



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Walesh

SUBJECT: SEE BELOW

DATE: October 11, 2018

Approved

Date

10/12/18

SUBJECT: LICENSE AGREEMENT WITH AMERICAN TOWER, L.P. FOR THE USE OF SPACE AT COYOTE PEAK

RECOMMENDATION

Approve the License Agreement with American Tower, L.P and the City of San José for the use of the communications facility and radio tower on Coyote Peak within the Santa Teresa County Park for an initial five-year term retroactive to July 1, 2017 with three five-year renewal options. The City shall pay annual rent of \$43,450 for the first year which will be adjusted by a cost of living adjustment of 3% on each anniversary date.

OUTCOME

By approving the license agreement, the City Council authorizes the execution of the license agreement for a new term of five years, with three, 5-year renewal options, with an annual rent for the first year of \$43,450, and annual three percent rent increase thereafter which will ensure that a public safety communication signal transmission facility will remain in place.

BACKGROUND

On June 20, 1996, Santa Clara County, ("County" or "Lessor") entered into a Master Lease Agreement with Baycom San Jose, L.P. ("Lessee"), to lease a property located in Santa Teresa County Park, commonly known as Coyote Peak, for the proposed use as a communication signals transmission facility for a 10 year term, expiring June 30, 2007, with a starting monthly rent payment of \$2,090.

On August 1, 1996, American Towers, L.P. doing business as American Radio Systems, purchased certain assets from Baycom San Jose, L.P., including Baycom San Jose, L.P.'s rights, title and interest in the Master Lease, as Lessee, with the County consenting to the assignment.

Effective August 1, 1996 American Radio Systems became the new Master tenant (Lessee) under the Master Agreement with the County (Lessor).

Beginning in 1997 the City of San José expressed interest in entering into a sublease agreement, for a certain portion of the Premises with American Radio Systems, subject to the terms and conditions set-forth in the existing Master Lease with the County. The proposed use of the premises was for the installation of equipment that was necessary to establish a public safety communication signal transmission facility.

On July 1, 1997, the City of San José entered into a sublease agreement with American Radio Systems for a 10-year term ending on June 30, 2007. The sublease also included an option to extend the term for an additional 10 years with a final termination date of June 30, 2017. On December 4, 2007, the City exercised its option to extend the original term from June 30, 2007 through June 30, 2017.

On June 30, 2017, the sublease between the City and American Radio Systems expired during the negotiation process, however, both parties have expressed an interest in entering into a new License Agreement.

ANALYSIS

The City of San José has been leasing tower and rack space at the communications facility on Coyote Peak in Santa Teresa County Park as part of the City's public police and fire safety dispatch and emergency telephone answering system (911) since 1997.

Since all license renewal options have been exercised, the City and American Tower L.P. wish to enter into a new License Agreement, attached as Exhibit A, for 5 years, with three 5-year renewal options. The following information highlights the basic terms of the proposed license agreement:

1. **MASTER LESSOR:** Santa Clara County
2. **MASTER LESSEE:** American Tower, L.P.
3. **SUB-LESSEE:** City of San José
4. **PREMISES:** Radio tower and accessory building space at the top of Coyote Peak in Santa Teresa County Park.
5. **USE OF PREMISES:** Transmission facility for the City's public police and fire safety dispatch and emergency telephone answering system (911).
6. **TERM:** Sixty months.

7. LICENSE COMMENCEMENT: July 1, 2017

8. OPTIONS: Three, 5-year extension options at the amount equal to the fifth year monthly rent payment, plus a 3% escalation increase per year. The License Option will automatically extend provided that the Master Lessee or Sub-Lessee has not notified the Master Lessee 180 days prior to expiration of the current term of their intention to terminate the license at the conclusion of the current term.

9. BASE RENT FOR FIRST 5 YEARS:

Year	Monthly Rent	Annual Rent	Annual Escalation
7/1/17 to 6/30/18	\$3,620.83	\$43,449.96	0%
7/1/18 to 6/30/19	\$3,729.45	\$44,753.40	3%
7/1/19 to 6/30/20	\$3,841.33	\$46,095.96	3%
7/1/20 to 6/30/21	\$3,956.57	\$47,478.84	3%
7/1/21 to 6/30/22	\$4,075.26	\$48,903.12	3%

10. UTILITIES: City as Sub-lessee shall pay for all electricity used by Sub-lessee during the Lease Term.

11. INSURANCE: Sub-Lessee at its sole cost and expense and for the full term of this License and any extensions thereof, shall obtain and maintain or shall cause to be obtained and maintained insurance against claims for injuries to persons or damages to property in or about the Premises which may arise from or in connection with the activities of Sub-lessee and its agents, employees and contractors. Sub-lessee is self-insured.

12. HOLDOVER: At the end of the License Term including extension options, Sub-Lessee may holdover on a month-to-month basis at 150% of the preceding term's rental rate.

The total cost of the license agreement for the first 5-year term is \$279,585. Approval of the license agreement will allow the City to continue using a portion of the facility as a signal transmission facility that is vital for Public Safety Communication.

EVALUATION AND FOLLOW-UP

The license of the premises is expected to be effective retroactively from July 1, 2017 and continue through June 30, 2022. At the conclusion of the first five years, the City has 3 additional 5-year options to extend the license subject to a 3% escalator on the anniversary date of the prior year's effective date.

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PUBLIC OUTREACH

This memorandum will be posted on the City's website for the October 23, 2018 City Council Agenda.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation is associated with this action.

COST SUMMARY/IMPLICATIONS

The total rent for the first-year of this license agreement is \$43,449.96, with an annual rent increase of 3% thereafter. Funding for the proposed new License Agreement, with a 5-year term and three, 5-year renewal options is included in the City-Wide Property Leases appropriation (2064) for the 2018-2019 Adopted Operating Budget. The 2017-2018 payment was delayed because the current License Agreement was being negotiated at the time. Since the license agreement is retroactive until July 1, 2017, both the 2017-2018 and 2018-2019 payments will be made this fiscal year. The department will monitor expenses to determine if there will be savings in 2018-2019 to cover the additional payment. If the cost cannot be covered with existing resources, an increase to the appropriation would be brought forward as part of a budget adjustment process this fiscal year.

BUDGET REFERENCE

The rent for the Coyote Peak license agreement will be paid from appropriation 2064, which includes City payments for multiple property leases.

Fund #	Appn #	Appropriation Name	Total Appn.	2018-2019 Adopted Operating Budget Page	Last Budget Action (Date, Ord. No.)
001	2064	Property Leases	\$1,522,491	IX-25	6-19-2018 #30124

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CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/

KIM WALESH

Deputy City Manager

Director of Economic Development

For questions please contact Nanci Klein, Assistant Director of Economic Development, at (408) 535-8184.