



STAFF REPORT

MEETING DATE: November 29, 2023

PRESENTER: John Jansons, City Manager

SUBJECT: Resolution Approving Short Term Lease with Kerman Telephone Company for 15061 W. C Street, APN 023-204-16SU

RECOMMENDATION: Council by motion adopt resolution approving short term lease agreement with Kerman Telephone Company for 15061 W. C Street, APN 023-204-16SU, Kerman, CA.

EXECUTIVE SUMMARY:

Kerman Telephone Company (KTC) has requested a short term lease with the City of Kerman (City) to continue to use a portion (approximately 3,660 square feet of space) of 15061 West C Street for storage for up to 9 months.

15061 West C Street (the Property) is part of the property the City is currently acquiring for the new police station facility. One condition in the Purchase and Sale Agreement approved by City Council is the provision of a short term lease with KTC to facilitate their transition and vacancy of the subject property.

The basic terms of the required lease include:

- **Term:** Up to nine (9) months- December 1, 2023 through August 1, 2024, Term to commence on the Closing Date, as defined in the Purchase Agreement (“Commencement Date”).
- **Square Footage:** 3,660 square feet
- **Rent:** \$4,026.00 per month due by the first of each month.
- **Insurance:** KTC to maintain acceptable liability insurance.

City is responsible for insurance against public liability and property damage; KTC responsible for insuring its personal property.

- **Utilities:** Paid by KTC, until prorated or separated (see below).
- **Taxes:** Any property taxes and assessments on personal property owned by KTC paid by KTC.
- **Maintenance of Premises:** Unless repairs or maintenance requirements are caused by an intentional or negligent act of Lessee (or its agents, employees or invitees) in which case Lessee shall bear the entire costs of the repairs, Lessor shall be responsible for one hundred percent (100%) of all repairs and maintenance.

- KTC responsible for utilities such as gas, water and electricity that are separately metered to the Premises, or billed to Lessee pursuant to its usage, and for all other utilities and services furnished to or used in the Premises, such as pest control, janitorial or security services.

Representatives from KTC have indicated that the term will likely be shorten to less than 9 months as their relocation arrangements are made.

Attached to the proposed lease Attachment B, is Exhibit A, Description of Real Property and Exhibit B, Depiction of Premises of the proposed lease.

ATTACHMENTS:

- A. Resolution
- B. Lease with Exhibits

Attachment 'A'

RESOLUTION NO. 23-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KERMAN APPROVING OF A SHORT TERM LEASE AGREEMENT WITH KERMAN TELEPHONE COMPANY FOR 15061 WEST C STREET, APN 023-204-16SU, KERMAN, CA.

WHEREAS, the Kerman City Council Approved a Purchase and Sale Agreement (PSA) for 15061 West C Street, APN 023-204-16SU, Kerman, CA, on October 25, 2023; and

WHEREAS, a short term lease is a required condition of the PSA to assist Kerman Telephone Company (KTC) with their relocation and transition; and

WHEREAS, the City and KTC have negotiated a lease agreement in good faith; and

WHEREAS, the lease agreement represents fair market value and is to the mutual benefit of both parties.

NOW THEREFORE, the Kerman City Council resolves as follows:

SECTION 1. The foregoing recitals are true and correct.

SECTION 2. The City Council approves of the short term lease agreement (Exhibit A to this Resolution) with Kerman telephone Company for 15061 West C Street, APN 023-204-16SU, Kerman, CA (the Property).

SECTION 3. The term of the Lease commences upon closing of escrow when the City takes ownership of the property.

SECTION 4. The City Manager is authorized to sign the agreement on behalf of the City.

SECTION 5. This resolution is effective upon adoption.

The foregoing resolution was approved by the City Council of the City of Kerman at a Special Meeting held on the 29th day of November, 2023, and passed at said meeting by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

The foregoing resolution is hereby approved.

Maria Pacheco
Mayor

ATTEST:

Josie Camacho,
Deputy City Clerk

Attachment 'B'

OFFICE AND WAREHOUSE LEASE

THIS OFFICE AND WAREHOUSE LEASE (“Lease”) is entered into on and effective as of _____, 2023 (“Effective Date”), by and between the City of Kerman, a municipal corporation (“Lessor”), and Kerman Telephone Co., a California corporation (“Lessee”). Lessor and Lessee may hereinafter be referred to singularly as a “Party” or collectively as “Parties.”

RECITALS

A. Lessor is the owner of that certain real property known as Fresno County Assessor’s Parcel Number 023-204-16SU and more particularly described in Exhibit “A”, attached hereto and incorporated herein by this reference, which is improved with a warehouse and office space (the “Building”).

B. Lessee desires to lease a certain portion of the Building, consisting of approximately 3,660 square feet of space, as depicted in Exhibit “B”, attached hereto and incorporated herein by this reference (“Premises”).

C. This Lease is entered into in connection with that certain Property Purchase Agreement by and between Lessor, as buyer, and the Barcus Family Limited Partnership, a California limited partnership, and the S & K Moran Family Limited Partnership, a California limited partnership, as sellers, dated _____, 2023 (“Purchase Agreement”), pursuant to which, Lessor agreed to lease the Premises to Lessee, for a term commencing on the Closing Date, as defined in the Purchase Agreement (“Commencement Date”).

D. The Parties desire to enter into a lease covering the use and occupancy of the Premises as hereinafter specified.

NOW, THEREFORE, for and in consideration of the mutual covenants, terms, provisions, conditions and limitations set forth herein, the Parties agree as follows:

**ARTICLE I
GENERAL**

1.1 **Premises.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, pursuant to the terms and subject to the conditions set forth in this Lease. The Premises shall include non-exclusive parking together with reasonable, non-exclusive vehicular and pedestrian access to and across the common areas serving the Premises as necessary to make reasonable commercial use of the Premises. Lessee agrees that Lessee is accepting the Premises in "AS-IS" condition.

1.2 **Term and Termination.** The term of this Lease (“Term”) shall commence on the Commencement Date, and continue for a period of up to nine (9) months, unless terminated sooner in accordance with the provisions of this Lease. This Lease may be terminated pursuant to Section 4.3 below, or at any time by mutual written agreement of the Parties.

1.3 **Possession.** Lessee shall be given possession of the Premises on the Commencement Date, free of any occupants or lessees and their personal property.

ARTICLE II RENT AND EXPENSES

2.1 **Rent.** Lessee shall pay to Lessor the sum of \$1.10 per square foot or Four Thousand Twenty-Six and No/100 Dollars (\$4,026.00) total, per month for use of the Premises (the "Rent"). Lessee will pay the Rent to Lessor, in advance, on or before the 1st day of each and every month of the Term of this Lease, in a form acceptable to Lessor.

2.2 **Expenses.**

(a) **Taxes.** All real property taxes and assessments, personal property taxes and assessments on personal property owned by Lessor, or similar levies of any kind, levied against the Premises and accruing during the Term shall be paid by Lessor. Lessee shall pay any personal property taxes and assessments on personal property owned by Lessee.

(b) **Maintenance of Premises.** Unless repairs or maintenance requirements are caused by an intentional or negligent act of Lessee (or its agents, employees or invitees) in which case Lessee shall bear the entire costs of the repairs, Lessor shall be responsible for one hundred percent (100%) of all repairs and maintenance necessary to maintain the Premises in substantially the same condition they existed as of the Effective Date.

(c) **Insurance.** Lessor shall, at all times during the Term, maintain and keep in force a policy or policies of insurance with reputable insurance companies which will adequately insure Lessor and Lessee against public liability and property damage in or about the Premises; provided, in no event shall Lessor have any obligation to insure any of Lessee's personal property located on the Premises.

(d) **Utilities.** Except as otherwise provided herein to the contrary Lessee shall timely pay for utilities such as gas, water and electricity that are separately metered to the Premises, or billed to Lessee pursuant to its usage, and for all other utilities and services furnished to or used in the Premises, such as pest control, janitorial or security services.

ARTICLE III USE OF PREMISES

3.1 **Permitted Uses.** Subject to the terms, covenants and conditions of this Lease, Lessee shall use the Premises for any lawful purpose.

3.2 **Quiet Enjoyment.** Lessor covenants that as long as Lessee pays the Rent reserved in this Lease and performs all of its obligations and agreements hereunder, Lessee may quietly and peaceably have, enjoy and hold the Premises for the entire Term.

3.3 **Compliance with Laws.** Lessee covenants and warrants that it will obtain and maintain, at Lessee's expense, at all times during the Term, all necessary permits, licenses and registrations for the use, maintenance and operation of the Premises and operation of its business on the Premises. Lessee shall not use or permit anyone to use the Premises in

any manner that violates any law. Lessor shall be responsible for ensuring that the Premises complies with the Americans With Disabilities Act (“ADA”).

ARTICLE IV MISCELLANEOUS PROVISIONS

4.1 **Indemnity**. Each Party (the "Indemnifying Party") waives all claims against the other Party (the "Indemnified Party") for damage to any property or injury or death of any person on the Premises arising at any time from the negligence or willful misconduct of the Indemnifying Party or the Indemnifying Party's employees, agents, or contractors. The Indemnifying Party shall hold the Indemnified Party harmless from and defend the Indemnified Party against all claims, liability, damage, loss, and expense (including reasonable attorneys' and paralegals' fees and expenses and experts and consultants' fees) arising out of any injury or death to any person or damage to or destruction of property attributable to the use of the Premises by the Indemnifying Party, except that caused by the negligence or willful misconduct of the Indemnified Party or the Indemnified Party's employees, agents or contractors.

4.2 **Default By Lessee**. The occurrence of any one or more of the following events shall constitute a default under this Lease by Lessee:

(a) **Bankruptcy**. An order for relief against Lessee has been entered under the Federal bankruptcy laws, or Lessee has made a general assignment for the benefit of creditors, has filed a voluntary petition under the Federal bankruptcy law, or has supported, consented to, or acquiesced in the appointment of a trustee, receiver, or liquidator of Lessee, or of all or any substantial part of the Lessee's properties.

(b) **Other Failure to Perform**. The failure by Lessee to observe or perform any other material covenant, condition, or provision of this Lease to be observed or performed by Lessee, where such failure continues for a period of thirty (30) calendar days after written notice from Lessor to Lessee (or, if such failure cannot be reasonably cured within such thirty (30) calendar day period, then where Lessee fails to commence all steps reasonably necessary to cure such condition within such thirty (30) calendar day period and to continue thereafter to remedy the same).

4.3 **Remedies for Lessee Default**. If a default occurs, Lessor shall have the following remedies, which remedies are not exclusive, but are cumulative and in addition to any other right at law or in equity:

(a) **Continuation of Lease**. Lessor can continue this Lease in full force and effect, and this Lease will continue in effect as long as Lessor does not terminate Lessee's right to possession.

(b) **Termination of Right to Possession**. Lessor may terminate Lessee's right to possession of the Premises.

4.4 **Default By Lessor and Lessee's Remedies**. Upon a breach of or default under this Lease by Lessor, Lessee shall have all remedies available at law and in equity by statute or otherwise.

4.5 **Assignment and Subletting**. Neither Party shall assign any right or interest arising under this Lease without the prior written consent of the other. Provided, however, that this Lease may be assigned by either Party without the other Party's consent to any parent, affiliate or subsidiary of the assigning Party, any party that merges or consolidates with the assigning Party or its parent, or any party that purchases or otherwise acquires a majority of assigning Party's ownership interest or assets.

4.6 **Lessor's Right to Enter**. Lessor and its agents shall have the right to enter the Premises at all reasonable times, following at least 24 hours' written notice, for the purpose of inspection, testing, posting notices of non-responsibility, performing Lessor's obligations hereunder, taking possession in the event of a default by Lessee and making repairs that Lessor deems necessary or desirable.

4.7 **No Waiver**. No consent or waiver by any of the Parties to any breach or default by another Party under this Lease shall be valid unless given in writing and shall not be deemed or construed to be a consent or waiver to any other breach or default under this Lease, whether with respect to the same obligation or any other obligation. Furthermore, failure on the part of any of the Parties to act or to complain or to declare another Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such Party of its rights hereunder.

4.8 **Notices**. Any notice required under this Lease must be in writing, and may be given either personally, by electronic mail, or by certified mail, return receipt requested. If personally delivered, a notice shall be deemed to have been given and received when delivered to the party to whom it is addressed. If by electronic mail, a notice shall be deemed to have been given and received at the time and date the electronic mail is received at the address provided below. If given by certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) two (2) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. Such notices or communications shall be given to the Parties at their addresses set forth below:

To Lessor:

City of Kerman
850 S. Madera Avenue
Kerman, CA 93630
Attn: John Jansons, City Manager
Email: jjansons@cityofkerman.org

To Lessee:

Kerman Telephone Co.
811 S Madera Avenue
Kerman, CA 93630
Attn: William Barcus
Email: bbarcus@sebastiancorp.com

Any Party hereto may at any time designate any other address in substitution of the address to which such notice or communication shall be given.

4.9 **Attorneys' Fees.** In the event that any Party institutes a legal action or arbitration, including a bankruptcy proceeding, to interpret or enforce this Lease or their respective rights and obligations hereunder, the prevailing Party in such action or arbitration shall be entitled to an award of reasonable attorneys' fees, expert fees, court costs and other costs.

4.10 **Relationship of the Parties.** Neither the execution, delivery, nor performance of this Lease will be construed to constitute either Party as an agent or representative of the other Party for any purpose, or to establish a joint venture, partnership or employer/employee relationship between the Parties. Neither Party has the authority to bind the other Party by or to any contract, representation, understanding, act, or deed, or represent to any other individual or entity that either Party is an agent of the other party, or responsible for the acts or omissions of the other Party. Both Parties shall be solely responsible for satisfying any and all obligations which it may have as an independent contractor as well as to any person or entity whom the Party may retain or employ to assist in the performance of this Lease and operation of its business.

4.11 **Severability.** Should any provision hereof prove to be invalid or illegal, such invalidity shall in no way affect, impair or invalidate any other provision hereof and such remaining provisions shall remain in full force and effect.

4.12 **Binding On Successor And Assigns.** This Lease shall, subject to the provisions regarding assignment, apply to and bind the respective heirs, successors, executors, administrators and assigns of Lessor and Lessee.

4.13 **Governing Law; Venue.** This Lease shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Lease shall be governed by, the laws of the State of California without giving effect to provisions thereof regarding conflict of laws. Each Party agrees that any action by either Party to enforce the terms of this Agreement shall be brought by the other Party in the Superior Court of California, Fresno County California, or the United States District Court for the Eastern District of California.

4.14 **Entire Agreement.** This Lease and the exhibits attached hereto constitute the entire agreement between the Parties, and except as expressly provided herein, there are no binding agreements or representations between the Parties. This Lease may be altered, amended, or revoked only by an instrument in writing signed by both Lessor and Lessee.

4.15 **Survival.** The provisions of this Lease with respect to representations, warranties and indemnifications shall survive the termination of this Lease and shall be enforceable in accordance with their terms, covenants and conditions.

4.16 **Counterparts.** This Lease may be executed in a number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Lease. Any digital signature, or signature page delivered electronically shall be binding to the same extent as an original signature page, with regard to any agreement subject to the terms hereof or any amendment thereto. Any party who delivers such a signature page agrees to later deliver an original counterpart to any party that requests it.

4.17 **Authority.** By their signatures hereunder, the persons executing this Lease represent that they have full power and authority to do so, and that they have full power and authority to bind the Parties to the terms and conditions hereof.

IN WITNESS WHEREOF, the Parties have executed this Lease as of the date first set forth above.

LESSOR:

CITY OF KERMAN,
a municipal corporation

By: _____
John Jansons, City Manager

LESSOR:

KERMAN TELEPHONE CO.,
a California corporation

By: _____
William Barcus, CEO

EXHIBIT 'A'

Description of Real Property

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Lots 5 and 6 in Block 13 of the Town, (now City), of Kerman, according to the map thereof recorded in Book 3 Page 31 of Record of Surveys, Fresno County Records.

EXCEPTING THEREFROM all oil, gas, other hydrocarbon substances and minerals of any kind or character, in, on, or thereunder, as reserved in Deeds of record.

APN 023-204-16SU

EXHIBIT 'B'

Depiction of Premises

