

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

November 17, 2020

FROM

TERRY W. THOMPSON, Director, Real Estate Services Department

LARRY AINSWORTH, Chief Information Officer, Information Services Department

SUBJECT

Lease Agreement with the United States of America for Land for the Information Services Department in the Oak Hills Area

RECOMMENDATION(S)

1. Approve an approximately 30-year Communications Use **Lease Agreement No. 20-1083** with the United States of America, acting through the United States Department of Agriculture, Forest Service, for the use of approximately 800 square feet of land for the construction, operation, and maintenance of a County of San Bernardino public safety communication facility, located at the Cajon Summit Communication Site in the Oak Hills Area, commencing upon full execution of the Communication Use Lease Agreement through December 31, 2050 at no rental cost to the County.
2. Adopt a finding of exemption under the California Environmental Quality Act and direct the Clerk of the Board to post the Notice of Exemption for the project.

(Presenter: Terry W. Thompson, Director, 387-5252)

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 rents payable by the County for this approximately 30-year lease. While the lease typically requires the payment of rent 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 lease fees from governmental users under current guidelines. Other costs associated with this lease, which are considered minimal, include utilities and maintenance, which will be paid from the Information Services Department (ISD) Telecommunication Services budget (1200304020). Sufficient appropriation is included in the 2020-21 ISD budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

The recommended action will provide for a Communications Use Lease Agreement (Agreement) with the US, acting through the DA-FS, for a term of approximately 30 years, commencing upon full execution, and expiring on December 31, 2050, providing for the use of approximately 800 square feet of DA-FS-controlled land, for the construction, operation and

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maintenance of a public safety communication facility in support of the County of San Bernardino public safety communication system in the Cajon Pass (Pass) in the Oak Hills area.

Radio communication in the Pass is made difficult by the terrain and the circuitous route that the 15 Freeway travels through the Pass. ISD has long desired to establish a facility that would improve public safety radio communication in the Pass area and several sites were investigated by Real Estate Services Department (RESO). ISD requested RESO secure a lease with the DA-FS for a facility to accomplish improvement in radio communication and to provide an additional microwave link to the High Desert Government Center (HDGC). RESO submitted a DA-FS application for the use of Federal lands along with preliminary construction plans detailing the improvements to be placed on the site, as this site best meets the technical needs of ISD. This new, approximately 30-year Agreement with US, acting through DA-FS provides for the use of approximately 800 square feet of DA-FS-controlled land located in the Oak Hills area of the Pass, for the construction, operation, and maintenance of a County of San Bernardino public safety communication facility. The new Agreement with US includes some non-standard provisions including (i) a waiver of all defenses of laches or estoppel against the US, regarding the timeliness of DA-FS claims of lease violations, (ii) the County is responsible for all loss to the facility and improvements including those caused by US, (iii) the County has an affirmative duty to protect the land, property and interest of US, which could be broadly interpreted, (iv) in the event of breach by the County, the US may, on reasonable notice, cure the breach at County's cost, but does not expressly permit County to cure without costs being incurred by the US, (v) the Agreement can be terminated if County does not commence operations by September 30, 2022 or if there is non-use of the land for one year, and can be revoked at any time by the US for public purposes, and (vi) County shall indemnify the US for any violations in connection with the County's use and occupancy of the land. Due to the US's unique authority and because this site best meets the technical needs of ISD, staff recommends that the lease be executed as proposed by the US.

The lease of land for this facility was reviewed pursuant to the California Environmental Quality Act (CEQA) and determined to be categorically exempt from further environmental review in accordance with Section 15301 of the CEQA guidelines.

Summary of Lease Terms

Lessor:	United States of America, Department of Agriculture, Forest Service
Location:	Cajon Summit Communication Site
Size:	Approximately 800 square feet of land
Term:	Approximately 30 years, commencing upon full execution and expiring on December 31, 2050
Options	None
Rent:	None (waived by current DA-FS policy for government entities)*
Improvement Costs:	Provided by County
Maintenance:	Provided by County

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Utilities: 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 Lessor can terminate if operations do not commence by September 30, 2022, there is non-use of the land for one year, and at any time for public purposes

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 October 22, 2020; ISD (Tim Trager, Chief Public Safety Communications Division, 388-5563) on October 20, 2020; Finance (Monique Amis, Administrative Analyst, 387-4883 and Carl Lofton, Administrative Analyst, 387-5404) on November 2, 2020; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on November 2, 2020.

(KB: 677-7961)

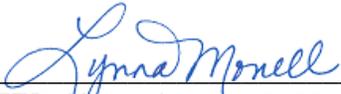
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Record of Action of the Board of Supervisors
County of San Bernardino

APPROVED (CONSENT CALENDAR)

Moved: Robert A. Lovingood Seconded: Josie Gonzales
Ayes: Robert A. Lovingood, Janice Rutherford, Dawn Rowe, Curt Hagman, Josie Gonzales

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: November 17, 2020



cc: RESD- Thompson w/agree's w/CEQA & Receipt
Contractor- RESD- w/agree
File- BAI only w/CEQA & Receipt
File- Confidential w/agree
LA 11/18/2020