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4/19/12

CITY OF FRESNO
City Clerk's Office (Original)

ANTENNA SITE LEASE

Name and Address of Lessor:

Loperena Antenna Sites
2764 W. Athens Ave.
Fresno, CA 93711

Name and Address of Lessee:

Wastewater Management Division/ Department of Public Utilities/ City of Fresno
5607 W. Jensen Ave.
Fresno, CA 93706

RENT: Thirteen Hundred Fifty Dollars and no Cents ($1350.00) per Month commencing on the commencement date as defined below.

TERM: Five (5) years commencing on April 1, 2012, (Commencement Date) and ending on March 31, , 2017.

LOCATION OF LEASED PREMISES:
Owens Mountain 19720 Auberry Rd. Clovis, CA

DESCRIPTION OF LEASED PREMISES:
A. Within Room 3 (Public Safety Room) Floor space for 1 rack
B. Tower Space @ 60' for two (2) sector antenna 60 degree
C. Tower space below 40' for two (2) dish antenna

EQUIPMENT TO BE INSTALLED ON LEASED PREMISES:
A. One (1) rack of Radio Equipment as described in Exhibit "A"
B. Two (2) Sector Antenna 900mhz-928mhz, 51.6"x 11.2"x 5.2", 32lbs/Ant.
C. Two (2) Dish Antenna ; (One is 3' and 30 lbs, the other is 4' and 90lbs)

BY:

INITIALED

1. **LEASE OF LEASED PREMISES.**

Lessor agrees to lease the Leased Premises to Lessee as described on page one (1) of this agreement.

2. **USE OF LEASED PREMISES.**

The Leased Premises are to be used for any lawful activity in connection with the provision of mobile/wireless communications services. Lessee shall have the unrestricted right to enter or leave the Leased Premises at all reasonable times. Lessee may not sublet or license others to use the Leased Premises and Lessee may not make alterations to it without Lessor's prior consent and approval first obtained.

3. **TERM.**

The term of this Antenna Site Lease is indicated on page one (1) of this agreement. Lessee shall have the option to renew this Antenna Site Lease for three (3) like periods under the same terms and conditions as contained in this Antenna Site Lease, by mailing written notice to Lessor at least ninety (90) days before the expiration of the term indicated on page one (1) of this agreement. If the site becomes unfit or undesirable for use for Lessees' purposes, Lessee may terminate this Antenna Site Lease by mailing written notice to Lessor, which shall be effective ninety (90) days after it is mailed by Lessee. If Lessee holds over at the end of the term, it shall create a month-to-month tenancy subject to the provisions of the Antenna Site Lease with applicable rent increases.

4. **TERMINATION BY LESSE FOR NON-APPROPRIATION.**

The Lessee obligation to pay the rental payments and any other payment obligation under this Lease shall constitute a current expense to Lessee for Lessee's beneficial use and occupancy of the Leased Premises. The rental payments shall be payable only from current funds, budgeted and appropriated, on deposit in a reserve fund, or otherwise legally available for the rental payments or other Leased Premises costs. This Lease does not create an immediate debt for aggregate rental payments, and is not a pledge of the City's full faith and credit. During its annual budgeting process, Lessee shall consider, and will use best efforts to appropriate funding to meet its rental payments, maintenance, and other estimated Leased Premises costs under this Lease for the fiscal year under consideration. In the sole event of non-appropriation relating to this Lease, Lessee shall have the right to terminate this Lease at the end of any fiscal year of Lessee, in a manner and subject to the terms specified in this paragraph. Lessee shall endeavor to give written notice of such termination not less than sixty (60) days prior to the end of such fiscal year, and shall notify the Lessor of any anticipated termination. For purposes of this paragraph, "fiscal year" shall mean the twelve month fiscal period of Lessee which commences on July 1 in every year and ends on the following June 30. For purposes of this paragraph, "non-appropriation" shall mean the failure of Lessee or Lessee's governing body to appropriate money for any fiscal year of Lessee sufficient for the continued performance of this Lease by Lessee.

5. **RENT.**

Each month during the lease term and while Lessor is not in default hereunder, Lessee will pay to Lessor in advance the monthly rental indicated on page one (1) of this agreement. Payments received after the tenth (10th) day of the month in which it is due, shall incur a late payment charge of ten percent (10%) of the total amount due.

INITIALED BY: _____ _____

6. ROAD MAINTENANCE FEE.

On February 1st of each year of the lease term, Lessee shall pay to Lessor the sum of one (1) month rent, as payment of a road maintenance fee. The road maintenance fee shall be pro-rated for any partial portion of a year in which the equipment is installed. Lessee shall not be responsible for any abnormal or excessive damage to the road caused by the use of Lessor or other lessees.

7. ELECTRICITY.

Lessor shall supply electrical service to the Leased Premises, the Equipment Building and to the Tower. Lessee shall be responsible for the payment of the electrical consumption utilized by its equipment.

8. ADJUSTMENT TO LEASE RENT.

Lessor shall have the right to adjust the Lease Rent on the first (1st) anniversary of the Commencement Date and on each anniversary of the Commencement Date ("Anniversary Date") thereafter, subject to the following terms and conditions.

A) Beginning on the first (1st) anniversary date of this agreement, the License Rent shall be increased by a percentage not greater than the percentage increase in the Consumer Price Index ("CPI") during the twelve-month period ending on the Anniversary Date on which the increase will become effective. The CPI to be used for this purpose is the Consumer Price Index for All Urban Consumers – All Items, for the San Francisco-Oakland-San Jose metropolitan area, or any successor index thereto.

9. ASSESSMENTS AND TAXES.

Lessee shall pay when due and before delinquency, all personal property taxes levied against Lessees' Equipment located on the Leased Premises. Lessor shall pay when due and before delinquency all real property taxes, assessments, and governmental charged imposed of assessed against the Site during term of this Agreement and all personal property taxes levied against any personal property of Lessor located on the Site.

10. LIABILITY.

Lessee maintains General Liability self-insurance in the amount of $1,000,000 per occurrence for bodily injury and property damage and Auto Liablity self-insurance in the amount of $1,000,000 per accident for bodily injury and property damage.

Lessee agrees to furnish Lessor with certificates of insurance certifying that Lessee has agreed to the above-specified insurance, the certificate shall name the Lessor as an additional insured. Failure to comply with this request shall constitute a default of this Antenna Site Lease.

11. NON-LIABILITY; REPRESENTATIONS.

In no event shall Lessor or any of its partners, officers, agents or employees be liable for any injury, damage to or theft of any property unless and to the extent such injury, damage or loss is proximately caused by the gross negligence of willful misconduct of Lessor. Further, Lessor shall not be liable for (i) any such damage caused by tenants, licensees or person in, upon or about the Building and tower, including and of the Leased Premises, or cause be construction of any private, public or quasi-public work, or (ii) any incidental, special punitive or consequential damages arising or to any loss of use of the Leased Premises or any part thereof.

INITIALED BY: _____ _____

12. CONDITION OF SITE.

During the term of this Antenna Site Lease, Lessor shall keep the Leased Premises and the Property owned by Lessor of which they are a part in good condition and repair. Upon termination or expiration of this Antenna Site Lease, Lessee will surrender the Leased Premises to Lessor in good condition except for reasonable wear and tear.

13. DAMAGE OR DESTRUCTION

If the Leased Premises shall be damaged by fire, the elements, unavoidable accident, or other casualty, but is not thereby rendered untenantable in whole or in part, Lessor shall, at Lessor's own expense and within thirty (30) days of Lessee's written notification to Lessor of the damage, cause such damage to be repaired, and the rent shall not be abated. If by reason of such occurrence, the Leased Premises shall be rendered untenantable only in part, Lessor shall, at Lesssor's own expense and within thirty (30) days of Lessee's written notification of Lessor of the damage, cause such damage to be repaired, and rent meanwhile shall be abated proportionately as to the portion of the Leased Premises rendered untenaritable from the time of such occurrence until such repairs are completed. If the Peased Premises shall be rendered wholly untenantable by reason of such occurrence, Lessor shall, at Lessor's own expense and within sixty (60) days of Lessee's written notification to Lessor of the damage, cause such damage to be repaired, and the rent meanwhile shall be abated in whole from the time of such occurrence until such repairs are completed. Notwithstanding the proceeding provisions of this Section, either party shall have the right, to be exercised by notice in writing to the other within thirty (30) days from and after the date of Lessee's written notification of any such event of partial or total destruction, to elect to terminate this Lease, and in such event, this Lease and the tenancy herby created herby shall cease as of the date of such notice, and the rent shall be adjusted as of such date.

14. ASSIGNMENT OF LEASE.

Lessee may not assign this Antenna Site Lease without Lessor's prior written consent, which consent shall not be unreasonably withheld or unduly delayed.

15. INTERFERENCE.

A) Lessee shall operate the Lessee Facilities in a manner that will not cause interference to Lessor and other Lessees of the Land, provided that their installation predates the Lessee Facilities. All operations by Lessee shall be lawful and in compliance with all Federal Communications Commission ("FCC") requirements.

B) Subsequent to the installation of the Lessee Facilities, Lessor shall not permit itself, its lessees or licensees to install new equipment on the Land if such equipment is likely to cause interference with Lessee's operations. Such interference shall be deemed a material breach by Lessor.

16. DEFAULTS.

Lessee shall have ten (10) days after the receipt of written notice to cure any monetary default. Either party shall have thirty (30) days after the receipt of written notice to cure any non-monetary default; provided however, that if any default is not capable of being cured within the requisite period of time, then so long as the party charged with the default has diligently pursued such cure of the default within the prescribed period, the party shall be given the necessary time to cure the default.

17. PRIOR NEGOTIATIONS.

This Lease constitutes the entire agreement of the parties hereto and shall supersede all prior offers, negotiations, and agreements.

INITIALED BY: LH _____ GW _____

18. AMENDMENT.

No revision of this Lease shall be valid unless made in writing and by Lessor and Lessee of their authorized agent(s).

19. GOVERNING LAW.

This agreement is governed by the laws of jurisdiction of which the Premise is situated.

20. ANY CHANGES TO THIS AGREEMENT MUST BE DONE BY WRITTEN AGREEMENT SIGNED BY BOTH PARTYS.

21. ATTORRNEY'S FEES

In the event that either party is required to commence any proceeding or legal action to enforce or interpret and term, covenant, or condition of this agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement the year and day first written above.

LESSOR:

Loperena Antenna Sites

By: _____ **Date:** 2/23/12

Its: MANAGING PARTNER

LESSEE: _____

By: PATRICK WIEMILLER **Date:** 5/2/12

Its: DIRECTOR

City of FRESNO **REPORT TO THE CITY COUNCIL**

AGENDA ITEM NO.	I
COUNCIL MEETING	04/19/12
APPROVED BY	
DEPARTMENT DIRECTOR	
CITY MANAGER	

April 19, 2012

FROM: PATRICK N. WIEMILLER, Director
Department of Public Utilities

BY: STEPHEN A. HOGG, Assistant Director
Department of Public Utilities, Wastewater Management Division

SUBJECT: ADOPT A FINDING OF CLASS 1 AND 3 CATEGORICAL EXEMPTIONS, PURSUANT TO SECTION 15301 (EXISTING FACILITIES) AND 15303 (NEW CONSTRUCTION OR CONVERSION OF SMALL STRUCTURES) OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT GUIDELINES AND APPROVE A FIVE YEAR (WITH THREE ADDITIONAL OPTIONAL RENEWAL PERIODS) LEASE AGREEMENT WITH LOPERENA ANTENNA SITES IN THE AMOUNT OF $1,350 A MONTH PLUS AN ANNUAL ROAD MAINTENANCE FEE EQUAL TO ONE MONTH'S RENT FOR THE PURPOSE OF PROVIDING SPACE FOR, OPERATING, AND MAINTAINING A DATA RADIO ANTENNA, RECEIVER, AND TRANSMITTER ATOP OWENS MOUNTAIN, 19720 AUBERRY ROAD, CLOVIS, CAIFORNIA

Presented to City Council
Date 4/19/12
Disposition approved

RECOMMENDATIONS

Staff recommends the City Council:

1. Adopt a finding of Class 1 and 3 Categorical Exemptions, pursuant to Sections 15301 (existing facilities) and 15303 (new construction or conversion of small structures) of the California Environmental Quality Act (CEQA) guidelines for lease agreement with Loperena Antenna Sites for the purpose of establishing, operating, and maintaining a data radio antenna, receiver, and transmitter atop Owens Mountain, 19720 Auberry Road, Clovis, CA.

2. Approve a lease agreement with Loperenna Antenna Sites for the purpose of establishing, operating, and maintaining a data radio antenna, receiver, and transmitter atop Owens Mountain, 19720 Auberry Road, Clovis, CA, and authorize the Director of Public Utilities, or his designee, to sign the agreement on behalf of the City. The rent will be at a rate of $1,350 per month for the first year, to be increased annually by a percentage not greater that the percentage increase in the Consumer Price Index during the previous twelve months. In addition, each year the City will pay a road maintenance fee equal to one month's rent. The lease will be for an initial term of five years with an option to renew for three like periods.

EXECUTIVE SUMMARY

The recommended agreement with Loperenna Antenna Sites will provide a lease for space atop Owens Mountain to provide a high elevation, "line of sight" location for the placement of a microwave data, and supervisory control and data acquisition (SCADA) radio system. This system will provide a reliable, high-speed data communication link between the Regional Wastewater Reclamation Facility (RWRF), the North

Fresno Water Reclamation Facility (NFWRF) and numerous sewer collection system pump stations throughout the city. The agreement utilizes the leaser's standard rental rates for equipment and space on the tower and in the building on the site. The rent will be at a rate of $1,350 per month for the first year, to be increased annually by a percentage not greater that the percentage increase in the Consumer Price Index during the previous twelve months. In addition, each year the City will pay a road maintenance fee equal to one month's rent. The lease will be for an initial term of five years with an option to renew for three like periods. Staff has performed a preliminary environmental assessment of this project and has determined that it falls within Class 1 and 3 Categorical Exemptions set forth in CEQA Guidelines, Sections 15301 (existing facilities) and 15303 (new construction or conversion of small structures).

BACKGROUND

The Department of Public Utilities currently utilizes "T1" type phone lines to provide for control system and data network connection between the NFWRF and the RWRF and low capacity radio communications to monitor and control the numerous sewer collection system pump stations throughout the city. The Department is currently in the process of upgrading the obsolete control system used to monitor and control the numerous sewer collection system pump stations throughout the community. This upgrade will enhance the functionality and reliability of the control system, reducing the risk of sewer overflows. The enhancements will include replacing the current radio system with faster, higher capacity wireless communications. The increased bandwidth will also allow for the implementation of improved security measures such as monitored intrusion alarms and security video monitoring. These pump stations contain electrical equipment and wiring that are a potential target for copper thieves.

In addition, the new system will provide capacity to replace the "T1" phone lines used to connect the NFWRF to the RWRF with high speed wireless communication. While "T1" lines are intended for the transmission of data and are significantly faster than "dial up" phone lines, they still have speed and capacity limitations. The NFWRF is only staffed a portion of one shift and is monitored and operated remotely by operators and the RWRF the remainder of the day. The capacity limitation of the phone lines result in the need to reduce the image quality of the video monitoring system and slow response to operational commands sent to the remote control system. The use of the "hard wire" phone lines with the existing system also reduces the reliability of the system as a result of events such as excavations, vehicle accidents, and other causes of wire failures. The use of microwave radio will provide a faster, higher capacity and more reliable control and data connection for both the sewer collection system pump stations and the NFWRF.

Wireless microwave systems require a clear "line of sight" path to ensure reliable communication. By the nature of the sewer pump stations, they are located in low points in the collection system. Objects such as building and trees degrade signal quality. The Owens Mountain antenna site provides an ideal, secure, high elevation location for the placement of data radio antennas, receiver and transmitter. This location provides a reliable "line of sight" path between the RWRF southwest of downtown, the NFWRF in northeast Fresno, and all of the sewer collection system pump stations throughout the City and is not likely to be obscured by any future construction, tree growth, or other obstacle. The City already utilizes this location for other communication needs.

The agreement utilizes the lessor's standard rental rates for equipment and space on the tower and in the building on the site. The rent will be at a rate of $1,350 per month for the first year, to be increased annually by a percentage not greater that the percentage increase in the Consumer Price Index during the previous twelve months. In addition, each year the City will pay a road maintenance fee equal to one month's rent. The lease will be for an initial term of five years with an option to renew for three like periods.

The City Attorney has reviewed and approved this agreement as to form.

ENVIRONMENTAL FINDING

Staff has performed a preliminary environmental assessment of this project and has determined that it falls within the Class 1 and Class 3 Categorical Exemptions set forth in CEQA Guidelines, Sections 15301 (existing facilities) and 15303 (new construction or conversion of small structures). These Categorical Exemptions are appropriate for this project as it is for the operation, lease and/or minor alteration of an existing structure involving negligible or no expansion of use, including minor interior or exterior alterations. The project consists of leasing space at an existing antenna site for the placement of a small data radio antenna receiver/transmitter. Staff notes there are numerous existing antennas located at this location and the proposed data radio antenna receiver/transmitter is within the height and size profile of antennae currently on-site. In addition, the project will not result in an increase of more than 50% of current floor area of existing structures or 10,000 square feet. Finally, none of the exceptions to the Categorical Exemptions as set forth in CEQA Guidelines Section 153000.2 apply to this project.

FISCAL IMPACT

The lease will be paid from the Sewer Enterprise Fund and since it will utilize City-owned equipment, no additional telephone or data communications fees will be required. Adequate funding for this lease is appropriated in the Liquid Waste (Wastewater Management Division) Operating Budget.

Attachment:
Lease Agreement