the event it is necessary for Licensor to use the services of an attorney or other person, or commence an action to enforce any of the provisions of the Agreement, and providing Licensor is the prevailing party, Licensee agrees to pay all costs of enforcement in connection therewith, including, but not limited to, legal fees and costs.

17. Notices. All notices, consents, approvals, requests, demands, and other communications provided for herein, shall be in writing, and shall be deemed to have been duly given if and when personally served, or forty-eight (48) hours after being sent by United States Postal Services certified mail, return receipt requested, postage prepaid, to the intended party at:

LICENSOR:

Omninet Properties Manchester Center, LLC a
Delaware limited liability company
1901 E. Shields Avenue, Suite 203
Fresno, Ca 93726

LICENSEE:

Nelson Esparza
Councilmember District 7
2600 Fresno Street
Fresno, CA 93721
559-621-8000

18. Air Conditioning, Heating And Ventilation. Licensor will provide air conditioning and heating to the Center.

19. Miscellaneous. The Agreement constitutes the entire agreement between Licensor and Licensee. All prior agreements, representations or understandings of Licensor and Licensee, oral or written, are hereby superseded. No supplement, modification or amendment of the Agreement shall be binding unless it is in writing and executed by the parties hereto. No waiver of any of the provisions of the Agreement shall be deemed, or constitute, a waiver of any other provision, whether or not similar, nor shall any waiver be a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver. The Agreement shall be construed and enforced in accordance with, and governed by the laws of the State of California. The headings of the Agreement are for the purpose of reference only. This Agreement may be executed in counterparts, each of which shall be an original, and none of which shall be filed or recorded in any public office without Licensor's prior written consent. Licensee shall have no right to sublicense, sell, assign, convey or transfer (collectively, "Transfer") this Agreement (including its rights and obligations under this Agreement), and shall not attempt to Transfer this Agreement. Licensor shall have the right to Transfer the Agreement without approval or consent of Licensee.

20. Hours. 21. Utility, Usage, Payment By Licensee. Licensee shall, from the date entry to the Premises is made, and thereafter throughout the term of this License, arrange for and pay all electricity and natural gas supplied to or consumed in or on the Premises, together with all applicable taxes and surcharges, or reimburse Licensor for same. Licensee shall reimburse Licensor for charges incurred each month. Payment shall be due upon receipt of billing by Licensor.

22. Gross Sales Reports.

22.1. "Gross Sales" means the gross selling price of all merchandise or services sold in or from the Premises by Licensee, its agents, employees or concessionaires whether for cash or for credit, and of all orders filled or received or orders taken even if filled other than in the Premises by telephone or any other means, including, without limitation, mail or canvassing, by any employee, agent or other source in or from the Premises, including but not limited to the proceeds of pay phones and stamp, music, newspaper, and magazine dispensers installed by or for the benefit or account of Licensee, its agents, employees or concessionaires. No deduction shall be allowed for uncollected credit accounts and returned checks, nor for any returned items (including, without limitation, from sales made on Internet sites). Any transaction on an installment basis, including without limitation, any "lay-away" sale or like transaction, or otherwise involving the extension of credit, shall be treated as a sale for the full price at the time of the transaction, irrespective of the time of payment or when title passes. The following items only shall be excluded from Gross Sales: (i) any sales of trade fixtures and Licensee's equipment after substantial use thereof in the ordinary conduct of Licensee's business in the Premises; and (ii) the amount of any sales, use, luxury or excise tax on such sales which is both added to the selling price (or absorbed therein) and paid to the taxing authorities by Licensee (but not by any vendor of Licensee). Nothing contained herein shall waive the limitations on Transfer set forth in this Lease

22.2. On or before the 15th day of each calendar month, Licensee shall furnish to Licensor a statement of Gross Sales and any authorized deductions therefrom for the previous calendar month, certified as correct by Licensee or an authorized employee of Licensee, accompanied by payment of the Percentage License Fee, if any, for the previous month. Licensor's acceptance of any amounts as Percentage License Fee shall not be deemed an admission of the accuracy of any annual or monthly statement of Gross Sales or the sufficiency of any payment of Percentage License Fee.

23. Keys. Licensee may re-key the Premises at its own expense. If the lock is re-keyed, Licensee agrees to return the lock to its original cylinder upon vacating of the Premises and further agrees to return all keys to Licensor.

24. Signage, Requirements For Professional Displays. Licensee agrees that all Signage must be professionally produced and not taped to windows, including "Sale" signs and hours of operation. Signage reflecting the store's name must be professionally produced in accordance with the Center's signage requirements as further set forth in Exhibit "B" to the Agreement. All signage to be produced at Licensee's expense. Upon Licensor's request, signs not meeting the Center's signage requirements shall be removed. Failure to act upon Licensor's request within 24-hours may result in immediate termination of the Agreement.

25. Store Presentation And Fixtures. Licensee agrees to keep Premises in an orderly, neat and clean appearance and fully stocked with merchandise.

26. Disclaimer Of Liability. Omninet Properties Manchester Center, LLC is the managing agent for the Licensor. Except for such representation, it shall have no liability with respect to the Agreement and/or the Premises.

27. Confidentiality. The provisions of this Agreement in its entirety are confidential and shall remain confidential unless disclosed by Licensor, in its sole and absolute discretion. Licensee represents, warrants and covenants that Licensee, its agents, employees and contractors (collectively "Agent"), have not published or disclosed and shall not publish or disclose to any third party any of the provisions of this Agreement. Licensee acknowledges that any disclosure to a third party made by Licensee or its Agents may substantially harm Licensor's marketing efforts in the Center in that as a result of such disclosure, Licensor may have to provide potential licensees or tenants occupying space in the Center with concessions which would not have been provided by Licensor but for such disclosure by Licensee or its Agents. Any such disclosure by Licensee or its Agents shall, at the option of Licensor, constitute a noncurable default by

Licensee for which Licensor may elect to collect immediately all future License Fees calculated throughout the Term of the Agreement.

EXECUTED THIS _____ DAY OF _____, _____.

LICENSOR:

LICENSEE:

OMINNET PROPERTIES
MANCHESTER CENTER, LLC a
Delaware limited liability company

CITY OF FRESNO,
Nelson Esparza
Councilmember District 7
2600 Fresno Street
Fresno, CA 93721

By: _____
Morel C. Bagunu, CSM
General Manager

By: _____
Nelson Esparza, Councilmember

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____ Date
Laurie Avedisian-Favini
Assistant City Attorney

By: _____ Deputy