



AGENDA ITEM NO. 1C
COUNCIL MEETING 02/06/14
APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER

February 6, 2014

FROM: Fire Department

BY: KERRI L. DONIS, Fire Chief

SUBJECT: Approve second amendment to license agreement with Crown Castle GT Company LLC and the City of Fresno to extend the contract term five years to March 31, 2023, for placement of Cellular Tower Equipment at Fire Station 13

RECOMMENDATION

It is recommended Council approve the second amendment to the license agreement with Crown Castle GT Company LLC extending the contract period five years to 2023 for a one-time payment of \$10,000.00.

EXECUTIVE SUMMARY

On April 1, 1993, Council approved an agreement to license certain real property together with access and utility easements located at Fire Station 13 for the purpose of constructing, maintaining and operating a communications facility, including tower structures and related equipment. Amendment No. 1, approved by Council on April 15, 2010, allowed Crown Castle GT Company LLC to sublicense a portion of the tower in exchange for a monthly license fee increase of \$400.00 payable to the Fire Department. The second amendment will extend the lease term an additional five years to March 31, 2023 in exchange for a one-time payment of \$10,000.00.

BACKGROUND

On April 1, 1993, Council approved an agreement with Contel Cellular of California, Inc., a California public utility corporation, to license certain real property together with access and utility easements located at Fire Station 13 for the purpose of constructing, maintaining, and operating a communications facility, including tower structures and related equipment. Crown Castle GT Company LLC is currently the licensee under the license as successor in interest to the original licensee (Contel Cellular of California, Inc). The original term of the agreement is 25 years, expiring March 31, 2018, and the agreement provides for a monthly license fee payable to the Fire Department that is adjusted every five years by the CPI. The current monthly fee is \$1,651.28, which provides \$19,800 in General Fund revenues annually.

REPORT TO CITY COUNCIL

Approve Second Amendment to License Agreement with Crown Castle

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Crown Castle GT Company LLC has requested to extend the term of the agreement five years. Approval of this amendment will extend the monthly license fee received by the Fire Department to 2023.

FISCAL IMPACT

Approval of this agreement will provide for a continuation of revenues to the Fire Department of at least \$19,800 annually through 2023.

KLD/CC/mc 012114

Attachment

License Agreement

**SECOND AMENDMENT TO
LICENSE AGREEMENT**

THIS SECOND AMENDMENT TO LICENSE AGREEMENT (the "Second Amendment") is entered into this ____ day of _____, 2014, by and between THE CITY OF FRESNO, a Charter City of the State of California (hereinafter referred to as "Licensor") and CROWN CASTLE GT COMPANY LLC, a Delaware limited liability company ("Licensee").

RECITALS

WHEREAS, Licensor and Contel Cellular of California, Inc., a California public utility corporation ("Original Licensee") entered into a License Agreement dated April 21, 1993 (the "Original License") whereby Original Licensee licensed certain real property, together with access and utility easements, located in Fresno County, California from Licensor (the "Premises"), all located within certain real property owned by Licensor ("Licensor's Property");

WHEREAS, the Original License was amended by that certain First Amendment to License Agreement dated April 15, 2010 ("First Amendment") (the Original License and First Amendment are collectively referred to as the "License");

WHEREAS, Licensee is currently the successor in interest to the Original Licensee, as more fully set forth in the First Amendment; and

WHEREAS, the License is for a period of twenty-five (25) years, beginning on April 1, 1993 and ending on March 31, 2018 ("Term"); and

WHEREAS, Fresno MSA Limited Partnership, a California limited partnership dba Verizon Wireless ("Verizon"), as the assignor to Licensee under the Assignment and Assumption Agreement referenced in the First Amendment, reserved its rights, title and interest to the equipment remaining on the Premises;

WHEREAS, in conjunction with Licensee becoming a successor in interest to the Original Licensee, Licensee sublicensed the Premises back to Verizon for the operation of Verizon's equipment and communications facility; and

WHEREAS, Licensee acknowledges that Verizon desires to replace a generator on the Premises belonging to Licensor and share its use with Licensor for Verizon's facilities on the Premises, and Licensee consents to Licensor and Verizon entering into a separate agreement for this purpose;

WHEREAS, Licensor and Licensee desire to amend the License on the terms and conditions contained herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Licensor and Licensee agree as follows:

1. Recitals; Defined Terms. The parties acknowledge the accuracy of the foregoing recitals. Any capitalized terms not defined herein shall have the meanings ascribed to them in the License.

2. Extension Term. At the conclusion of the Term, Licensee shall be entitled to one (1) extension of five (5) years in length, commencing on April 1, 2018 and expiring on March 31, 2023 (the "Extension Term"). The Term of the License shall automatically be extended for the Extension Term unless Licensee notifies Licensor of its intention not to renew at least ninety (90) days prior to the expiration of the Term.

3. License Fee. The License Fee and Additional License Fee for the Extension Term shall be calculated in accordance with Article 2 of the Original License, except the "U.S. Bureau of Labor statistics Consumer Price Index for All Urban Consumers for LA-Riverside-Orange County" shall be used in lieu of the Consumer Price Index for "all urban consumers for the Los Angeles, Anaheim, Long Beach area" referenced in Section 2.01 of the Original License.

4. Consideration. Licensee will pay to Licensor a one-time amount of Ten Thousand and 00/100 Dollars (\$10,000.00) for the full execution of this Second Amendment, within sixty (60) days of the full execution of this Second Amendment ("Conditional Signing Bonus"). In the event that this Second Amendment (and any applicable memorandum) is not fully executed by both Licensor and Licensee for any reason, Licensee shall have no obligation to pay the Conditional Signing Bonus to Licensor.

5. Ratification.

a) Licenser and Licensee agree that Licensee is the current Licensee under the License, the License is in full force and effect, as it may have been amended and as amended herein, and the License contains the entire agreement between Licenser and Licensee with respect to the Premises.

b) Licenser and Licensee agree that no breaches or defaults exist as of the date of this Second Amendment.

c) Licenser represents and warrants that Licenser is duly authorized and has the full power, right and authority to enter into this Second Amendment and to perform all of its obligations under the License as amended.

6. Remainder of License Unaffected. The parties hereto acknowledge that except as expressly modified hereby, the License remains unmodified and in full force and effect. In the event of any conflict or inconsistency between the terms of this Second Amendment and the License, the terms of this Second Amendment shall control. This Second Amendment may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

7. Verizon Sublicense. Licensee acknowledges it has no right or interest in that portion of Licenser's Property used by Licenser for the operation of an emergency generator for Licenser's Property and Licenser's equipment on the Premises (including to the extent that the generator and attendant facilities are on the Premises in their current location). Licensee hereby consents to Verizon acquiring rights from Licenser for the installation of a new emergency generator and attendant facilities on the Licenser's Property for the shared use by Licenser and Verizon; provided that such generators and related equipment are not located within the boundaries of the Premises without Licensee's prior written consent.

8. The rights, interests, duties and obligations defined within the Second Amendment and the License are intended for the specific parties hereto as identified in the preamble of this Second Amendment. Notwithstanding anything stated to the contrary in either this Second Amendment or the License, it is not intended that any rights or interests in either this

Second Amendment or the License benefit or flow to the interest of any third parties, excepting either party's permitted successors and assignees.

9. No provisions of either this Second Amendment or the License may be waived unless in writing and signed by all parties to this Second Amendment.

[Signature pages follow]

This Second Amendment is executed by Licensor as of the date first written above.

APPROVED AS TO FORM:

Douglas T. Sloan
City Attorney

By: _____
Print Name: _____
Title: _____
Date: _____

LICENSOR:

THE CITY OF FRESNO, a Charter City of the
State of California

By: _____
Print Name: _____
Title: _____

ATTEST:

Yvonne Spence, CMC
City Clerk

By: _____
Title: _____
Date: _____

[Licensee Execution Page Follows]

This Second Amendment is executed by Licensee as of the date first written above.

LICENSEE:
CROWN CASTLE GT COMPANY LLC, a
Delaware limited liability company

By: _____
Print Name: _____
Title: _____