

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

June 18, 2025

FROM

TERRY W. THOMPSON, Director, Real Estate Services Department

LYNN FYHRLUND, Chief Information Officer, Innovation and Technology Department

SUBJECT

License Agreement with ATC Ponderosa K LLC, a Delaware limited liability company for Antenna and Rack Space at Barstow Tower

RECOMMENDATION(S)

1. Find that approval of a License Agreement with ATC Ponderosa K LLC, a Delaware limited liability company, for antenna and rack space, is an exempt project under the California Environmental Quality Act Guidelines, Section 15301 – Existing Facilities (Class 1).
2. Approve the Real Estate Services Department's use of an alternative procedure in lieu of a formal Request for Proposals, as allowed per County Policy 12-02 - Leasing Privately Owned Real Property for County Use, for a License Agreement with ATC Ponderosa K LLC, a Delaware limited liability company, for antenna space and rack space at the Barstow Tower located at 33328 I Street in Barstow, for a total contract amount of \$287,043, commencing on June 18, 2025, through June 17, 2035, with three additional five-year extension periods, for the Innovation and Technology Department.
3. Approve License **Agreement No. 25-465** with ATC Ponderosa K LLC, a Delaware limited liability company, for antenna space and rack space at the Barstow Tower, located at 33328 I Street in Barstow, for a total contract amount of \$287,043, commencing on June 18, 2025, through June 17, 2035, with three additional five-year extension periods, for the Innovation and Technology Department.
4. Direct the Real Estate Services Department to file the Notice of Exemption in accordance with the California Environmental Quality Act.

(Presenter: Terry W. Thompson, Director, 387-5000)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). The total cost of this License Agreement (License) over the initial 10-year period is \$287,043, which includes a one-time application fee of \$1,000, a one-time site inspection fee of \$1,500, a one-time structural analysis fee of \$2,000, and an optional one-time Shared Site Interference Study (SSIS) fee of \$1,600. Payments will be made directly from the Innovation and Technology Department (ITD) Telecommunications Services fund (1200304020). Sufficient appropriation is included in the ITD 2024-25 budget and will be included in future recommended budgets. Annual license costs are as follows:

**License Agreement with ATC Ponderosa K LLC, a Delaware limited liability company for Antenna and Rack Space at Barstow Tower
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Year	Cost
2025-26: *Application Fee	\$1,000
2025-26: *Site Inspection Fee	\$1,500
2025-26: *Structural Analysis	\$2,000
2025-26: *SSIS Fee	\$1,600
June 18, 2025 – June 17, 2026	\$23,400
June 18, 2026 – June 17, 2027	\$24,336
June 18, 2027 – June 17, 2028	\$25,309
June 18, 2028 – June 17, 2029	\$26,322
June 18, 2029 – June 17, 2030	\$27,375
June 18, 2030 – June 17, 2031	\$28,470
June 18, 2031 – June 17, 2032	\$29,608
June 18, 2032 – June 17, 2033	\$30,793
June 18, 2033 – June 17, 2034	\$32,025
June 18, 2034 – June 17, 2035	\$33,305
Total Cost	\$287,043

*One-time fee

BACKGROUND INFORMATION

On December 17, 2013 (Item No. 107), the Board of Supervisors (Board) approved the 800 Megahertz (MHz) Project budget to upgrade the County's public safety radio system from analog to digital radio equipment and concurrently upgrade the County's microwave radio network.

In October 2023, ITD requested the Real Estate Services Department (RESO) negotiate a license agreement for a new location for antenna and rack space at Barstow Tower 1, located near 33328 I Street in Barstow, owned and operated by ATC Ponderosa K LLC, a Delaware limited liability company (ATC Ponderosa). During that time, ATC Ponderosa and ITD worked on the best location of the tower for County communication equipment and provided site specifications for the racking equipment that would go in the ATC Ponderosa-owned equipment shelter. RESO was able to negotiate a monthly license rate with ATC Ponderosa at below market rates for the Barstow area per the competitive set analysis on file with RESO.

The recommended action will provide for a 10-year License with three five-year options to extend the term for antenna and rack space in support of the 800 MHz public safety communication system, Wide Area Network and County telephone service in Barstow and the surrounding areas for a total contract amount of \$287,043. The License also includes one-time application fees, one-time site inspection fees, and one-time structural analysis fees. The site best fits ITD's needs due to the immediate programmatic requirement to provide 800 MHz radio transmission for emergency services in and around the Barstow area.

The project to approve this License was reviewed pursuant to the California Environmental Quality Act (CEQA) and determined to be categorically exempt under Guidelines Section 15301 – Existing Facilities (Class 1) because approval of a license amendment for existing facilities is an exempt activity under CEQA. There is no possibility that the licensing of the subject property will have a significant effect on the environment, therefore, the activity is exempt from the provisions of CEQA.

**License Agreement with ATC Ponderosa K LLC, a Delaware limited liability company for Antenna and Rack Space at Barstow Tower
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The License with ATC Ponderosa includes terms that differ from the standard County contract. The non-standard terms include the following:

1. The License has modified insurance terms including a mutual waiver of subrogation clause. Both parties agree to release the other from any claims by way of subrogation of which the insurance carrier of a Party waives all of such carrier's rights to proceed against the other Party for damages to the extent covered by insurance.
 - (c) The County standard contract requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department.
 - (d) Potential Impact: By waiving subrogation against ATC Ponderosa, the County's insurer cannot pursue claims against ATC Ponderosa for losses which are covered by the proceeds of the insurance provided in the License.
2. The License indemnification obligations exclude the gross negligence or willful misconduct of the indemnified party.
 - (c) The County standard contract indemnity provision requires the contractor to indemnify, defend, and hold County harmless from third party claims arising out of the acts, errors or omissions of any person.
 - (d) Potential Impact: Neither party is required to defend, indemnify or hold the other party harmless from any claims arising from the other party's grossly negligent or intentional acts. If the County is sued for any claim that is excluded from the indemnification based on its use of ATC Ponderosa's equipment or services, the County may be solely liable for the costs of defense and damages, which could exceed the total License agreement amount.
3. The License requires the County to pay ATC Ponderosa liquidated damages in the amount of \$25,000 per month in the event of an uncured default for each tower facility the County maintains under the License that is in breach.
 - The County standard contract does not require the County to pay liquidated damages penalties in the event of a default.
 - Potential Impact: In addition to the License fees, County would be obligated to pay liquidated damages in the amount of \$25,000 each month for each tower facility that is in breach for unpermitted tower frequencies, which would exceed the total License amount.

ITD recommends approval of the License, including the non-standard terms, because the benefits to the County and ITD in acquiring the Barstow Tower License serve the County's and public's interests in providing upgraded MHz radio transmission for emergency services in and around the Barstow area, which outweigh the minimal risk of the cost of liquidated damages.

Summary of License Terms

Licensor: ATC Ponderosa K LLC, a Delaware limited liability company
Keith Fearon, Manager

Location: 33328 I Street, Barstow

**License Agreement with ATC Ponderosa K LLC, a Delaware limited liability company for Antenna and Rack Space at Barstow Tower
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Size:	Antenna and rack space
Term:	June 18, 2025, through June 17, 2035
Term Extensions:	Three five-year extension terms
Rent:	Monthly: \$1,950 Annual: \$23,400 *Low-range for comparable facilities in the Barstow area per the competitive set analysis on file with RESD
Annual Increases:	4%
Improvement Costs:	Provided by County
Maintenance:	Provided by Licensor for the tower and equipment shelter and fencing; provided by County for antennas and radio equipment
Utilities:	Provided by County
Insurance:	The Certificate of Liability Insurance, as required by the License, is on file with RESD
Holdover:	Month-to-month term in an amount equal to 150% of the Monthly License Fee in effect for the last month of the term prior to the commencement of such month-to-month term
Right to Terminate:	ATC Ponderosa shall have the right to remove all Approved Equipment at Licensee's sole expense on or before the expiration or earlier termination of the License, provided ATC Ponderosa repairs any damage to the Tower Facility or the Tower caused by such removal

PROCUREMENT

This License was procured using an alternative procedure process as provided in County Policy 12-02 - Leasing Privately Owned Real Property for County Use (Policy). The Policy would normally require the use of a Formal Request for Proposals (RFP) process. The Policy provides that the Board may approve the use of an alternative procedure to the use of a RFP process whenever the Board determines that compliance with the RFP requirements would unreasonably interfere with the financial or programmatic needs of the County, or when the use of an alternative procedure would otherwise be in the best interest of the County. This site best meets the technological requirements and reliability criteria of the department for communication sites in the Barstow area.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (John Tubbs II, Deputy County Counsel, and Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on May 23, 2025; Risk Management (Stephanie Mead, Staff Analyst, 386-9039) on April 17, 2025; Innovation and Technology (Steve Miller, Division Chief, 388-0705) on April 1, 2025; Purchasing (Ariel Gill, Supervising Buyer, 387-2070) on March 31, 2025; Finance (Ivan Ramirez, 387-4205, and

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Eduardo Mora, 387-4376, Administrative Analysts) on May 29, 2025; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on June 2, 2025.

(BR: 531-2674)

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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Curt Hagman Seconded: Joe Baca, Jr.
Ayes: Col. Paul Cook (Ret.), Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: June 18, 2025



cc: RESD - Thompson w/agree
Contractor - c/o RESD w/agree
File - w/agree
MBA 06/26/2025