



ORIGINAL

Contract Number

04-1267 A3

SAP Number

Real Estate Services Department

Department Contract Representative	Terry W. Thompson, Director
Telephone Number	(909) 387-5252
Contractor	Western Summit Enterprises, Inc.
Contractor Representative	Debbie Whiting
Telephone Number	661-945-5448 Ext. 223
Contract Term	12/1/2005 – 5/31/2026
Original Contract Amount	\$447,602.00
Amendment Amount	\$242,077.77
Total Contract Amount	\$689,679.77
Cost Center	
GRC/PROJ/JOB No.	54001925
Internal Order No.	

Briefly describe the general nature of the contract: Amendment No. 3 to Lease Agreement No. 04-1267 with Western Summit Enterprises, Inc. to provide upgrades to existing ventilation and air conditioning equipment, extend the term of the lease agreement five years for the period of June 1, 2021 through May 31, 2026, following a permitted six-month holdover for the period of December 1, 2020 through May 31, 2021, adjust the rental rate schedule for the extended term, and add two five-year options to extend the term of the lease for the Innovation and Technology Department (formerly known as the Information Services Department) at the Slate Mountain Communication Site near Trona.

FOR COUNTY USE ONLY

Approved as to Legal Form

► See signature page

Agnes Cheng, Deputy County Counsel

Date

Reviewed for Contract Compliance

►

Date

Reviewed/Approved by Department

►

Jim Miller, Real Property Manager, RESD

Date

THIRD AMENDMENT TO ANTENNA SITE LEASE AGREEMENT

This THIRD AMENDMENT TO ANTENNA SITE LEASE AGREEMENT ("Third Amendment") dated as of the date the last of the parties executes this Third Amendment is entered into by and between Western Summit Enterprises, Inc., a California corporation d.b.a. Mountain Investments ("Lessor") and County of San Bernardino ("Lessee").

RECITALS

A. Whereas, Lessor and Lessee entered into an Antenna Site Lease Agreement that was fully executed on December 14, 2004 with a term that commenced on December 1, 2005, as amended by the First Amendment to Antenna Site Lease Agreement with a reference date of July 1, 2007 that was fully executed on October 23, 2007, and the Second Amendment to Antenna Site Lease Agreement with an effective date of January 1, 2018 that was fully executed on January 26, 2018 (collectively, the "Lease"), whereby Lessor leases to Lessee and Lessee leases from Lessor the right to install and operate certain "Site Equipment" on a certain "Antenna Site," located on a portion of the Lessor's Property located at Slate Mountain, near Trona, California, as such terms are defined in the Lease.

B. Whereas, the term of the Lease expired on November 30, 2020, and with Lessor's consent, the Lease has continued on a month-to-month holdover for the period from December 1, 2020 through May 31, 2021 at a monthly rate of \$3,311.77.

C. WHEREAS, following said holdover, Lessee and Lessor desire to extend the term of the Lease for five (5) years from June 1, 2021 to May 31, 2026.

D. WHEREAS, Lessor agrees to install new upgraded ventilation, and air conditioning equipment at the Antenna Site, as set forth in this Third Amendment, at Lessor's cost but subject reimbursement by Lessee of fifty percent (50%) of said cost, provided that such reimbursement shall not exceed \$4,392.80.

E. Lessee and Lessor desire to amend the Lease on the terms and conditions set forth herein.

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties agree as follows:

1. Paragraph 2 of the Lease is hereby amended to add a new sub-paragraph (c) that follows:

2. Lease to Use.

(c) Within 60 days after mutual execution of this First Amendment, Lessor shall purchase and complete installation of new, upgraded ventilation, and air conditioning equipment, pursuant to the specifications set forth in Exhibit D – HVAC Work ("HVAC Work") at the Antenna Site. The HVAC Work shall be performed at Lessor's sole cost and expense, provided that Lessee shall reimburse Lessor fifty percent (50%) of the cost for the HVAC Work, subject to a maximum reimbursement amount of \$4,392.80. Lessee shall pay Lessor the reimbursable amount within ninety (90) days after the latest to occur of: (i) Lessor's completion of the HVAC Work in accordance with the specifications in Exhibit D and to Lessee's satisfaction, (ii) Lessor's submission of an invoice for Lessee's reimbursable amount along with itemized invoices, paid receipts, and lien releases and any other documentation reasonably requested by Lessee, showing that Lessor has paid its contractors and vendors in full for the HVAC Work, and (iii) Lessor's submission to Lessee of any required permits for the installed HVAC equipment. The HVAC equipment shall be used solely by Lessee during the term of the Lease but shall remain the property of Lessor and as such shall be maintained by the Lessor and shall not be removed by Lessee upon surrender of the Antenna Site at the end of the term of the Lease.

2. Paragraph 3 of the Lease is hereby replaced in its entirety with the Paragraph 3 that follows:

3. Term.

- (a) Permitted Holdover. The parties acknowledge and agree that term of the Lease has continued on a permitted month-to-month holdover for the period from December 1, 2020 through May 31, 2021 at a monthly fee of \$3,311.77.
- (b) Extended Term. Effective as of June 1, 2021, the term of this Lease shall be extended for five (5) years commencing on June 1, 2021 and ending on May 31, 2026.
- (c) Options to Extend Term. Lessee shall have two (2) options to extend the term of the Lease for five (5) years each on the same terms and conditions as this Lease, including the monthly fee, (each an "extended term") by providing notice to Lessor at any time prior to the expiration of the then existing term or during any holdover.
- (d) This Lease is deemed subordinate to the BLM Grant and in the event of any conflict between the terms and provision of the BLM Grant and the term and provisions of the Lease, the terms and provisions of the BLM Grant shall control. Thus, for example, termination of the BLM Grant (for any reason beyond the reasonable control of Lessor) prior to expiration of the term of the Lease as provided in Section 3 of the Lease shall terminate the Lease.

3. Paragraph 4(a) of the Lease is hereby replaced in its entirety with the Paragraph 4 that follows:

4. Payments:

- (a) Effective June 1, 2021, Lessee shall pay to Lessor as consideration for this Lease the sum of Three Thousand Four Hundred Eighteen and 86/100 Dollars (\$3,418.86) per month ("Fee"). The Fee shall increase on June 1, 2022 and on each anniversary thereafter by three percent (3%), as more specifically set forth below:

Lease Year	Monthly Fee Payments
June 1, 2021 thru May 31, 2022	\$ 3,418.86
June 1, 2022 thru May 31, 2023	\$ 3,521.43
June 1, 2023 thru May 31, 2024	\$ 3,627.07
June 1, 2024 thru May 31, 2025	\$ 3,735.88
June 1, 2025 thru May 31, 2026	\$ 3,847.96

4. This Third Amendment may be executed in counterparts, each of which shall be deemed an original as against the party signing such counterpart, but together shall constitute one and the same instrument.

5. Except as otherwise expressly amended in this Third Amendment, all other terms and conditions of the Lease shall remain in effect as written therein. In the event of inconsistency or discrepancy between the Lease and this Third Amendment, the terms and conditions of this Third Amendment shall control.

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IN WITNESS WHEREOF, the parties have executed this Third Amendment as of the date written below.

LESSEE:
COUNTY OF SAN BERNARDINO


Curt Hagman, Chairman
Board of Supervisors

Date: MAY 18 2021

LESSOR:
WESTERN SUMMIT ENTERPRISES, INC.
dba MOUNTAIN INVESTMENTS

By: 
Christopher Killian, President

Date: 3/18/2021

SIGNED AND CERTIFIED THAT
A COPY OF THIS DOCUMENT
HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

LYNNA MONELL, Clerk of the
Board of Supervisors

By: 

Date: MAY 18 2021

Approved as to Legal

MICHELLE BLAKEMORE, County Counsel
San Bernardino County, California

By: 
Agnes Cheng, Deputy County Counsel

Date: 3/9/2021

EXHIBIT "D" – HVAC Work

Equipment

Bard 5T Wall Mounted Unit (WP60A2-A15 R410A)

30x10 Supply Grills

30x16 Return Grills