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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-558) with American Towers, LLC, in order to a.) extend one antenna and perform additional equipment modifications, b.) increase the monthly license fee by \$144.00, 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 December 24, 2003, your Honorable Board approved a resolution which authorized the County of Westchester ("County") to enter into a license agreement ("Agreement") with American Towers, Inc. for the installation and operation of radio equipment and antennas at their radio tower located on Pines Bridge Road in Ossining, New York, for a five (5) year period commencing on April 1, 2004 for an annual license fee of \$9,600, with a 4% annual increase, and a \$2,000 one time site inspection fee. The Agreement was subsequently executed.

On February 9, 2006, your Honorable Board approved a resolution which authorized an amendment to the Agreement in order to increase the number of antennas from 4 to 12, as well as to install a shelter and generator at the radio tower site. In addition, the annual rent was increased to \$28,800 with a 4% increase each year. This resolution was subsequently amended on May 18, 2006 to reflect that the new annual rent was increased to \$29,184. The First Amendment to the Agreement was subsequently executed.

On December 23, 2008, your Honorable Board approved a resolution which authorized the County to renew the Agreement for a five (5) year period commencing on April 1, 2009, for a monthly fee of \$2,735.67 with a 4% annual increase on each July 1st. All other terms and conditions of the Agreement, as amended, remained the same.

On October 13, 2011, your Honorable Board approved a resolution in order to update the engineering details to reflect the extension of the radio tower and the new type and location of the County's equipment installed at the radio tower, and to change the name of American Towers, Inc. to American Towers, LLC. All other terms and conditions of the Agreement, as amended, remained the same. The Second Amendment to the Agreement was subsequently executed.

On July 10, 2014, your Honorable Board approved a resolution which authorized the County to amend the Agreement in order to extend the term of the Agreement for five (5) years commencing April 1, 2014 for a monthly license fee of \$3,600, which fee increases yearly on July 1st by 4% and provides the parties the right to renew the Agreement for three (3) successive periods of five (5) years each, subject to necessary legal approvals. The Third Amendment to the Agreement was subsequently executed.

On August 19, 2015, your Honorable Board approved a resolution in order to update the engineering details to reflect the installation of a microwave dish at the site for an additional license fee of \$616.50 per month, commencing on the earlier of installation or January 1, 2016. All other terms and conditions of the Agreement, as amended, shall remain unchanged and in full force and effect. The Fourth Amendment to the Agreement was subsequently executed.

On May 30, 2019, your Honorable Board approved a resolution (the "May 30th Resolution") which authorized the County to amend the license agreement (IT-558) with the American Towers, LLC to extend the term of the agreement for five (5) years commencing April 1, 2019 and terminating on March 31, 2024, for a Monthly License fee of \$5,073.43 subject to a 4% Annual Escalator commencing July 1, 2019 and on each July 1st thereafter. The Fifth Amendment to the Agreement was subsequently executed.

Authorization is now sought to amend the Agreement to a) extend one antenna and perform additional equipment modifications, b) increase the monthly license fee by \$144.00, 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 "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%. All other terms and conditions of the Agreement, as amended, shall remain unchanged and in full force and effect.

The space rented from American Towers LLC houses equipment and antennas that are critical components of County radio systems used for Police, Fire, and EMS communications and for 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 Westchester'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. The Department of Information Technology ("DoIT"), along with the Departments of Emergency Services, Public Safety, and Public Works and Transportation monitor the radio systems that utilize the Ossining radio 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.

In addition, the budget box in the May 30th Resolution needs to be amended as a result of the equipment modifications and reduction in the escalator and to incorporate certain other necessary changes for the 2019 budget information.

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

MB/GF/RAN
Attachment

APPROVED BOARD OF ACQUISITION & CONTRACT - 10/31/2019 - USA PERMANENT SECRETARY

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 sixth amendment ("Sixth Amendment") to the license agreement ("Agreement") with American Towers, LLC, for the operation of radio equipment and antennas at the radio tower site located on Pines Bridge Road in Ossining, New York (the "Maryknoll Site") in order to a) modify the equipment, b) 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 c) reduce the annual license fee escalator under the Agreement from 4% to 3%, and be it further

RESOLVED, that the monthly license fee shall increase by \$144.00, effective upon the earlier to occur of the commencement of installation of the modified equipment or November 1, 2019; and be it further

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

Each party shall, to the fullest extent permitted by law, indemnify, defend and hold harmless the other party, its respective affiliates, and their respective directors, employees, officers, shareholders, successors and assigns against all claims, losses, costs, expenses, damages, and liabilities (except as otherwise provided in Section 15 of this Agreement [concerning waiver of punitive and consequential damages]) arising from: (i) the negligence, willful misconduct or strict liability of such party, or its agents, employees, representatives, contractors; or (ii) any material breach by such party of any provision of this Agreement. In addition to the foregoing, the County shall indemnify the Licensor for all costs and expenses associated with actions taken by Licensor to resolve any interference caused by the County or the County's Approved Equipment pursuant to Section 10(a), (c), and (d). Neither Party shall be responsible or liable to the other for any damage arising from any claim to the extent attributable to any acts or omissions of other licensees at the Tower Site.

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 ‘budget box’ included in the resolution approved on May 30, 2019 (the “May 30th Resolution”), which authorized the County of Westchester (the “County”) to enter into the Fifth Amendment to the Agreement, is hereby deleted and replaced with the following ‘budget box’:

; 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.

Agreement # IT-558

Original Agreement	\$9,600
First Amendment	\$19,200
Renewal	\$183,141
Second Amendment	\$0
Third Amendment	\$241,009
Fourth Amendment	\$32,160
Fifth Amendment	\$357,562.15
This Amendment	<u>\$58,381.51</u>
TOTAL	\$901,053.66

Account to be Charged/ credited	Year	Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub Object	Trust Account	Dollars
	2019	101	20	1000	4070		\$11,584.67
	2019	101	44	1000	4070		\$11,984.14
	2019	101	38	2000	4070		\$7,159.76
	2020	101	20	1000	4070		(\$309.42)
	2020	101	44	1000	4070		(\$320.09)
	2020	101	38	2000	4070		(\$191.23)
	2021	101	20	1000	4070		(\$1,502.72)
	2021	101	44	1000	4070		(\$1,554.54)
	2021	101	38	2000	4070		(\$928.74)
	2022	101	20	1000	4070		(\$2,976.06)
	2022	101	44	1000	4070		(\$3,078.68)
	2022	101	38	2000	4070		(\$1,839.32)
	2023	101	20	1000	4070		(\$4,578.34)
	2023	101	44	1000	4070		(\$4,736.21)
	2023	101	38	2000	4070		(\$2,829.58)
	2024	101	20	1000	4070		\$19,791.70
	2024	101	44	1000	4070		\$20,474.17
	2024	101	38	2000	4070		\$12,232.00

Budget Funding Year(s) 2019-2024 Start Date 11/01/2019 End Date 12/31/2024
 (must match resolution)

Funding Source Tax Dollars \$58,381.51
 State Aid _____
\$58,381.51 Federal Aid _____
 (must match resolution) Other _____