



CITY COUNCIL AGENDA REPORT



DEPARTMENT: City Manager's Office

MEETING DATE: November 20, 2018

PREPARED BY: Angela Cho, Management Analyst

AGENDA LOCATION: AR-1

TITLE: Letter Agreements with TowerPoint Capital, LLC for Exclusive Option to Purchase Lease Interest in Wireless Communication Sites on City Property

OBJECTIVE: To approve letters of intent to sell the City's interest in three wireless cell tower sites to TowerPoint Capital, LLC, for \$1,075,000.

BACKGROUND: During the past few years, the wireless telecommunications industry has been evolving rapidly to accommodate the pending roll-out of 5G wireless technology. Cell phone carriers, tower companies, and even cable television companies are all gearing up to rollout "small cell" facilities that will accommodate the next generation of wireless connectivity that offer 5G networks speeds. Based on current market trends, the widespread establishment of 5G wireless network speeds has the potential to revolutionize "the internet of things" by facilitating the deployment of everything from smart homes, to autonomous vehicles, to data-centric cities.

To that end, various telecommunication entities are actively – and successfully – lobbying members of the Federal government and state legislatures for the right to install wireless facilities on public property for a fraction of the cost that they are paying today for wireless cell tower leases featuring 4G technology. Currently, there are at least 14 states that have passed small cell legislation in various forms (with all of those laws containing small cell legislative subsidies that cap rents at just \$250 per year per small cell node), and similar legislation was narrowly defeated in California last year. In addition, this past September, the Federal Communications Commission (FCC) established a new regulatory category of "small wireless facilities" which aims to impose substantial restrictions on how state and local jurisdictions regulate 5G wireless facilities in the public rights-of-way, including the imposition of a \$500 cap for any permitting process, and a maximum rent cost of \$270 / year for any single 5G node.

Given this emerging regulatory framework governing small cell sites, municipalities are likely going to have to provide a compelled subsidy for the telecommunication industry by capping the rents that can be charged to private wireless carriers and tower companies for use of public infrastructure. And of particular note, this advantageous cost structure means that in the future, small cell facilities will be significantly cheaper to operate than traditional cell towers, both in terms of acquiring the underlying property rights, as well as for facility and equipment costs.

These factors have provided telecommunication companies, wireless carriers, and cell tower companies tremendous leverage in renegotiating existing lease terms for current 4G cell sites, and furthermore, provides a built in financial incentive for these private companies to more quickly decommission existing tower sites that are more costly to operate and maintain than the new 5G small cell sites.

AR-1

Against that backdrop, the City has spent considerable time these past few months conducting further analysis of our existing 4G cell tower leases. Currently, Monrovia has three such leases, where a cell phone carrier has leased City property for use as a 4G cell tower node. Our agreements include leases with AT&T (\$2,138.64 / month payment to the City), T-Mobile (\$2,059.48 / month payment to the City), and Verizon (\$2,328.75 / month payment to the City).

However, as part of our lease agreements with each entity, all three carriers have the right to terminate their leases with the City for any reason and with no penalties, giving them tremendous leverage to try and renegotiate current lease costs. And to that end, AT&T and T-Mobile have both recently approached the City asking to lower their monthly payment – AT&T is requesting a reduction of 39.3% (down to \$1,297.92 / month) while T-Mobile has demanded a 36.9% reduction (down to \$1,300.00 / month).

Given the evolving nature of wireless connectivity, emerging 5G technology, and the relative ease with which cell phone carriers can cancel their existing lease arrangements, staff has spent considerable time assessing our options to identify the best way in which we can protect the City's interests. After extensive review and research, we believe we have identified an option that provides an optimal level of protection for the City from future changes in cell tower technology, while also providing the City with a substantial one-time infusion of cash.

The identified opportunity involves selling the rights to all three of our existing cell tower leases to TowerPoint Capital, LLC (TowerPoint), for an upfront payment of \$1,075,000. In addition, pursuant to the terms of the proposed transaction, TowerPoint will give the City 55% of any new revenues that they extract from renegotiations with the three current wireless carriers, and also will provide the City with 55% of any new revenues that they earn from finding new tenants. Of note, this particular option also protects the City from any future rent reductions, as TowerPoint will absorb any future losses at no cost to Monrovia.

ANALYSIS: During the past few months, staff has engaged a comprehensive review of current trends in the wireless industry as it relates to our pending transition to the 5G wireless platform through establishment of small cell sites. That analysis has led staff to the conclusion that our existing cell tower leases with AT&T, T-Mobile, and Verizon are all at risk of being modified significantly to the City's detriment, or cancelled altogether.

That sentiment has been reinforced through recent actions by AT&T and T-Mobile, both of whom currently lease property on the City's telecommunication tower in the Civic Center complex at 140 East Lime Avenue. Both carriers have recently requested significant lease payment reductions.

Also, the City leases property to Verizon Wireless in the Sawpit Dam Parking Lot at Canyon Park. And while Verizon Wireless has not yet requested any rent reduction, staff does believe that the request to lower their payments will be coming in the near future.

An overview of our current cell tower lease arrangements is outlined in greater detail below.

1) AT&T Cell Tower Lease Overview

- a. Current Rent: \$2,138.64 / month with an annual 3% rent escalation cost
- b. AT&T Renegotiation Demand: \$1,297.92 / month with a 3% rent escalation every 5 years and a payment guarantee worth 10-years of lease payments (which equates to a guaranteed value of \$158,086.25)

2) T-Mobile Cell Tower Lease Overview

- a. Current Rent: \$2,059.48 / month with an annual 2% rent escalation cost
- b. T-Mobile Renegotiation Demand: \$1,300.00 / month with an 8% rent escalation every 5 years and a payment guarantee worth 10-years of lease payments (which equates to a guaranteed value of \$162,240.00)

3) Verizon Cell Tower Lease Overview

- a. Current Rent: \$2,328.75 / month with an annual 3.5% rent escalation cost.
- b. Verizon Renegotiation Demand: n/a

As a means to mitigate the risks associated with these lease arrangements, especially in light of the evolution of 5G technology and small wireless facilities, staff recommends that the City Council consider selling the rights to all three leases to TowerPoint.

TowerPoint is a financial services firm that specializes in acquiring and managing macro cell tower leases, and has offered to pay the City \$1.075 million for the rights to all three of our existing cell tower agreements. Pursuant to the proposed terms of the transaction, in exchange for a payment of \$1.075 million to the City, any future lease revenue derived from the three existing agreements would be given to TowerPoint. In addition, under the agreement negotiated by the City, TowerPoint has also offered to provide the City with 55% of any new revenues they extract in the future, while also absorbing any rent reductions with no impact to Monrovia.

If the City Council should authorize the execution of the proposed agreements, TowerPoint will engage in a due-diligence process that should take around 30-days. During that time, TowerPoint will run title reports on the existing properties in question, send their staff out to assess the equipment located on the City's infrastructure, and coordinate an escrow process through which the transfer of funds would occur. After reviewing multiple options and taking into account current market trends, staff believes that the TowerPoint deal provides the best option for the City moving ahead.

ENVIRONMENTAL IMPACT: There is no environmental impact associated with approving this action.

FISCAL IMPACT: The City will receive \$1,075,000 in a lump sum payment upon the closing of the deal, which should take 30-days from the time that we execute the letters of intent. Additionally, the City will receive 55% of all future revenues received through a revenue sharing agreement on any future lease payments made.

OPTIONS: The following options are presented for City Council consideration:

1. Approve the Letters of Intent with TowerPoint Capital, LLC, thereby selling the City's lease interest in our three wireless communication sites for \$1,075,000.
2. Do not approve the agreements and provide additional direction to staff.

RECOMMENDATION: Staff recommends that the City Council select Option 1, thereby approving the agreements with TowerPoint Capital, LLC.

COUNCIL ACTION REQUIRED: If the City Council concurs, the appropriate action would be a motion to approve the Letter Agreements with TowerPoint Capital, LLC, and authorize the City Manager to execute the necessary documents in a form approved by the City Attorney.

Exhibit A

Site Location and Lease Terms

Site Location: 140 E Lime Ave, MONROVIA, CA 91016-2840

Wireless Tenants	Current Rent	Rent Payment Frequency	Escalation (CPI, % or \$)	Escalation Frequency	Date of Next Escalation
AT&T	\$1,982.75	Monthly	3%	Annual	November 1, 2019
T-Mobile	\$2,033.61	Monthly	2%	Annual	October 1, 2019

Pricing is based on the Lease Terms above and is subject to confirmatory due diligence of the Lease Terms.

*** Currently, your records indicate that AT&T pays \$1,982.75 monthly and T-Mobile pays \$2033.61 monthly. Per the respective leases, it appears that AT&T should be paying \$2138.64 monthly and T-Mobile should be paying \$2059.18 monthly. As we work through our due diligence process, we will confirm the correct monthly rents for both tenants and if we conclude that the city should be collecting the higher rental rates, we will then increase the purchase by \$29,885 at closing for an updated purchase price of 690,000.00.**

Initial
Here:

Exhibit B

Required Due Diligence Items

1. Executed Lease including any and all Amendments thereto (as well as any lease commencement letters, notices, or other correspondence regarding the Lease)
2. Proof of Rent Payments under the Lease (minimum of 3 months received in the last 6 months); e.g.: copies of rent checks/stubs and/or direct deposit statements.
3. Landlord Request for Information (RFI): Completed and executed including social security numbers for individuals with 20% or greater ownership positions in the entity which owns the property.
4. Landlord's comments or Landlord's counsel's comments, if any, to the Easement Agreement ("Easement") to be provided under separate cover (to be finalized in a mutually agreeable Easement) or return the Easement with each page initialed showing approval of the form Easement.
5. If an existing mortgage is in place on the property: A Mortgage Statement and Lender contact information for obtaining a non-disturbance agreement from Lender (required only if the property is encumbered by a Mortgage, Deed of Trust, Line of Credit or similar instrument).
6. Legal entity organizational documents (including any Amendments thereto) showing proof of authority, as applicable below, for all entities owning an interest in the Property:

Corporation	LLC	General Partnership	Limited Partnership	Condominium Association	Cooperative Corporation (i.e.: Housing Co-op)	Trust
Articles of Incorporation	Articles of Incorporation	Certificate of Partnership	Certificate of Limited Partnership	Condominium Declaration	Articles of Incorporation	Trust Agreement
Signed Corporate Bylaws	Signed Operating Agreement	Signed General Partnership Agreement	Signed Limited Partnership Agreement	Signed Condominium Bylaws	Signed Corporate Bylaws	Certificate of Trust

Within 10 days of signing this Letter Agreement, I agree to provide to TowerPoint the Required Due Diligence Items listed above to facilitate a timely close under the terms of this Letter Agreement.

Initial
Here:

Exhibit A

Site Location and Lease Terms

Site Location: 1 Monrovia Nature Center Rd, Monrovia, CA 91016

Wireless Tenants	Current Rent	Rent Payment Frequency	Escalation (CPI, % or \$)	Escalation Frequency	Date of Next Escalation
Verizon	\$2,328.75	Monthly	3.5%	Annual	April 1, 2019

Pricing is based on the Lease Terms above and is subject to confirmatory due diligence of the Lease Terms.

Initial
Here:

Exhibit B

Required Due Diligence Items

1. Executed Lease including any and all Amendments thereto (as well as any lease commencement letters, notices, or other correspondence regarding the Lease)
2. Proof of Rent Payments under the Lease (minimum of 3 months received in the last 6 months); e.g.: copies of rent checks/stubs and/or direct deposit statements.
3. Landlord Request for Information (RFI): Completed and executed including social security numbers for individuals with 20% or greater ownership positions in the entity which owns the property.
4. Landlord's comments or Landlord's counsel's comments, if any, to the Easement Agreement ("Easement") to be provided under separate cover (to be finalized in a mutually agreeable Easement) or return the Easement with each page initialed showing approval of the form Easement.
5. If an existing mortgage is in place on the property: A Mortgage Statement and Lender contact information for obtaining a non-disturbance agreement from Lender (required only if the property is encumbered by a Mortgage, Deed of Trust, Line of Credit or similar instrument).
6. Legal entity organizational documents (including any Amendments thereto) showing proof of authority, as applicable below, for all entities owning an interest in the Property:

Corporation	LLC	General Partnership	Limited Partnership	Condominium Association	Cooperative Corporation (i.e.: Housing Co-op)	Trust
Articles of Incorporation	Articles of Incorporation	Certificate of Partnership	Certificate of Limited Partnership	Condominium Declaration	Articles of Incorporation	Trust Agreement
Signed Corporate Bylaws	Signed Operating Agreement	Signed General Partnership Agreement	Signed Limited Partnership Agreement	Signed Condominium Bylaws	Signed Corporate Bylaws	Certificate of Trust

Within 10 days of signing this Letter Agreement, I agree to provide to TowerPoint the Required Due Diligence Items listed above to facilitate a timely close under the terms of this Letter Agreement.

Initial
Here: