

REPORT/RECOMMENDATION TO THE BOARD OF DIRECTORS OF SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT AND RECORD OF ACTION

May 7, 2024

FROM

DAN MUNSEY, Fire Chief/Fire Warden, San Bernardino County Fire Protection District

SUBJECT

Ownership Change Form with Crown Castle

RECOMMENDATION(S)

Acting as the governing body of the San Bernardino County Fire Protection District:

1. Acknowledge the San Bernardino County Fire Protection District as the successor of the Hesperia Fire Protection District in the Land Lease Agreement, dated August 1, 2003, that is currently between the San Bernardino County Fire Protection District, as the successor lessor, and Crown Castle, as the successor lessee, regarding the cell tower lease of a portion of property previously occupied by Fire Station 301, located at 9430 Eleventh Avenue in Hesperia.
2. Approve non-financial Landowner Ownership Change Form **(Agreement No. 24-352)**, including non-standard terms, with Crown Castle to reflect a change of ownership of the premises subject to the Land Lease Agreement identified in Recommendation No. 1, and update the lease payment instructions under the Land Lease Agreement.

(Presenter: Dan Munsey, Fire Chief/Fire Warden, 387-5779)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Improve County Government Operations.

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

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

FINANCIAL IMPACT

Approval of the recommended form will not result in the use of Discretionary General Funding (Net County Cost). The Landowner Ownership Change Form (OCF) is non-financial in nature; however, Crown Castle will not provide rent payments to the San Bernardino County Fire Protection District (SBCFPD) until SBCFPD completes the OCF and submits it to Crown Castle. The OCF will allow Crown Castle to submit the past-due amount of \$54,922.15 and monthly cell tower lease payments to SBCFPD. Sufficient revenue is included in the 2023-24 budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

On August 21, 2018 (Item No. 66), the SBCFPD Board of Directors (Board) approved annexation of the Hesperia Fire Protection District into SBCFPD. As part of the recommendations in that item, the Board approved a contract between the City of Hesperia (City), the Hesperia Fire Protection District, and SBCFPD that directed the transfer of existing leases to SBCFPD.

Ownership Change Form with Crown Castle
May 7, 2024

According to the records of Crown Castle, on August 1, 2003, the original lessee, Pacific Bell Wireless doing business as Cingular Wireless, entered into a Land Lease Agreement with the Hesperia Fire Protection District for the cell tower lease of a portion of Fire Station 301 (hereafter "Premises"), located at 9430 11th Avenue in Hesperia. Section 23 of the Land Lease Agreement provides that it applies to the successors and assigns of the parties. SBCFPD is the current successor lessor and Crown Castle is the current successor lessee. Also, Fire Station 301 no longer occupies the property located at 9430 Eleventh Avenue in Hesperia. The annual rent for the Premises was initially \$24,000, and increases every year by 5%. The current annual rental amount is \$60,703.44, and the next annual 5% increase will be effective on August 1, 2024. The rent is paid in monthly installments. The term of the Land Lease Agreement was for an initial five years, and then it automatically extends by four additional five-year terms unless Crown Castle terminates by giving at least 90 days' notice prior to the end of the current term. The Land Lease Agreement is currently in its fourth and final five-year option to extend period and will expire in 2028. According to the terms of the Land Lease Agreement, the Land Lease Agreement will continue for additional successive five- year terms (with an increase of 115% in the annual rent for each successive five year extension) after 2028, unless either party gives at least six months' notice prior to the end of such successive term. SBCFPD will return to the Board in 2027 with a recommendation as to whether to continue the existing Land Lease Agreement or exercise SBCFPD's rights to provide written notice to terminate this agreement.

The City did not process the OCF with Crown Castle, as a result Crown Castle continued to send payments to the City who would then send the payments to SBCFPD. The City has requested that SBCFPD process the OCF so that payments can be sent directly to SBCFPD. Crown Castle has postponed processing payments until the OCF has been processed and approved. SBCFPD has not received rent since August 1, 2023, and there is a past-due amount of lease payments owed by Crown Castle to SBCFPD in the amount of \$54,922.15.

The OCF is Crown Castle's standard change of ownership form, which includes a term that differs from the standard County contract and omits certain County standard contract terms. The non-standard and missing term is:

1. SBCFPD is required in the OCF to indemnify and hold Crown Castle harmless from and against any and all liability, claims, demands, suits or causes of action arising out of any actions taken by Crown Castle resulting from the submission of this form including the payments to SBCFPD.
 - The agreement already includes an indemnity provision in favor of SBCFPD and does not require SBCFPD to indemnify Crown Castle.
 - Potential Impact: By agreeing to indemnify Crown Castle, SBCFPD could be contractually waiving the protection of sovereign immunity or other statutory immunities.

The non-standard term under the OCF is only applicable to any and all liability, claims, demands, suits or causes of action arising out of any actions taken by Crown Castle resulting from the submission of the OCF including the payments to SBCFPD. Notwithstanding the non-standard provision, SBCFPD is recommending that the Board approve the OCF, as this will update Crown Castle's records on the ownership of the premises from Hesperia Fire Protection District to SBCFPD and update the payment instructions for the agreement's cell tower lease payments.

The Land Lease Agreement is included as an attachment with this Board item and will be filed by the Secretary of the Board with the Landowner Ownership Change Form.

**Ownership Change Form with Crown Castle
May 7, 2024**

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Scott Runyan, Principal Assistant County Counsel, 387-5455) on May 2, 2024; Risk Management (Victor Tordesillas, Deputy Executive Officer, 386-8623) on April 15, 2024; Finance (Ivan Ramirez, Administrative Analyst, 387-4020) on April 22, 2024; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on April 22, 2024.

**Ownership Change Form with Crown Castle
May 7, 2024**

Record of Action of the Board of Directors
San Bernardino County Fire Protection 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, SECRETARY

BY



DATED: May 7, 2024



cc: SBCFPD - Munsey w/ agree
Contractor c/o SBCFPD w/ agree
File w/ agree

JLL 05/8/2024