



## Legislation Details (With Text)

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**Title:** Approve agreements with Unison to complete the purchase of a defined easement for the cell site at Fire Station 13  
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Date	Ver.	Action By	Action	Result
8/21/2014	1	City Council	approved	Pass
7/31/2014	1	City Council	continued	

## REPORT TO THE CITY COUNCIL

**August 21, 2014**

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Fire Department

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### SUBJECT

Approve agreements with Unison to complete the purchase of a defined easement for the cell site at Fire Station 13

### RECOMMENDATION

Staff recommends Council approve agreements with Unison to complete the purchase of a defined easement for the cell site at Fire Station 13 through March 31, 2023.

### EXECUTIVE SUMMARY

Approval of the recommended action will allow the Fire Department (Department) to complete the defined easement process for the cell tower site located at Fire Station 13 that was approved by Council on May 22, 2014. This defined easement will provide a lump sum, one-time payment of \$203,073 to the City in exchange for the current scheduled rent stream of \$1,651 per month (plus

one CPI escalator in 2018) for the term of the assigned easement (expiring March 31, 2023). In addition, any future rent received by Unison over and above the current base monthly fee shall be split 50/50 between the City of Fresno and Unison. Ownership of the overall property remains with the City subject to the easement.

## **BACKGROUND**

On April 1, 1993, City 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 term of the original agreement was 25 years, expiring March 31, 2018, and the agreement provides for a monthly license fee payable to the City of Fresno that is adjusted every five years by the CPI.

In 2013, Crown Castle GT Company LLC requested an extension of the existing agreement and on February 6, 2014, City Council approved a five-year term extension to March 31, 2023, for a one-time, lump sum payment of \$10,000. The current monthly fee is \$1,651.28 and provides \$19,815.36 in General Fund revenues annually. This amount will be subject to one final CPI adjustment in April 2018.

In late 2013 the Department was also contacted by Unison about the possibility of assignment of the Crown Castle GT Company LLC agreement. Under the approved agreement, Unison will receive the currently scheduled monthly rent stream (including the April 2018 escalator) for the remaining term of the original agreement in exchange for a one-time, lump sum payment of \$203,073. In addition, if Unison engages any future tenants on the cell site, any rental revenues would be split 50/50 between the City of Fresno and Unison. Ownership of the overall property remains with the City of Fresno subject to the easement.

Unison's offer is greater than the total lease rent due under the remaining term of the existing lease (assuming an April 2018 CPI escalator of twelve percent, which is the average of the prior four CPI adjustments). Staff calculated the existing contract estimated revenues receivable through March 2023 to be \$185,100. This provides positive net proceeds of \$17,973 by taking the lump sum payment now, and any future revenue increases from the site will be split 50/50 between Unison and the City. Staff also performed present and future value comparisons which indicate that the Unison lump sum payment is financially beneficial and it eliminates the risk of decreased revenues that might occur in the future should the current contractor decommission this site due to changes in the communications industry.

City Council approved the Terms of Agreement and Document Checklist for this transaction on May 22, 2014. Since that time, staff has been working with Unison to finalize the agreements necessary to complete the transaction. The Net Profits Agreement outlines Unison's obligation to pay the City of Fresno fifty percent of any rental revenues from future cell site tenants. The Wireless Communication Easement and Assignment Agreement grants Unison an exclusive easement for the transmission and reception of any and all wireless communication signals and a non-exclusive easement over portions of the property at Fire Station 13 to allow ingress and egress to the cell tower site for installation, repair, maintenance, etc.

The City Attorney's Office has reviewed and approved as to form the proposed Agreements.

## **ENVIRONMENTAL FINDINGS**

By the definition in the California Environmental Quality Act (CEQA) Guidelines Section 15378, an agreement to purchase an easement does not qualify as a "project" as defined CEQA.

## **LOCAL PREFERENCE**

Local preference was not considered because the purchase of an easement does not include a bid or award of a construction or services contract.

## **FISCAL IMPACT**

This transaction will provide a one-time lump sum payment of \$203,073 and the Department will no longer appropriate General Fund revenues of approximately \$19,800 annually through FY 2023. Staff will return to Council for appropriation of the revenues and proposed expenditures at a future date.

### **Attachments:**

- Unison Net Profits Agreement
- Unison Easement Agreement