

THIS IS A PROPOSED DRAFT AND WILL BE REPLACED BY THE FINAL, SIGNED ORDINANCE OR RESOLUTION ADOPTED BY CITY COUNCIL.

ORDINANCE

AUTHORIZING THE EXTENSION TO THE SOUTH BREEZE TOWER LEASE AGREEMENT WITH AMERICAN TOWER, L.P. IN SUPPORT OF THE ENHANCED DIGITAL ACCESS COMMUNICATION SYSTEM USED BY THE CITY OF SAN ANTONIO'S POLICE AND FIRE DEPARTMENTS, BEXAR COUNTY AND SURROUNDING PARTICIPATING AGENCIES. THE OVERALL OPERATIONAL INCREASE IS \$5,395.68 FROM APRIL 22, 2021 TO APRIL 21, 2024, FOR AN OVERALL TOTAL COST OF \$171,498.32. THE RECURRING MONTHLY FEE UNDER THIS AGREEMENT SHALL INCREASE FROM \$4,188.41 TO \$4,500.00 ON APRIL 22, 2021, FOR AN ANNUAL COST OF \$51,912.38 FOR FY 2021. FUNDING FOR FY 2021 IS AVAILABLE IN THE FY 2021 INFORMATION TECHNOLOGY SERVICES FUND BUDGET AND FUNDING FOR FUTURE YEARS IS SUBJECT TO CITY COUNCIL APPROVAL OF THE ANNUAL BUDGET.

* * * * *

WHEREAS, on February 18, 2001 City Council Ordinance 93402 approved a site agreement with American Tower, L.P. to affix antennae on the existing tower at 23706 South Breeze and to place transmission equipment at the site as part of the 800 MHZ Public Safety Radio System; and

WHEREAS, on June 18, 2009, City Council Ordinance 2009 06-18-0515 approved the authorization of an amendment to the existing lease with American Tower, L.P. increasing the annual amount from \$15,000 to \$27,120 for the installation of an antenna system on the tower at 23706 South Breeze; and

WHEREAS, the second amendment to the co-location agreement extends the current agreement to April 21, 2024 and aligns with the completion and acceptance of the new P25 Phase II Public Radio System; and

WHEREAS, the recurring monthly fee under this agreement shall increase from \$4,188.41 to \$4,500.00 on April 22, 2021 with the overall operational increase is \$5,395.68 from April 22, 2021 to April 21, 2024, for an overall total cost of \$171,498.32; and

WHEREAS, the Monthly License Fee shall be increased by four percent (4%) ("Annual Escalator") effective upon April 22, 2022, and each anniversary thereafter during the term; and

WHEREAS, after April 21, 2024, all EDACS equipment will be shut down as all land-mobile radio (LMR) communications will be supported by the new P25 Phase II Public Safety Radio Communication System; and

WHEREAS, this second amendment to extend the license agreement will allow the City to continue operating critical communications equipment to allow for continuity of radio communications and provide public safety services to the community; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or designee, or the Director of the ITSD Department or designee, is authorized to execute the second amendment to the South Breeze Tower license agreement with American Tower, L.P. in support of the Enhanced Digital Access Communication System. A copy of the extension agreement, in final form, is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. Funding in the amount of \$51,912.38 for this ordinance is available in Fund 74001000, Cost Center 0905010002 and General Ledger 5206010 as part of the Fiscal Year 2021 Adopted Budget approved by City Council.

SECTION 3. Additional funding for future years is contingent upon City Council approval of the Fiscal Year 2022 Budget and subsequent budgets that fall within the term length of this contract.

SECTION 4. Payment is authorized to American Tower, L.P. and should be encumbered with a purchase order.

SECTION 5. The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 6. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this _____th day of _____, 2021.

M A Y O R
Ron Nirenberg

ATTEST:

APPROVED AS TO FORM:

Tina Flores, City Clerk

Andrew Segovia, City Attorney

ATTACHMENT I - Second Amendment to Site License

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Licensor Site Name/Number: SOUTH BREEZE TX / 90322
Licensor Contract Number: SW020289
Licensee Site Name/Number: N/A / N/A

SECOND AMENDMENT TO LICENSE AGREEMENT

This Second Amendment (the "Second Amendment") to that certain License Agreement dated February 22, 2001 by and between American Tower, L.P. and City of San Antonio, as amended by that certain First Amendment to License Agreement dated June 22, 2009 (collectively, the "Agreement") is made and entered into as of the latter signature date hereof, by and between American Towers LLC, a Delaware limited liability company, as successor-in-interest to the Agreement (the "Licensor") and City of San Antonio (the "Licensee") (collectively, the "Parties").

RECITALS

WHEREAS, Licensor owns a certain communications tower on a certain parcel of land located at 23706 South Breeze, San Antonio, TX, San Antonio, TX 78258-7319 more commonly known to Licensor as the SOUTH BREEZE TX tower site (the "Tower Site"); and

WHEREAS, Licensor and Licensee entered into the Agreement for the use of a certain portion of the Tower Site; and

WHEREAS, the Parties agree to extend the term of the Agreement, among other things, all on the terms and conditions as set forth herein.

NOW THEREFORE, in consideration of the foregoing promises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

- 1) Licensor and Licensee agree to extend the term of the Agreement commencing on April 22, 2021 (the "Extension Term Commencement Date") for a period of three (3) years (the "Extension Term").
- 2) Immediately following the expiration of the Extension Term, there shall be two (2) additional periods of one (1) year each (each a "Renewal Term"). The Agreement shall automatically renew for each successive Renewal Term unless either Party notifies the other in writing of its intention not to renew this Agreement at least ninety (90) days prior to the end of the then existing term.
- 3) Effective upon April 22, 2021, the Monthly License Fee shall be increased by Three Hundred Eleven and 59/100 Dollars (\$311.59) per month ("Increased Fee") and adjusted pursuant to the Annual Escalator as set forth on Section 4 of this Second Amendment. The Increased Fee for any fractional month at the beginning or end of the period shall be appropriately prorated.
- 4) Effective upon April 22, 2022, and each anniversary thereafter during the term, the Monthly License Fee shall be increased by four percent (4%) ("Annual Escalator").

Licensor Site Name/Number: SOUTH BREEZE TX / 90322
Licensor Contract Number: SW020289
Licensee Site Name/Number: N/A / N/A

- 5) Licensor and Licensee agree and acknowledge that all future payments of the Monthly License Fee shall be made to the Licensor at the following remittance address:

American Tower Corporation
29637 Network Place
Chicago, IL 60673-1296

- 6) The Parties agree that (i) a digital or electronic signature on this Second Amendment and/or (ii) a fully executed scanned or electronically reproduced copy or image of this Second Amendment shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence hereof notwithstanding the failure or inability to produce or tender an original, manually executed counterpart of this Second Amendment and without the requirement that the unavailability of such original, manually executed counterpart of this Second Amendment first be proven.
- 7) Capitalized terms contained herein, unless otherwise defined, are intended to have the same meaning and effect as that set forth in the Agreement.
- 8) All other terms and provisions of the Agreement remain in full force and effect.

[SIGNATURES APPEAR ON THE NEXT PAGE]

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Licensor Site Name/Number: SOUTH BREEZE TX / 90322
Licensor Contract Number: SW020289
Licensee Site Name/Number: N/A / N/A

IN WITNESS WHEREOF, the Parties hereto have set their hands to this Second Amendment to that certain License Agreement as of the day and year written below:

LICENSOR:
American Towers LLC, a
Delaware limited liability company

LICENSEE:
City of San Antonio

By: 

By: _____

Name: Daniel Boe

Name: _____

Title: VP-Legal

Title: _____

Date: 4/20/2021

Date: _____