

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

April 23, 2024

FROM

TERRY W. THOMPSON, Director, Real Estate Services Department

LYNN FYHRLUND, Chief Information Officer, Innovation and Technology Department

SUBJECT

Amendment to Lease Agreement with the United States of America for Land at Skyland Peak in Crestline

RECOMMENDATION(S)

1. Find that approval of Amendment No. 1 to Communications Use Lease Agreement No. 21-392 with the United States of America for Federal lands is an exempt project under the California Environmental Quality Act Guidelines Section 15301 – Existing Facilities (Class 1).
2. Approve **Amendment No. 1 to Communications Use Lease Agreement No. 21-392**, including a non-standard term, with the United States of America, acting through the United States Department of Agriculture, Forest Service, commencing upon full execution, for the temporary use of approximately 646 square feet of additional Federal lands during an estimated one-year construction period to provide proposed improvements to San Bernardino County's Public Safety Communication facility at Skyland Peak Communication Site in Crestline, with no cost to the County for use of the land, with no change to the original agreement term of June 29, 2021 through December 31, 2049.
3. Direct the Clerk of the Board of Supervisors to maintain the confidentiality of Exhibit B to Amendment No. 1 to the Communications Use Lease Agreement No. 21-392 with the United States of America, acting through the United States Department of Agriculture, Forest Service, pursuant to California Government Code Section 6254.19.
4. Direct the Real Estate Services Department to file the Notice of Exemption in accordance with the California Environmental Quality Act.

(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 and Stakeholders.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). There is no fee payable by San Bernardino County (County) for this temporary use of the land. While the lease 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 fees from governmental users under current guidelines. Other costs associated with Communications Use Lease Agreement No. 21-392 (Lease) include utilities and maintenance, which will be paid from the Innovation and

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Technology Department (ITD) budget (1200304020). Sufficient appropriation is available in the 2023-24 ITD budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

Amendment No. 1 (Amendment) to the Lease will amend the Lease providing for the temporary use of land during the approximately one-year construction period of the proposed permanent improvements to be constructed at the Skyland Peak Communication Site (Skyland). The Amendment allows for the use of an additional 646 square feet of Federal land (Land) to the 1.5 acres of Land previously authorized for use by the County under the terms and provisions of the Lease.

On June 8, 2021 (Item No. 71), the Board of Supervisors (Board) approved the approximately 29-year Lease with the US, acting through DA-FS, for the use of approximately 1.5 acres of Land for the operation and maintenance of a County public safety communication facility located at Skyland for ITD, commencing upon full execution of the Lease through December 31, 2049, at no fee to the County for use of the site under current DA-FS fee policy. The DA-FS also approved a proposal by the County to modify the improvements at the site by adding a new 80-foot-tall lattice work antenna tower, and provide upgrades to the existing equipment shelter.

During pre-construction inspections, ITD was informed that the existing concrete block equipment shelter was not seismically sound and would need to be reinforced. The additional Land, located in the existing parking area outside the perimeter fence line, will be used to place a non-penetrating ground-mounted equipment shelter and antenna tower for use during the estimated one-year construction period, allowing this link in the County's Public Safety Communication System to remain active while the facility is rebuilt. At the conclusion of construction of the new antenna tower and reconstruction of the equipment shelter, the non-penetrating, ground-mounted equipment shelter and antenna tower will be removed.

The project to approve the Amendment was reviewed pursuant to the California Environmental Quality Act (CEQA) guidelines and determined to be categorically exempt under Section 15301 – Existing Facilities (Class 1) because approval of an amendment to a lease agreement is an exempt activity under CEQA. There is no possibility that the leasing of the additional subject land will have a significant effect on the environment; therefore, the activity is exempt from the provision of CEQA.

Summary of Lease Terms

Lessor:	United States of America, Department of Agriculture, Forest Service Freddie Duncan District Ranger
Location:	Skyland Peak Communication Site, Crestline
Size:	Approximately 1.6 acres of land and temporary use of 646 square feet of land
Term:	Approximately one year for the additional 646 square feet, within the remaining 25 years, eight months of the original term
Options:	None

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Rent:	None for County use (waived by current DA-FS policy for government entities)
Improvement Costs:	Provided by County for proposed improvements under the Amendment
Maintenance:	Provided by County
Utilities:	Provided by County
Insurance:	Both parties are self-insured public entities
Holdover:	None for the temporary addition of 676 square feet of Land for the amendment; under the original Agreement, upon the end of the term, if permitted by Lessor the Lease shall continue on a month-to-month term upon the same terms and conditions which existed at the time of expiration
Right to Terminate:	The County has no right to terminate except due to default; the Lessor can terminate if there is non-use of the land for one year, and at any time for public purposes

The original Lease includes a term that differs from the standard County contract. The non-standard term is as follows:

Under the provisions of the Lease the County indemnifies, defends and holds the US harmless for any violations, judgments, claims, or demands in connection with the County's use and occupancy of the land and waives all defenses of laches or estoppel against the US, regarding the timeliness of DA-FS claims of lease violations.

- The County standard contract does not include an indemnification, or defense by the County of a contractor.
- Potential Impact: The County would be responsible to defend and reimburse the US for costs, expenses, and damages, which could exceed the total contract amount.

RESD recommends proceeding with the amendment, including the non-standard term with the Agreement, due to this communication tower best meeting the requirements of the Department and the County while providing the necessary services for the community. RESD requests the Board protect the confidentiality of Exhibit B of the Amendment to provide security of the frequencies used by ITD and the location details of the County equipment protecting the Public Safety Communication System at the Skyland communication site from targeted vandalism and interference of the technical capabilities of the County system.

PROCUREMENT

The Lease is exempt from the procurement provisions of County Policy No. 12-02 – Leasing Privately Owned Real Property for County Use because the real property is owned by a public entity.

REVIEW BY OTHERS

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This item has been reviewed by County Counsel (John Tubbs II, Deputy County Counsel, and Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on March 14, 2024; Innovation and Technology Department (Tim Trager, Chief, Public Safety Communications Division, 388-5563) on March 19, 2024; Risk Management (Victor Tordesillas, Director, 386-8623) on March 19, 2024; Purchasing (Ariel Gill, Supervising Buyer, 387-2070) on March 20, 2024; Finance (Illiana Rodriguez, 387-4205, and Garrett Baker, 387-3077, Administrative Analysts) on April 4, 2024; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on April 4, 2024.

(BR: 531-2674)

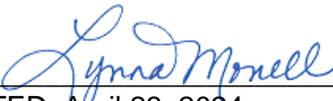
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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY  _____
DATED: April 23, 2024



cc: RESD - Thompson w/agree for sign
Contractor - c/o RESD w/agree
File - w/agree
File - Confidential w/attach
CCM 05/1/2024