



COUNCIL AGENDA: 1/8/19
FILE: 18-1779
ITEM: 2.7

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Walesh

SUBJECT: SEE BELOW

DATE: December 19, 2018

Approved

Date

12/20/18

COUNCIL DISTRICT: 7

SUBJECT: LICENSE AGREEMENT WITH PHAM RADIO COMMUNICATION, LLC FOR THE USE OF SPACE AT COYOTE CREEK PARK CHAIN

RECOMMENDATION

Adopt a resolution authorizing the City Manager to negotiate and execute a License Agreement between the City of San Jose and Pham Radio Communication, LLC for the use of certain portions of the City-owned property located near Remillard Drive at Coyote Creek Park Chain (APN 472-11-009) to construct, operate and maintain radio transmission equipment and related facilities for a period of ten years, with two 5-year renewal options, for a total of \$60,122.16 per year with a 3% annual escalation after the first year.

OUTCOME

City Council adoption of this resolution will allow staff to complete the License Agreement, thereby allowing Pham Radio Communication to use and improve the radio transmission equipment located on City property.

BACKGROUND

On June 14, 1985, the City entered into a license agreement with Tamarack Communications Inc. to use a portion of the City-owned Coyote Creek Park Chain to install, maintain and operate an 800 square foot building, four 190-foot radio signal transmitter towers with ground wire systems, and perimeter security fencing in order to broadcast the radio station KNTA.

On April 9, 1997, the City consented to the assignment of the license agreement from Tamarack to Imperio as part of the sale of KNTA. On August 26, 1997, the City consented to the assignment of the license agreement from Imperio to Inner City Broadcasting Corporation of

Berkeley (IBC) through Imperio's sale of KNTA to IBC. Another media company, YMF Media California LLC (YMF), acquired assets associated with radio station KVVN from IBC. Those assets also included IBC's license agreement with the City of San Jose.

YMF sold KVVN radio station to Pham Radio Communications, LLC (Pham Radio). Pham Radio now desires to enter into a new license agreement with the City to continue to use the existing improvements and to remove the four aging radio signal transmitter towers. The old towers will be replaced by Pham Radio with new towers and equipment that do not need guide wires, which will allow the Licensee to occupy less of the property. The site has been used to support radio broadcasting the past several years using the original license agreement.

ANALYSIS

The City has been licensing the tower and rack space at the communications facility at the Coyote Creek Park Chain since 1985. Pham Radio, the new owner of KVVN, desires to continue to use this space and replace some of the aging equipment. Ownership proposed co-locating operations with Bob Kieve, radio station KLIV AM 1590. The ownership researched alternative locations, and none were available in the listening radius. The loss of this site would result in station termination. Staff is proposing a new lease as described below.

The License Agreement is to be effective retroactively from September 1, 2018 and continue through August 31, 2029.

Below are the main terms of the License Agreement:

1. **LICENSOR:** City of San José
2. **LICENSEE:** Pham Radio Communications, LLC
3. **PREMISES:** Radio tower and accessory building space at Coyote Creek Park Chain (APN 472-11-009)
4. **USE OF PREMISES:** Radio signal transmission towers
5. **TERM:** 10 years
6. **COMMENCEMENT DATE:** September 1, 2018
7. **EXPIRATION DATE:** August 31, 2028
8. **OPTIONS:** Two (2), five-year extension options

9. SCHEDULE OF RENT:

Initial Term Rent

| Year | Monthly Rent | Annual Rent | Annual Escalation |
|------------------------------|--------------|---------------------|-------------------|
| 9/1/18 to 8/31/19 | \$5,010.18 | \$60,122.16 | 0% |
| 9/1/19 to 8/31/20 | \$5,160.49 | \$61,925.82 | 3% |
| 9/1/20 to 8/31/21 | \$5,315.30 | \$63,783.60 | 3% |
| 9/1/21 to 8/31/22 | \$5,474.76 | \$65,697.11 | 3% |
| 9/1/22 to 8/31/23 | \$5,639.00 | \$67,668.02 | 3% |
| 9/1/23 to 8/31/24 | \$5,808.17 | \$69,698.06 | 3% |
| 9/1/24 to 8/31/25 | \$5,982.42 | \$71,789.00 | 3% |
| 9/1/25 to 8/31/26 | \$6,161.89 | \$73,942.67 | 3% |
| 9/1/26 to 8/31/27 | \$6,346.75 | \$76,160.95 | 3% |
| 9/1/27 to 8/31/28 | \$6,537.15 | \$78,445.78 | 3% |
| Total (Years 1 to 10) | | \$689,233.19 | |

First Five (5) Year Renewal Option

| Year | Monthly Rent | Annual Rent | Annual Escalation |
|----------------------------|--------------|---------------------|-------------------|
| 9/1/28 to 8/31/29 | \$6,733.26 | \$80,799.16 | 3% |
| 9/1/29 to 8/31/30 | \$6,935.26 | \$83,223.13 | 3% |
| 9/1/30 to 8/31/31 | \$7,143.32 | \$85,719.82 | 3% |
| 9/1/31 to 8/31/32 | \$7,357.62 | \$88,291.42 | 3% |
| 9/1/32 to 8/31/33 | \$7,578.35 | \$90,940.16 | 3% |
| Total (Years 11-15) | | \$428,973.69 | |

Second Five (5) Year Renewal Option

| Year | Monthly Rent | Annual Rent | Annual Escalation |
|----------------------------|--------------|---------------------|-------------------|
| 9/1/33 to 8/31/34 | \$7,805.70 | \$93,668.41 | 3% |
| 9/1/34 to 8/31/35 | \$8,039.87 | \$96,478.46 | 3% |
| 9/1/35 to 8/31/36 | \$8,281.07 | \$99,372.81 | 3% |
| 9/1/36 to 8/31/37 | \$8,529.50 | \$102,354.00 | 3% |
| 9/1/37 to 8/31/38 | \$8,785.38 | \$105,424.62 | 3% |
| Total (Years 16-20) | | \$497,298.29 | |

10. UTILITIES: Licensee shall pay, at Licensee's sole cost and expense for all janitorial service, utility, including water, electricity, garbage, and all other utilities suitable for the intended use of the Premises.

- 11. MAINTENANCE AND REPAIRS:** Licensee shall maintain the Premises in good order, condition, and repair, including without limitation alterations thereto (if any) as required in the License Agreement. The City shall be responsible for the periodic fire prevention landscaping of the Premises (e.g., mowing, cutting, trimming, and/or removing weeds, grass, trees, shrubs, plants, and other wildland areas in such a way as to minimize fire hazard conditions).
- 12. INSURANCE:** Licensee to provide current liability insurance coverage as required in License Agreement.
- 13. CONDITION OF PREMISES:** Licensee is accepting the Premises in "As Is" condition.
- 14. HOLDOVER:** If Licensee remains in possession of all or any part of the premises with Licensor's prior written consent after the expiration or termination of this license or of Licensees right to possession, such possession will constitute a month-to-month tenancy which may be terminated by either Licensor or Licensee upon 30 days' written notice and will not constitute a renewal or extension of the term.
- 15. TAXES AND ASSESSMENTS/POSSESSORY INTEREST TAX:** Licensee acknowledges and agrees that this License will create a possessory interest subject to property taxation. Licensee agrees to pay and discharge, during the term of this License, before delinquency, all taxes including, without limitation, possessory interest taxes associated with the Premises.

The total revenue for the first 10-year term of the License Agreement is \$689,233.19. Approval of the License Agreement will allow the City to continue using a portion of the facility for AM radio broadcasting.

EVALUATION AND FOLLOW-UP

With Council's adoption of the resolution, no further Council action is needed.

PUBLIC OUTREACH/INTEREST

This memorandum will be posted on the City's website for the January 8, 2019 Council Agenda.

COORDINATION

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

HONORABLE MAYOR AND CITY COUNCIL

December 19, 2018

Subject: License Agreement for the use of space at Coyote Creek Park Chain

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COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

COST SUMMARY/IMPLICATIONS

The total revenue for the first 10-year term of the License Agreement is \$689,233.19, which will be deposited into the City's General Fund. The total revenue for the first five year renewal option is \$428,973.69. The total revenue for the second five year renewal option is \$497,298.29. Should the Licensee exercise both options, the total revenue of the initial 10-year term and both five (5) year options is \$1,615,505.17.

CEQA

Not a Project, File No. PP17-003, Agreement/Contracts resulting in no physical changes to the environment.

/s/

KIM WALES

Deputy City Manager

Director of Economic Development

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