

76898

DATE: May 22, 2020

TO: Board of Acquisition and Contract

FROM: Hugh J. Greechan, Jr. P.E.
Commissioner, Department of Public Works and Transportation

Marguerite Beirne
Chief Information Officer

Gary Friedman
Director of Real Estate

RE: Resolution authorizing the County to enter into Lease Agreement IT-1658 with American Tower Management, LLC, for a portion of certain real property located at 7 Morning View Court, Mount Pleasant, NY, for the purpose of installing, maintaining, and operating radio communication antennas and equipment, for a period commencing on the earlier of (i) ATC's issuance of Notice to Proceed or (ii) June 15, 2020, and continuing through December 31, 2029, 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, for an initial monthly license fee of \$4,500.00, to increase annually by 3% on the anniversary of the Commencement Date and each anniversary of same thereafter, subject to appropriation.

Authority is requested for the County of Westchester (the "County"), acting by and through its Department of Public Works and Transportation, to enter into lease agreement ("Agreement") IT-1658 with American Tower Management, LLC ("ATC"), to lease a portion of certain real property leased by ATC located at 7 Morning View Court, Mount Pleasant, NY (the "Hardscrabble Road Site"), for the purpose of installing, maintaining, and operating certain radio communication antennas and equipment.

The term of the proposed Agreement will commence on the earlier of (i) ATC's issuance of the Notice to Proceed with Equipment Installation (as defined below) or (ii) June 15, 2020 ("Commencement Date"), and continue through December 31, 2029. The term of the Agreement may be extended for up 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 in writing that it does not wish to extend the term at least 120 days prior to commencement of the applicable

Renewal Term, and, provided that at the time of such renewal, (i) the underlying agreement (“Ground Lease”) between the property owner and ATC remains in effect and has not expired or been terminated, (ii) the County is not in default under any term of the Agreement and no condition exists which left uncured would with the passage of time or the giving of the notice result in a default by the County, and (iii) the County has not assigned the Agreement or sublicensed any of its rights hereunder.

As your Honorable Board is aware, the County uses various radio towers throughout the county in order to provide radio communication systems that are relied upon by the Department of Emergency Services, the Department of Public Safety, and local fire, EMS and police agencies, and for operation of the Bee-Line Bus System. The County seeks to improve such radio communication systems in the communities surrounding the Hardscrabble Road Site by entering into the Agreement with ATC, which Agreement will permit the County to install and maintain radio antennas and related equipment on ATC’s tower (“ATC Tower”), with additional equipment at the base thereof (“Equipment Installation”). The Equipment Installation at the Hardscrabble Road Site will be managed by DoIT. The proposed Agreement will benefit the public as it will improve the reliability of the radio systems used by first responders and the Bee Line bus system and other government officials during both routine and emergency situations.

The County, at its sole cost and expense, will perform the Equipment Installation, which includes, but is not limited to the: (i) installation of seven antennas [one 6’5” antenna, four 10’ antennas, and two (one 1’3” and one 1’6”) dish antennas] and related cabling on ATC Tower, (ii) installation of a 12’ W x 24’ L equipment shelter, (iii) installation of a 6’ x 6’ slab for a load bank, and (iv) installation of a 4’ W x 8’ L generator.

As consideration for the Equipment Installation, the County will pay ATC an initial Monthly License Fee of \$4,500.00, which Monthly License Fee shall increase annually by 3% (“Annual Escalator”) on the first anniversary of the Commencement Date and each anniversary thereafter.

In addition, the County shall install all necessary utility equipment, including a separate utility meter and extend utilities to the County’s equipment at the Hardscrabble Road Site, as necessary for the operation of the County’s equipment, pay for all utility charges, including connection charges, security deposits, telephone connections and for all the utilities used at the Hardscrabble Road Site.

The Agreement provides for the following mutual indemnity:

“Subject to the mutual waiver of subrogation set forth in Section 27, Licensee and Licensor 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 Tower Facility by the Indemnifying Party. This indemnity does not apply to any Claims to the extent arising from the negligence or intentional misconduct of the Indemnified Party.”

In addition, there is a limitation to the indemnification as follows:

“Neither party shall be responsible or liable to any of the foregoing Indemnified Parties for Damages arising from any claim to the extent attributable to any acts or omissions of other licensees or users occupying the Hardscrabble Road Site or for any structural or power failures or destruction or damage to said site except if caused by such party’s sole, joint, or concurrent negligence or willful misconduct of such Party.”

This Agreement was approved by the County Board of Legislators by Intro Local Law 12688-2020 on May 18, 2020.

This Agreement is exempt from the Westchester County Procurement Policy pursuant to section 3(b) thereof.

Your approval of the attached resolution is respectfully requested.

HJG/MB/GF/RAN
Attachment

APPROVED BOARD OF ACQUISITION & CONTRACT - 05/28/2020 - USA MR/MAJ SECRETARY

RESOLUTION

Upon a communication from the Commissioner of Public Works and Transportation, the Chief Information Officer and the Director of Real Estate, be it hereby

RESOLVED, that the County of Westchester (the "County") is authorized to enter into lease agreement IT-1658 with American Tower Management, LLC ("ATC") pursuant to which the County will lease a portion of real property leased by ATC located at 7 Morning View Court, Mount Pleasant, NY (the "Hardscrabble Road Site"), for the purpose of installing, maintaining, and operating certain radio communications antennas and equipment, for a term commencing on the earlier date of (i) ATC's issuance of the Notice to Proceed or (ii) June 15, 2020 ("Commencement Date"), and continuing through December 31, 2029, 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 in writing that it does not wish to extend the term at least 120 days prior to the commencement of the applicable Renewal Term; and be it further

RESOLVED, that the initial Monthly License Fee shall be \$4,500.00, payable on the Commencement Date, which shall increase annually by three percent (3%) on the anniversary of the Commencement Date and each anniversary thereafter; and be it further

RESOLVED, that the proposed Agreement provides for the following mutual indemnification:

"Subject to the mutual waiver of subrogation set forth in Section 27, Licensee and Licensor 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 Tower Facility by the Indemnifying Party. This indemnity does not apply to any Claims to the extent arising from the negligence or intentional misconduct of the Indemnified Party."

With the following limitation on the indemnification:

"Neither party shall be responsible or liable to any of the foregoing Indemnified Parties for Damages arising from any claim to the extent attributable to any acts or omissions of other licensees or users occupying the Hardscrabble Road Site or for any structural or power failures or destruction or damage to said site except if caused by such party's sole, joint, or concurrent negligence or willful misconduct of such Party." and be it further

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

RESOLVED, that the County Executive or his authorized designee is authorized and empowered to execute and deliver all instruments and take all actions necessary or 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		\$10,179.00
2020	101	44	2100	4140		\$10,530.00
2020	101	38	2000	4070		\$6,291.00
2021	101	20	1000	4070		\$20,663.37
2021	101	44	2100	4140		\$21,375.90
2021	101	38	2000	4070		\$12,770.73
2022	101	20	1000	4070		\$21,283.27
2022	101	44	2100	4140		\$22,017.18
2022	101	38	2000	4070		\$13,153.85
2023	101	20	1000	4070		\$21,921.77
2023	101	44	2100	4140		\$22,677.69
2023	101	38	2000	4070		\$13,548.47
2024	101	20	1000	4070		\$22,579.42
2024	101	44	2100	4140		\$23,358.02
2024	101	38	2000	4070		\$13,954.92
2025	101	20	1000	4070		\$23,256.80
2025	101	44	2100	4140		\$24,058.76
2025	101	38	2000	4070		\$14,373.57
2026	101	20	1000	4070		\$23,954.51
2026	101	44	2100	4140		\$24,780.53
2026	101	38	2000	4070		\$14,804.78
2027	101	20	1000	4070		\$24,673.14
2027	101	44	2100	4140		\$25,523.94
2027	101	38	2000	4070		\$15,248.92
2028	101	20	1000	4070		\$25,413.34
2028	101	44	2100	4140		\$26,289.66
2028	101	38	2000	4070		\$15,706.39
2029	101	20	1000	4070		\$12,894.45
2029	101	44	2100	4140		\$13,339.09
2029	101	38	2000	4070		\$7,969.25

Budget Funding Year(s): 2020-2029 Start Date: Jun 1, 2020 End Date: May 31, 2029
 (must match resolution)

Funding Source Tax Dollars \$548,591.73
 State Aid _____
\$548,591.73 Federal Aid _____
 (must match resolution) Other _____