

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF THE FOLLOWING:
SAN BERNARDINO COUNTY
BOARD GOVERNED COUNTY SERVICE AREAS
SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT
AND RECORD OF ACTION**

**REPORT/RECOMMENDATION TO THE BOARD OF DIRECTORS
OF THE FOLLOWING:
SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT
INLAND COUNTIES EMERGENCY MEDICAL AGENCY
IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY
BIG BEAR VALLEY RECREATION AND PARK DISTRICT
BLOOMINGTON RECREATION AND PARK DISTRICT
AND RECORD OF ACTION**

October 8, 2024

FROM

LYNN FYHRLUND, Chief Information Officer, Innovation and Technology Department

SUBJECT

Non-Financial Terms of Service with Space Exploration Technologies Corp. for Starlink Satellite-Based Internet Service and Software Licenses

RECOMMENDATION(S)

1. Acting as the governing body for San Bernardino County, and as the governing body for the Board Governed County Service Areas; San Bernardino County Flood Control District; Big Bear Valley Recreation and Park District; Bloomington Recreation and Park District; In-Home Supportive Services Public Authority; Inland Counties Emergency Medical Agency; and San Bernardino County Fire Protection District, approve non-financial Terms of Service **(County Contract No. 24-983)** with Space Exploration Technologies Corp., including non-standard terms, for Starlink satellite-based internet service and software licenses, which shall remain in effect for as long as the County and its affiliated agencies continue to access or use the underlying software, or until terminated in accordance with the provisions of the agreement.
2. Acting as the governing body for San Bernardino County, designate the Chief Information Officer, Assistant Chief Information Officer, or IT Division Chief as the representative authorized for San Bernardino County to electronically accept the Terms of Service identified in Recommendation No. 1, and future updates to the agreement, subject to review by County Counsel, provided that such updated terms do not substantively modify the terms of the original agreement.
3. Acting as the governing body for the Board Governed County Services Areas; San Bernardino County Flood Control District; Big Bear Valley Recreation and Park District; Bloomington Recreation and Park District; In-Home Supportive Services Public Authority; Inland Counties Emergency Medical Agency; and San Bernardino County Fire Protection

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District, designate the Chief Executive Officer as the representative authorized for Board Governed County Services Areas; San Bernardino County Flood Control District; Big Bear Valley Recreation and Park District; Bloomington Recreation and Park District; In-Home Supportive Services Public Authority; Inland Counties Emergency Medical Agency; and San Bernardino County Fire Protection District to electronically accept the Terms of Service identified in Recommendation No. 1, and future updates to the agreement, subject to review by County Counsel, provided that such updated terms do not substantively modify the terms of the original agreement.

4. Direct the Chief Information Officer or Assistant Chief Information Officer to transmit printed copies of any updated terms to the Terms of Service related to the satellite-based internet services and software licenses that are electronically accepted to the Clerk of the Board of Supervisors within 30 days.

(Presenter: Lynn Fyhrlund, Chief Information Officer, 388-5501)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Improve County Government Operations.

Provide for the Safety, Health and Social Service Needs of County Residents.

FINANCIAL IMPACT

Approval of this item will not result in the use of discretionary General Funding (Net County Cost). The Space Exploration Technologies Corp. (SpaceX) Terms of Service (TOS) for Starlink satellite-based internet services is non-financial in nature and does not commit the Innovation and Technology Department (ITD), San Bernardino County (County), or its affiliated agencies to make any purchases. If future purchases are made in conjunction with the TOS, ITD, the County, and its affiliated agencies will adhere to purchasing policies and return to the Board of Supervisors/Board of Directors (Boards) for approval, if necessary.

BACKGROUND INFORMATION

Multiple County departments and affiliated agencies require satellite-based internet service to provide internet access in remote parts of the County where cable or fiber optic network infrastructure does not exist or in situations where mobility is required. Starlink is a satellite-based internet service provided by SpaceX that places thousands of small satellites in low Earth orbit that work in combination with ground transceivers.

On March 9, 2021 (Item No. 16), the Board of Supervisors approved Agreement No. 21-191 with SpaceX on behalf of the County for the provision of Beta Starlink, a service order and statement of work in the amount of \$61,464, plus applicable taxes, for the period of March 15, 2021, through March 14, 2022. The services order and statement of work allowed the County to purchase the required equipment to test Starlink to explore new technologies for the purpose of increasing services provided to county residents and communities served. The Beta Starlink testing was successful and met the needs of County departments and its affiliated agencies.

On October 24, 2023 (Item No. 83), the Boards approved of Starlink TOS, Acceptable Use Policy, and Software License and Usage Terms (collectively, Agreements), remaining in effect for as long as the County and its affiliated agencies continue to access or use the underlying software.

In July 2024, upon ITD's annual review of the Agreements, it was determined that SpaceX had issued a new TOS with no clear revision date. The new TOS significantly change the services offered, adding a standard and priority service plan for residential and mobile locations, as well

Non-Financial Terms of Service with Space Exploration Technologies Corp. for Starlink Satellite-Based Internet Service and Software Licenses
October 8, 2024

as clarifying and updating fees, penalties, and payment terms. This latest version of the TOS replaces the prior version but does not currently impact any of the services ITD receives.

The TOS is SpaceX's standard commercial agreement, which includes terms that differ or are omitted from the standard County contract. The TOS is a non-negotiable clickwrap agreement. The non-standard and missing terms include the following:

1. SpaceX may assign the TOS without notice to the County and without the County's approval.
 - (c) The County standard contract requires that the County must approve any assignment of the contract.
 - (d) Potential Impact: SpaceX could assign the TOS to a third party or business with which the County is legally prohibited from doing business due to issues of Federal debarment or suspension and conflict of interest, without the County's knowledge. Should this occur, the County could be out of compliance with the law until it becomes aware of the assignment and terminates the TOS.
2. All disputes arising under the TOS must be settled by binding arbitration.
 - (c) The County standard contract does not require arbitration.
 - (d) Potential Impact: Binding arbitration decisions are not appealable. In addition, disputes that might otherwise be settled in small claims court would incur arbitration costs that could exceed the costs of a small claims action, and the TOS amount.
3. The TOS does not require SpaceX to indemnify the County, as required by County Policies 11-05 and 11-07, including for intellectual property infringement claims.
 - (c) The County standard contract indemnity provision requires the contractor to indemnify, defend, and hold County harmless from third party claims arising out of the acts, errors or omissions of any person. The standard contract provision for intellectual property indemnity is: Contractor will indemnify, defend, and hold harmless County and its officers, employees, agents and volunteers, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by any goods or services.
 - (d) Potential Impact: SpaceX is not required to defend, indemnify or hold the County harmless from any claims, including indemnification for claims arising from SpaceX's negligent or intentional acts and intellectual property infringement. If the County is sued for any claim, including intellectual property infringement based on its use of SpaceX's software or services, the County may be solely liable for the costs of defense and damages, which could exceed the total TOS amount.
4. The County is required to indemnify SpaceX against all claims arising out of or related to the TOS, any and all uses of the account, and use of the Services, including: (a) all consequences resulting from actions by the County or any user of the County's account in violation of the TOS, the [Acceptable Use Policy](#), or any law or regulation; (b) negligent, reckless or intentionally wrongful acts by the County or any user of the County's account; and (c) any breach of the TOS by the County.
 - (c) The County standard contract does not include any indemnification or defense by the County of a contractor.
 - (d) Potential Impact: By agreeing to indemnify SpaceX, the County could be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred

Non-Financial Terms of Service with Space Exploration Technologies Corp. for Starlink Satellite-Based Internet Service and Software Licenses
October 8, 2024

against the County, time limited, or expense limited could be brought against SpaceX without such limitations and the County could be responsible to defend and reimburse SpaceX for costs, expenses, and damages, which could exceed the total TOS amount.

5. The TOS does not require SpaceX to meet the County's insurance standards as required pursuant to County Policies, 11-05, 11-07 and 11-07SP.
 - (c) County policy requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department and as set forth in County policy and in the County standard contract.
 - (d) Potential Impact: The County has no assurance that SpaceX will be financially responsible for claims that may arise under the TOS, which could result in expenses to the County that exceed the total TOS amount.
6. SpaceX's maximum liability to the County is limited to the total amount paid in the 6 months prior to the claim arising, without any exclusions for gross negligence, willful misconduct, or violation of law.
 - (c) The County standard contract does not include a limitation of liability.
 - (d) Potential Impact: Claims could exceed the liability cap and the TOS amount leaving the County financially liable for the excess.

ITD recommends approval of the revised SpaceX TOS associated with the Starlink services and software licenses, including non-standard terms, to maintain compliance and allow the County and its affiliated agencies to provide internet services where traditional internet services are not feasible due to infrastructure limitations, cost, or other connectivity challenges.

PROCUREMENT

The TOS, including non-standard terms, will be used to accompany future purchases to be approved, as necessary, per County Policy 11-04 Procurement of Goods, Supplies, Equipment and Services.

No other procurement action is related to this item. Starlink services can provide internet services in remote or infrastructure challenged locations of the County without the traditional communication infrastructure typically needed. The Purchasing Department supports the recommendation for a non-competitive procurement of Starlink satellite-based internet services and software from SpaceX, as the County's expansive and remote infrastructure-challenged areas could benefit from enhanced communications and improved government operations through this service.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on September 3, 2024; Purchasing (Jessica Barajas, Supervising Buyer, 387-2065) on September 4, 2024; Risk Management (Loretta Acuña, Staff Analyst II, 386-9039) on September 4, 2024; Finance (Iliana Rodriguez, 387-4025, Elias Duenas, 387-4052, Jessica Trillo, 387-4222, Ivan Ramirez, 387-4020, Carl Lofton, 387-5404, and Paul Garcia, 386-8392, Administrative Analysts) on September 20, 2024; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on September 23, 2024.

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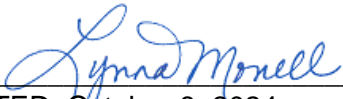
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Big Bear Valley Recreation and Park District
Bloomington Recreation and Park District

APPROVED (CONSENT CALENDAR)

Moved: Joe Baca, Jr. Seconded: Curt Hagman
Ayes: Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.
Absent: Col. Paul Cook (Ret.)

Lynna Monell, CLERK OF THE BOARD/SECRETARY

BY 
DATED: October 8, 2024



cc: IT - Thomas w/agree
Contractor - c/o IT w/agree
File - w/agree
CCM 10/15/2024