

72257

DATE: October 23, 2019

TO: Board of Acquisition and Contract

FROM: Marguerite Beirne
Chief Information Officer

Gary Friedman
Director of Real Estate

RE: Authority to amend the license agreement (IT-1582) with American Towers, LLC, in order to a.) license additional ground space, install six (6) additional antennas and related equipment and perform additional equipment modifications at the radio tower site located in Alpine, NJ, in order to improve public safety communications, b.) increase the quarterly license fee by \$14,290.05, subject to appropriation c.) extend the term of the agreement until December 31, 2024, subject to four (4) additional five (5) year renewal terms (each a "Renewal Term), which shall commence automatically unless either party provides notice to the other that it does not wish to extend the term at least 120 days prior to the commencement of the applicable Renewal Term, and d.) reduce the annual license fee escalator from 4% to 3%.

On June 12, 2008, your Honorable Board approved a resolution which authorized the County of Westchester ("County"), acting by and through its Department of Public Works and Transportation ("Department of Transportation"), to enter into a license agreement ("Agreement") with American Towers, Inc. ("ATC Inc.") for the installation and operation of radio equipment and antennas at its radio tower located in Alpine, New Jersey ("Alpine Site"), for a ten-year period. The Agreement was subsequently executed with the ten-year term commencing on July 1, 2008 and terminating on June 30, 2018.

On September, 2010, the County and ATC Inc. amended the Agreement ("First Amendment") in order to amend the billing cycle of the Agreement from a monthly payment schedule to a quarterly payment schedule. The First Amendment was subsequently executed.

On May 31, 2018, your Honorable Board approved a resolution which authorized the County, acting by and through the Department of Transportation, to further amend the Agreement (“Second Amendment”) with American Towers LLC (“ATC LLC”), as successor-in-interest to ATC Inc., to extend the term of the Agreement for five (5) years, commencing on July 1, 2018 and expiring on June 30, 2023, with the parties having the option to extend the Agreement for up to two (2) additional five-year extension terms, for an initial quarterly fee of \$4,820.43, effective July 1, 2018, to be increased by 4% on July 1st of each year thereafter. The Second Amendment was subsequently executed.

Authorization is now sought from your Honorable Board to further amend the Agreement with ATC LLC (“Third Amendment”) in order to permit the County, now acting by and through the Department of Information and Technology (“DoIT”) to a.) license additional ground space, install six (6) additional antennas and related equipment and perform additional equipment modifications at the Alpine Site, b.) increase the quarterly license fee by \$14,290.05, effective upon the commencement of installation of the modified equipment, subject to appropriations, c.) extend the term of the Agreement, which currently expires on June 30, 2023, until December 31, 2024, subject to four (4) additional five (5) year renewal terms (each a “Renewal Term”) which shall commence automatically unless either party provides notice to the other that it does not wish to extend the term at least 120 days prior to the commencement of the applicable Renewal Term, and d.) reduce the annual license fee escalator under the Agreement from 4% to 3%, effective upon the execution of the Third Amendment. All other terms and conditions of the Agreement, as amended, shall remain unchanged and in full force and effect.

The space rented from ATC LLC houses equipment and antennas that are critical components of County radio systems used for Police, Fire, and EMS communications and for the operation of the Bee Line bus system. These radio systems serve a public purpose because they allow first responders and other government personnel to serve the Westchester County’s residents by safeguarding their property and health and by coordinating the operation of the County’s public bus system.

The goals and objectives of the Agreement are to continue to operate critical County first responder and public transportation radio systems which require the use of antennas and equipment placed at strategically located sites that best cover Westchester County. DoIT, along with the Department of Transportation and the Departments of Emergency Services and Public Safety, monitor the radio systems that utilize the Alpine Site to make sure that it best suits the County’s needs. DoIT audits the invoices to make sure they comply with the terms of the Agreement.

Approval of the attached resolution by your Honorable Board is requested.

MB/GF/CMC
Attachment

RESOLUTION

Upon a communication from the Chief Information Officer and the Real Estate Director, be it hereby

RESOLVED, that the County of Westchester (“County”), acting by and through its Department of Information and Technology (“DoIT”), is authorized to enter into a third amendment (“Third Amendment”) to the license agreement (“Agreement”) with American Towers, LLC, for the operation of radio equipment and antennas at the radio tower site located in Alpine, New Jersey (“Alpine Site”) in order to a.) license additional ground space, install six (6) additional antennas and related equipment and perform additional equipment modifications at the Alpine Site, b.) extend the term of the agreement, which currently expires on June 30, 2023, until December 31, 2024, subject to four (4) additional five (5) year renewal terms (each a “Renewal Term), which shall commence automatically unless either party provides notice to the other that it does not wish to extend the term at least 120 days prior to the commencement of the applicable Renewal Term, and c.) reduce the annual license fee escalator under the Agreement from 4% to 3%, effective upon execution of the Third Amendment.

RESOLVED, that the quarterly license fee shall increase by \$14,290.05, effective upon the commencement of installation of the modified equipment; and be it further

RESOLVED, that, retroactive to the commencement of the Agreement, the County is authorized to agree to the following indemnification provision:

Licensor and Licensee each indemnifies the other against and hold the other harmless from any and all costs, demands, damages, suits, expenses, or causes of action (including reasonable attorneys’ fees and court costs) which arise out of the use and/or occupancy of the Towner Site by the indemnifying Party. This indemnity does not apply to any claims arising from the gross negligence or intentional misconduct of the Indemnified Party. Notwithstanding the foregoing indemnity, except for its own acts of gross negligence or intentional misconduct, Licensor will have no liability for (i) loss of revenue sustained by Licensee, (ii) imperfect communications operations experience by Licensee for any reason, or (iii) acts of third parties, including but not limited to other licensees, subtenants, contractors or subcontractors of Licensor, and be it further

RESOLVED, that all other terms and conditions of the Agreement, as amended, shall remain unchanged and in full force and effect; and be it further

RESOLVED, that this Agreement is subject to County appropriations; and be it further

RESOLVED, that the County Executive or his duly authorized designee is hereby authorized to execute and deliver any and all documents and to take all action necessary and appropriate to effectuate the purposes hereof.

Account to be Charged/credited:

Year	Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub Object	Trust Account	Dollars
2020	101	20	1000	4070		\$29,546.02
2020	101	44	1000	4070		\$30,564.84
2020	101	38	2000	4070		\$18,260.54
2021	101	20	1000	4070		\$30,432.40
2021	101	44	1000	4070		\$31,481.79
2021	101	38	2000	4070		\$18,808.35
2022	101	20	1000	4070		\$31,345.37
2022	101	44	1000	4070		\$32,426.24
2022	101	38	2000	4070		\$19,372.60
2023	101	20	1000	4070		\$32,285.73
2023	101	44	1000	4070		\$33,399.03
2023	101	38	2000	4070		\$19,953.78
2024	101	20	1000	4070		\$33,254.31
2024	101	44	1000	4070		\$34,401.01
2024	101	38	2000	4070		\$20,552.40

Budget Funding Year(s) 2020-2024
(must match resolution)

Start Date: 01/01/2020

End Date: 12/31/2024

Funding Source

Tax Dollars \$416,084.42

State Aid _____

\$416,084.42
(must match resolution)

Federal Aid _____

Other _____

APPROVED BOARD OF ACQUISITIONS CONTRACT 10/31/2019 SAMRINJAS SECRETARY