

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

July 14, 2020

FROM

TERRY W. THOMPSON, Director, Real Estate Services Department

LARRY AINSWORTH, Chief Information Officer, Information Services Department

SUBJECT

Amendment No. 1 to License Agreement with American Tower Asset Sub, LLC for Antenna Space and Radio Rack Space for the Information Services Department at Afton Peak near Baker

RECOMMENDATION(S)

Approve **Amendment No. 1** to License **Agreement No. 03-200** with American Tower Asset Sub, LLC for the addition of radio rack space in the licensor-owned equipment shelter to this agreement for antenna space and the modification of the County's antennas on the licensor-owned tower at Afton Peak near Baker, commencing upon the earlier of (i) the commencement of the installation of County's modified equipment on the tower or (ii) September 1, 2020 and continuing through the remainder of the existing term that expires on March 26, 2023 for the Information Services Department in the amount of \$84,382.

(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 amendment during the remaining two years and seven months of the current term is \$84,382. Payments will be made directly from the Information Services Department (ISD) Telecommunications Services budget (1200304020). Sufficient appropriation is included in the 2020-21 ISD budget and will be included in future recommended budgets. Annual license costs are as follows:

<u>Period</u>	<u>Annual License Cost</u>
September 1, 2020 – March 26, 2021	\$18,061*
March 27, 2021 – March 26, 2022	\$32,670
March 27, 2022 – March 26, 2023	<u>\$33,651</u>
Total Cost	\$84,382

*Prorated for the period from the annual license fee

BACKGROUND INFORMATION

The recommended action will amend an existing license agreement with American Tower Assets Sub, LLC (AT), commencing upon the earlier of: (i) the commencement of the installation

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of County modified equipment on the AT-owned tower or (ii) September 1, 2020 and continuing through the remainder of the existing term that expires on March 26, 2023 to provide for the addition of radio rack space in the AT-owned equipment shelter to this license agreement for antenna space, provide for an exchange and the modification of County-owned antennas on the AT-owned antenna tower and adjust the annual license fee at the Afton Peak communication site located near Baker. The license amendment provides for the addition of radio rack space and modified antennas at this pass-through link in the Public Safety Radio System providing upgraded digital radio and microwave network connectivity in the Baker area and portions of the northeast desert area. ISD's radio and microwave networks support the County's Public Safety Communications System that provides radio communications for emergency responders in addition to high-speed data information supporting the enterprise telephone network and the County's Wide Area Network (WAN). The Afton Peak location facilitates improved radio communications in the rural Baker area. These essential services require microwave connectivity with a high level of availability and reliability.

On February 25, 2003 (Item No. 75), the Board of Supervisors (Board) approved a five-year License Agreement No. 03-200 (Antenna Tower License) with four five-year automatic options to extend the term (unless terminated by County on 60 days prior notice) with Spectrasite Communication Inc. (Spectrasite) for antenna space on Spectrasite's tower at Afton Peak near Baker. The original term of the license was for the period of March 27, 2003 through March 26, 2008. On March 27, 2008, the license was automatically extended for the first of four five-year options. On March 27, 2013, the license was again automatically extended for the second five-year option to extend the term, and on March 27, 2018, the license was automatically extended for the third five-year option through March 26, 2023.

On April 10, 2001 (Item No 39), the Board approved a five-year Sub-lease Agreement No. 01-258, with four five-year options to extend the term of the sub-lease, with Nextel of California, Inc. (Nextel) for radio rack space in Nextel's equipment shelter at Afton Peak. The site was developed by Spectrasite, now a wholly-owned subsidiary of AT, and leased to Nextel, who placed an equipment shelter on the site. In the nineteen years since the sub-lease was originally approved, the Board has approved two amendments extending the term through April 9, 2011 and subsequently through April 9, 2016.

<u>Amendment No.</u>	<u>Approval Date</u>	<u>Item No.</u>
1	April 11, 2006	30
2	March 13, 2012	41

In December 2015, ISD requested the Real Estate Services Department (RESA) negotiate an amendment for the continued use of the Nextel equipment shelter at Afton Peak through the exercise of the third of four five-year options to extend the term of the sub-lease. In April 2016, the County received notice from Nextel (now known as Sprint) that a transfer of ownership of the equipment shelter to AT was to be completed. The County was directed to contact AT for future renewals of the Sub-lease; at which time, the Sub-lease agreement went into holdover. The County continued to occupy the equipment shelter site and abide by the provisions of the Sub-lease. AT indicated that it did not recognize the Sub-lease since a transfer of the equipment shelter had not been completed at the time. Negotiations with Sprint recommenced to extend the Sub-lease. In December 2016 Sprint declined to entertain further discussions for the extension of the Sub-lease, claiming that Sprint had completed transfer of ownership of the equipment shelter to AT. Discussions commenced with AT to extend the term of the Sub-lease

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for radio rack space at the equipment shelter but AT continued to deny recognition, claiming that a transfer of the equipment shelter had not occurred.

In February 2019, AT disclosed that ownership of the equipment shelter had been transferred to AT under a provision of the agreement between AT and Sprint which allowed Sprint to surrender its equipment shelter in place and avoid an early termination penalty. However, AT's position was the Sub-lease was cancelled as a result. The parties ultimately agreed that the County's use of the equipment shelter should be incorporated into the Antenna Tower License since both the equipment shelter and the tower are now owned by AT. Protracted discussions with AT and Sprint regarding the ownership of the equipment shelter have delayed presentation of this item for Board approval until now.

As part of a County initiative to identify the potential to gain control of communications sites where it is a tenant or licensee and attract co-locators for new income streams, RESD conducts analyses prior to the renewal of each license agreement. The Afton Peak site was first analyzed in a cost-benefit analysis in late 2016, and then revisited last summer, and the concept was determined to be financially infeasible. Moreover, the fee ownership of the land is held by the Gabrych Family, prolific property investors, and one of the largest landowners in the United States. They granted a perpetual easement in their underlying property to AT for the installation and maintenance of AT's communications tower and improvements. A proposal for the County to gain control of the site would require the parties to unwind all associated agreements and enter protracted negotiations with the Gabrych Family, assuming they are willing. Given the financial uncertainty and practical challenges, especially in light of the uncertain economic outlook due to the COVID-19 pandemic, it is not recommended to pursue control of this site at this time.

Amendment No. 1 to License Agreement No. 03-200 provides for the addition of radio rack space in the AT-owned equipment shelter and the modification of the County-owned antenna on the AT-owned tower and adjusts the annual license fee.

Staff has reviewed the recommended action pursuant to the California Environmental Quality Act (CEQA) and has determined that it does not constitute a project. Accordingly, no further action is required under CEQA.

Summary of License Terms

Licensors:	American Tower Asset Sub, LLC
Location:	Afton Peak in the Baker area
Size:	Antenna and radio rack space
Term:	Commencing the earlier of (i) the commencement of the installation of County-owned modified equipment on the tower or (ii) September 1, 2020; two years, seven months remaining in the current term due to expire March 26, 2023
Options	One five-year automatic option

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Summary of License
Terms

License Fee:	Annual: \$31,719 *Low-range for comparable facilities in the Baker area per the competitive set analysis on file with RESD
Annual Increases:	3%
Improvement Costs:	None
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
Right to Terminate:	The County has no right to terminate except due to default

PROCUREMENT

On February 25, 2003 (Item No. 75), the Board approved a five-year License Agreement, No. 03-200 with four five-year automatic options to extend the term; procured using an alternative procedure process as provided in County Policy 12-02 – Leasing Privately Owned Real Property For County Use (Policy) as this was the only viable site for communication equipment in the Baker area.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Agnes Cheng, Deputy County Counsel and Bonnie Uphold, Deputy County Counsel, 387-5455) on June 16, 2020; ISD (Tim Trager, Chief, Public Safety Communications Division, 388-5563) on June 8, 2020; Purchasing Department (Bruce Cole, Staff Analyst II, 387-2148) on June 8, 2020; Finance (Wen Mai, Principal Administrative Analyst, 387-4020 and Joon Cho, Administrative Analyst, 387-5402) on June 19, 2020; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on June 28, 2020.

(KB 677-7961)

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Record of Action of the Board of Supervisors
County of San Bernardino

APPROVED (CONSENT CALENDAR)

Moved: Robert A. Lovingood Seconded: Josie Gonzales
Ayes: Robert A. Lovingood, Janice Rutherford, Curt Hagman, Josie Gonzales
Absent: Dawn Rowe

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: July 14, 2020



cc: RESD- Thompson w/agree for sign
 Contractor- C/O RESD w/agree
 File- w/agree
la 07/15/2020