

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

March 9, 2021

**FROM**

**LEONARD X. HERNANDEZ, Chief Executive Officer, County Administrative Office**

**SUBJECT**

Agreement with Space Exploration Technologies Corp. for Beta Starlink Satellite-Based Internet Service

**RECOMMENDATION(S)**

Approve **Agreement No. 21-191** with Space Exploration Technologies Corp. for Starlink Beta Enterprise Service Terms and Service Order & Statement of Work for the purchase of Beta satellite-based internet service to test cutting-edge internet service with SpaceX for \$61,464, plus applicable taxes, for the period of March 15, 2021 through March 14, 2022.  
(Presenter: Leonard X. Hernandez, Chief Executive Officer, 387-5417)

**COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES**

**Improve County Government Operations.**

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

**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). Sufficient appropriation exists in the County Administrative Office's 2020-21 budget for the Starlink Beta Enterprise Service Terms and Service Order & Statement of Work (Agreement).

**BACKGROUND INFORMATION**

Starlink is a satellite-based internet service provided by Space Exploration Technologies Corp. (SpaceX). The service is based on SpaceX's placement of thousands of small satellites in low Earth orbit that work in combination with ground transceivers. Starlink is offering beta (testing) of satellite-based internet service (Services) while it continues a planned expansion to achieve near global coverage in 2021.

According to information from SpaceX, Starlink satellites, being in low Earth orbit, are over 60 times closer to Earth than traditional satellites. This results in lower latency (time it takes to send data from one point to the next) and the ability to support services typically not possible with traditional satellite internet that require low latency for functionality like voice and video based services. Because Starlink doesn't rely on a traditional cable or fiber optic network infrastructure to provide internet services, Starlink is intended to be ideally-suited for remote areas, locations where cable or fiber optic network infrastructure is non-existent, or areas where reliable, fast internet service is otherwise difficult to obtain.

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To that end, the County desires to enter into an agreement with SpaceX for their Beta satellite-based internet service, which includes the purchase of identified equipment (Equipment). Approval of the Agreement will allow the County to initiate a services agreement with SpaceX to provide a means to potentially receive more viable and robust internet service where traditional internet service is infeasible due to infrastructure, cost, or connectivity. As noted below, SpaceX offers no warranties that Starlink will actually provide the Services. If successful, however, such Services may enhance the availability of satellite-based internet which could potentially improve information technology and communication services.

Approval of this Agreement will allow the County to explore new technologies in an effort to increase the services provided to County residents and communities served. In the event this is a successful project, the County hopes to be uniquely positioned to take advantage of this service for the many remote or infrastructure challenged areas throughout the County that might benefit from this service. Subject to the terms of the Agreement, the Services can be cancelled by the County at any time.

Per County Policy 11-05, contracts containing non-standard contract language must be approved by the Board of Supervisors. The Agreement with SpaceX includes the following non-standard terms:

Limitations of Liability

SpaceX asserts the Equipment and Services are provided “as is” with no implied warranties and with limitations on express warranties. The limit of SpaceX’s liability is the total amount paid by the County under the Agreement.

- The County’s standard contract requires a vendor to be responsible for liability arising from its products and services.
- Potential Impact: The County may be found liable for any and all damages arising from the use of the Starlink Equipment or Services, which are impossible to estimate at this time. This potential impact includes damages to third parties.

Limited Warranty

SpaceX states that the Starlink Equipment and Services are novel and still in beta testing phase, and so SpaceX will use reasonable efforts to assist the County to substantially meet performance goals. SpaceX asserts the Equipment and Services are provided “as is” with no implied warranties and limitations on express warranties. The limit of SpaceX’s liability is the total amount paid by the County.

- The County’s standard language requires the contractor to provide a full warranty of its product.
- Potential Impact: The limited warranty provided limits the County’s claims if the use of the Equipment results in any damages or losses, which is very broadly defined in the Agreement, or if the Equipment fails to work. In the event the Equipment does not work, then the County will bear the loss.

Indemnification

The Agreement requires the County to defend and indemnify SpaceX against any third party claims based on the County’s use of the Starlink Services, including anyone’s use of the County’s account in ways that are illegal or violate the terms of the SpaceX agreement (e.g., illegal downloads) and including any negligent, reckless or intentional wrongful acts.

- The County’s standard contract requires the contractor to indemnify the County, with some exceptions whereby mutual indemnities may be warranted.

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- Potential Impact: This broad indemnity of SpaceX could result in various third party claims against the County which are impossible to estimate at this time.

Contract Assignment

The Agreement prevents the County from assigning the Agreement or the software or Services and SpaceX may terminate the Agreement if the County attempts such assignment. However, SpaceX may assign the Agreement, in whole or in part, without prior notice to the County.

- The standard contract language in County contracts requires any assignment of transfer to be approved by the County.
- Potential Impact: SpaceX may assign the Agreement to any third party individual or entity of its choosing, without prior notice to the County. The level or quality of service could be changed without input from the County; however, the County has the right to cancel the Agreement subject to the terms of the Agreement.

Waiver of Right to Sue

The Agreement provides that the County and SpaceX waive any right to bring an action in court, including waiver of jury trial, and requires all disputes be resolved through binding arbitration. The County also waives its right to join a class action lawsuit against SpaceX.

- The County standard contract requires that lawsuits be brought in the courts in the County and does not waive the right to jury trial.
- Potential Impact: Mandatory arbitration provisions are not unusual, and are often intended to limit potential liability that may arise from a jury verdict and to try to limit legal costs and fees.

Amendments

SpaceX reserves the right to substitute, change, cancel or add anything to the terms of the Services, with notice to the County, and such changes are binding on the County whether or not approved by the County.

- The County standard contract requires that any changes to the contract be reduced to writing, executed and attached to the original contract and approved by the person(s) authorized to do so on behalf of Contractor and County.
- Potential Impact: SpaceX can unilaterally change the terms of the Agreement, resulting possibly in terms that the County would not usually approve. Additionally, such changes could result in an inadvertent default by the County if changes are not properly communicated to County departments using the Equipment or Services. However, the County has the right to cancel the Agreement subject to the terms of the Agreement.

Sharing of Personal Information

SpaceX incorporates the "Starlink Privacy Policy" in the Agreement which allows the collection of specific types of personal information including identity (e.g., name and title); contact data; financial data including payment card details; transaction date; website technical data (including IP address, browser types, operating system and platform); customer technical data. Such collected information may not be sold but SpaceX may share the data with other service providers, government agencies and regulators, and organizations with which SpaceX may merge or reorganize.

- The County standard contract does not contain a standard provision.
- Potential Impact: Impacts to the County from this non-standard provision are not possible to fully identify. Privacy Policies are intended to be between the website owner and the person accessing the website as they pertain to personal information. SpaceX is required to comply with the California Consumer Protection Act regarding the collection

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and use of personal data. To the extent that a County employee is accessing the website in their official capacity as an employee of the County, there may be some vicarious liability of the County to the website owner based on an employee's actions. It is unclear whether the County would have any rights regarding information collected that is County information, such as payment card details and website technical data.

**PROCUREMENT**

This Agreement is the result of a non-competitive procurement. The County is proposing a project with SpaceX to beta test the Starlink Services as they are able to provide internet services in remote or infrastructure challenged locations of the County without requiring the traditional infrastructure to do so. SpaceX asserts that Starlink provides higher-speed satellite internet with a low latency connection and no data caps. Other satellite internet providers presently cap data utilization. Additionally, as Starlink continues to develop and launch additional satellites, it is possible that performance and latency may continue to improve and the County may derive benefits from these enhancements. The Purchasing Department concurs with the recommendation of a non-competitive purchase of Starlink Equipment and Services from SpaceX as the county is expansive and is comprised of remote or infrastructure challenged areas that could benefit from this type of service. Upon successful testing, the County may potentially look to expand Starlink Services in its remote areas to improve communications and government operations.

**REVIEW BY OTHERS**

This item has been reviewed by: County Counsel (Penny Alexander-Kelley, Chief Assistant County Counsel, 387-4270) on March 1, 2021; Department of Innovation and Technology (Jake Cordova, Assistant Chief Information Officer, 388-0503) on February 17, 2021; Purchasing Department (Leo Gomez, Purchasing Manager, 387-2063) on February 19, 2021; Finance (Stephenie Shea, Administrative Analyst, 387-4919) on February 13, 2021; County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on February 26, 2021.

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

**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: March 9, 2021



cc: CAO- Raughley w/agree  
Contractor- C/O CAO w/agree  
File- w/agree  
LA 03/11/2021