



COUNCIL AGENDA: 12-04-07  
ITEM: 2.14

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Katy Allen

**SUBJECT:** APPROVAL OF A SUBLEASE  
AMENDMENT COYOTE PEAK

**DATE:** 11-13-07

Approved

Date

11/14/07

**COUNCIL DISTRICT:** Citywide

## RECOMMENDATION

Approval of a first amendment to a sublease agreement with American Tower, L.P., successor in interest to American Radio Systems, for the use by the City of portions of the communications facility and radio tower on Coyote Peak within the Santa Teresa County Park extending the term of the agreement by 120 months while modifying and adding to the equipment to be installed on the premises.

## OUTCOME

By approving this amendment, Council authorizes the extension of the existing sublease for an additional ten years with an annual rent of \$33,916.66 for the first year with annual increases equal to the percentage increase in the consumer price index in each of the nine remaining years and gives the CITY the opportunity to upgrade it's 911 emergency communications equipment on the site.

## BACKGROUND

The City of San José has been leasing both tower and rack space at the communications facility on Coyote Peak in Santa Teresa County Park as a part of the City's public police and fire safety dispatch and emergency telephone answering system (911). On June 4, 1996, the County entered into a lease agreement with Baycom San Jose, LP (Baycom) that established Baycom as the master tenant at the Coyote Peak facility and authorized Baycom to negotiate with the City so that the City could continue its use of the facility as a tenant of Baycom and subtenant of the County.

On August 1, 1996, American Radio Systems Corporation (American Tower, L.P.) purchased Baycom's right title and interest in and to the master lease; the County consented to such assignment, and American Radio Systems became the master tenant under the master lease. Subsequently in June of 1997 the City entered into a ten year sublease with American Radio Systems for the City's continued use of the Coyote Peak Communications facility. Although this

agreement contained an option to extend the term for an additional ten years, the option was not correctly exercised and the agreement expired on June 30, 2007.

### **ANALYSIS**

At the request of the Department of General Services, Public Works Real Estate staff has negotiated an amendment to the previous sublease commencing July 1, 2007 extending the term of the agreement for an additional 120 months at a rental rate of \$2,652.60 per month the first six months increasing by \$347.41 in January of 2008 to \$3,000.01 per month through June of 2008 then increasing by a percentage equal to the percentage increase in the Consumer Price Index for the San José Metropolitan area. The rent shall be adjusted on an annual basis thereafter for the remainder of the sublease.

In addition to extending the term to June 30, 2017, the amendment allows the City to upgrade and add additional equipment to the Coyote Peak site. The amendment contains wording that would nullify the agreement if a structural analysis of the premises indicates that the premises is not suitable for the City's modified equipment unless City and American Tower Systems agree to structural modifications to the facility that would accommodate the City's modified equipment.

The lease contains language allowing for cancellation of this lease with 180 days written notice.

### **EVALUATION AND FOLLOW-UP**

Staff will determine suitability of existing tower for upgraded equipment. Staff will process payments as required in agreement.

### **POLICY ALTERNATIVES**

Not applicable.

### **PUBLIC OUTREACH/INTEREST**

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

The approval of this agreement does not meet any of the criteria identified by the Sunshine Reforms Work Plan. This memorandum will be posted on the City's website for the December 4, 2007 Council agenda.

**COORDINATION**

This memorandum has been coordinated with the Departments of General Services, Planning, Building and Code Enforcement and the City Manager's Budget Office. The City Attorney's Office has reviewed the agreement and approved it as to form.

**FISCAL/POLICY ALIGNMENT**

This item is consistent with the General Budget Principles in that it protects a vital core city service.

**COST SUMMARY/IMPLICATION**

The total rent for the first-year of this lease is \$33,916.66 with annual increases based on the percentage increase of the Consumers Price Index.

**BUDGET REFERENCE**

Fund #	Appn #	Appn. Name	RC#	Total Appn.	Amt. For Contract	2007-2008 Adopted Operating Budget Page	Last Budget Action (Date, Ord. No.)
001	0592	General Services Non personal /Equipment	000610	\$8,950,749	\$33,916.66	VIII-62	10/16/2007, 28143

**CEQA**

CEQA: Mitigated Negative Declaration, File # PP 70-055.

*Katy Allen*  
KATY ALLEN  
Director, Public Works Department

For questions please contact PHIL PRINCE, DEPUTY DIRECTOR, at 408-535-8300.  
NS:ppj,rlc