

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

February 8, 2022

FROM

TERRY W. THOMPSON, Director, Real Estate Services Department

LARRY AINSWORTH, Chief Information Officer, Innovation and Technology Department

SUBJECT

Special Use Permit with the United States of America for Land for the Innovation and Technology Department at Keller Peak Near Running Springs

RECOMMENDATION(S)

1. Approve a 30-year Special Use Permit **Agreement No. 22-61** with the United States of America, acting through the United States Department of Agriculture, Forest Service, to authorize the installation and operation of an existing diesel back-up generator on approximately 15 square feet of land at the Keller Peak Communication Site near Running Springs, commencing and retroactive to January 1, 2020 through December 31, 2049, for the Innovation and Technology Department at no fee to the County.
2. Adopt a finding of exemption under the California Environmental Quality Act and direct the Clerk of the Board of Supervisors to post the Notice of Exemption for the Special Use Permit.

(Presenter: Terry W. Thompson, Director, 387-5000)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.

Pursue County Goals and Objectives by Working with Other Agencies.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). There are no fees payable by the County for this 30-year Special Use Permit Agreement (Agreement) to authorize the County's installation and operation of a diesel back-up generator on approximately 15 square feet of federal land. While the Agreement typically requires the payment of fees as determined by the United States Department of Agriculture, Forest Service (DA-FS), acting on behalf of the United States of America (US), DA-FS waives collection of Agreement fees from governmental users under current guidelines. Other costs associated with this Agreement are maintenance and fuel costs for the back-up generator, which are considered minimal, and will be paid from the Innovation and Technology Department (ITD) budget (1200304020). Sufficient appropriation is included in the ITD Telecommunication Services 2021-22 budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

The recommended action will provide for a new Agreement with the US, acting through the DA-FS, for a term of 30 years, commencing and retroactive to January 1, 2020 and expiring on December 31, 2049, providing federal authorization for the County's prior installation and for the

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continuing operation of a diesel back-up generator in support of the County's public safety communication system on approximately 15 square feet of DA-FS controlled land at Keller Peak near Running Springs at no cost to the County.

On January 11, 2005 (Item No. 35), the Board of Supervisors (Board) approved License Agreement No. 05-33 (License) with American Towers, Inc. (AT) for the County's use of antenna and rack space on AT's tower, which tower is located on federal land that is subject to a master agreement between AT and the US. The original term of the AT License was for the period of December 1, 2004 through November 30, 2009 with two five-year automatic options to extend the term of the license. In the 17 years since the AT License was originally approved, the term was automatically extended through November 30, 2019 pursuant to the extension options in the original License and the Board has approved two amendments, as listed below, to expand the use area by adding antenna and rack space on AT's tower and back-up generator space on AT's grounds, extend the term through January 31, 2025, and add two five-year automatic options to extend the License, which if both are exercised would result in an aggregate term through January 31, 2035.

<u>Amendment No.</u>	<u>Approval Date</u>	<u>Item No.</u>
1	January 26, 2016	20
2	January 28, 2020	39

During a site inspection by the DA-FS, the County's installed back-up generator was noted, and DA-FS notified the County that under DA-FS guidelines, despite the master agreement between AT and the US and the AT License, all improvements placed on Federal lands require a separate authorization from the DA-FS. On September 17, 2020, at the request of ITD, the Real Estate Services Department (RESA) submitted an application for Transportation and Utility Systems and Facilities on Federal Lands to DA-FS for a separate authorization for the prior installation and continued operation of a diesel back-up generator on the 15 square feet of land at Keller Peak that is already licensed by the County from AT. Required physical site inspections by DA-FS biological, and environmental staff, and background investigation of the site have delayed presentation of this Agreement for Board approval. The term of the Agreement commences retroactive to January 1, 2020, to reflect the installation date of the back-up generator under the AT License.

This new, 30-year Agreement with the US, acting through DA-FS, provides for separate federal authorization recognizing the prior installation and authorization for the continued operation of a diesel back-up generator on approximately 15 square feet of DA-FS-controlled land located at Keller Peak near Running Springs.

Staff has reviewed the proposed Agreement pursuant to the California Environmental Quality Act. (CEQA) and determined it to be categorically exempt from further environmental review in accordance with Section 15301 of the CEQA guidelines.

Summary of Agreement Terms

Permitter: United States of America,
Department of Agriculture, Forest Service
(Jody Noiron, Forest Supervisor,

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	San Bernardino National Forest)
Location:	Keller Peak Communication Site
Size:	Approximately 15 square feet of land
Term:	30 years, commencing January 1, 2020 and expiring on December 31, 2049
Options:	None
Fee:	None for County use (waived by current DA-FS policy for government entities)
Improvement Costs:	Provided by County
Maintenance:	Provided by County
Insurance:	Both parties are self-insured public entities
Right to Terminate:	The County has no right to terminate except due to default; the License is revocable and terminable by Permitter at any time for public purposes

The Agreement includes terms that differ from the standard County contract. The non-standard terms include the following:

1. The County will indemnify, defend, and hold the US harmless for its use of federal land and for any release, or threatened release, of hazardous substances or hazardous waste, including remediation, in or near the use area or in connection with the County's activity on the use area.
 - The County standard contract does not include any indemnification or defense by the County of a contractor.
 - Potential Impact: By agreeing to indemnify the US, the County could be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred against the County, could be brought against the US and the County would be responsible to defend and reimburse the US for costs, expenses, and damages, which could exceed the total contract amount.
2. The term of the Agreement, which expires December 31, 2049, currently exceeds the term of the AT License, which is scheduled to expire on January 31, 2025, and at the latest on January 31, 2035, if both automatic extension options are exercised. In addition, the ground area of 15 square feet is subject to both the AT License and the Agreement, which could result in a conflict.
 - Potential Impact: The DA-FS did not agree to adjust the term of the Agreement to match the term of the AT License. Therefore, should the County not extend the term of AT License in the future to match the term of the Agreement, the County would

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remain subject to the provisions and conditions of the Agreement, which could result in ongoing liabilities for a space that the County may not need.

PROCUREMENT

This Agreement is exempt from the provisions of County Policy No. 12-02 – Leasing Privately Owned Real Property for County Use, because the real property is owned by a governmental agency.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Agnes Cheng, Deputy County Counsel and Bonnie Uphold, Deputy County Counsel, 387-5455) on December 16, 2021; Innovation and Technology Department (Tim Trager, Chief, Public Safety Communications Division, 388-5563) on January 28, 2022; Purchasing Department (Bruce Cole, Supervising Buyer, 387-2148) on January 28, 2022; Finance (Sofia Almeida, Administrative Analyst, 387-4378 and Carl Lofton, Administrative Analyst, 387-5404) on January 21, 2022; and County Finance and Administration (Diana Atkeson, Deputy Executive Officer, 387-4376) on January 21, 2022.

(KB: 677-7961)

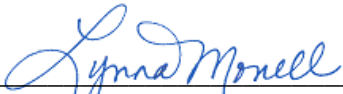
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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Joe Baca, Jr. Seconded: Dawn Rowe
Ayes: Col. Paul Cook (Ret.), Janice Rutherford, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: February 8, 2022



cc: RESD - Thompson w/agree for sign w/CEQA & receipt
Contractor - C/O RESD w/agree
File - w/agree w/CEQA & receipt
CCM 02/8/2022