

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

November 15, 2022

**FROM**

**TERRY W. THOMPSON, Director, Real Estate Services Department**

**CHAD NOTTINGHAM, Deputy Executive Officer, Innovation and Technology Department**

**SUBJECT**

License Agreement with Estrella Media, Inc. for Rack and Antenna Space in Upland

**RECOMMENDATION(S)**

1. Approve the Real Estate Services Department's use of an alternative procedure in lieu of a Formal Request for Proposals as allowed per County Policy 12-02 – Leasing Privately Owned Real Property for County Use, to procure a license agreement with Estrella Media, Inc. for a term of five years, commencing on the first day of the month following full execution of the license agreement, for the use of rack and antenna space at the Sunset Hill Communication Site near Upland for the Innovation and Technology Department.
2. Approve a five-year License **Agreement No. 22-1089**, including non-standard terms, with Estrella Media, Inc., commencing on the first day of the month following full execution of the license agreement, projected to be for the period of November 1, 2022 through October 31, 2027, for the use of rack and antenna space at the Sunset Hill Communication Site near Upland for the Innovation and Technology Department in the total amount of \$95,580.
3. Direct the Clerk of the Board of Supervisors to maintain the confidentiality of Exhibit B to the license agreement with Estrella Media, Inc., pursuant to California Government Code Section 6254.19.

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

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

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

**FINANCIAL IMPACT**

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). The total cost of this five-year license agreement is \$95,580. There are no other costs associated with this license agreement. Sufficient appropriation is included in the 2022-23 Innovation and Technology Department (ITD) Telecommunication Services budget and will be included in future recommended budgets. Annual license costs are as follows:

<u>Year</u>	<u>Annual License Cost</u>
Year 1	\$18,000
Year 2	\$18,540
Year 3	\$19,092
Year 4	\$19,668
Year 5	<u>\$20,280</u>
<b>Total Cost</b>	<b>\$95,580</b>

**BACKGROUND INFORMATION**

The recommended actions will provide for a new license agreement with Estrella Media, Inc. (EM) for a term of five years, commencing on the first day of the month following full execution, projected to be November 1, 2022 through October 31, 2027, for San Bernardino County's (County) use of rack and antenna space at EM's equipment shelter located at EM's communications site at Sunset Hill near Upland for ITD, which will enhance the first responder emergency radio communication coverage provided by the County's Public Safety Communication System in the Mt. Baldy area.

In 2021, ITD requested that the Real Estate Services Department (RES D) negotiate a license agreement with EM for the use of antenna and rack space at EM's Sunset Hill site. This prominent site will support ITD's public safety radio system and microwave network by providing radio and microwave coverage to the Mt. Baldy area, a popular hiking and snow sports area. Mt. Baldy is frequently visited by County emergency medical personnel and law enforcement in response to emergency calls to locate and evacuate lost hikers and to render first aid to winter sports enthusiasts. To maintain optimal radio connectivity during emergency responses, these essential services require specific physical locations with desired line of sight characteristics to maintain system connectivity. Terrain impediments in the area hamper the propagation of radio communication signals, impacting the County's desired level of communication coverage for Mt. Baldy and the surrounding mountain region.

Two sites were investigated in the Sunset Hill area to provide a link to the County's equipment in the west valley area and to provide strong radio signal coverage in the Mt. Baldy area. Analysis and testing confirmed the site at Sunset Hill, owned by EM, provides the best radio signal coverage of the two. The selected site at Sunset Hill also provides a line of sight for microwave service at the location. ITD's equipment installation and operation at Sunset Hill will improve system availability and reliability, providing improved radio coverage for law enforcement, fire, and Emergency Medical Services communications necessary to support emergency responses throughout the area.

EM is the holder of a 30-year right-of-way agreement with the United States Department of Agriculture-Forest Service (USFS) for the underlying use of Federal lands as a communication site which will expire in 2047. EM license's the site to multiple users as evidenced by the numerous antennas on the EM-owned antenna tower and the amount of radio equipment present in the EM-owned equipment shelter. While RES D initially investigated taking over EM's right-of-way agreement with the USFS, this option is not feasible at this time due to the timing and the process necessary to terminate the existing licenses with other users and obtain USFS approval for a transfer, but it can be revisited in the future when the opportunity to achieve that goal is more easily obtainable. No privately-owned land is available in the area or at the same elevation that would provide coverage into the Mt. Baldy area.

RES D requests the Board of Supervisors (Board) protect the confidentiality of Exhibit B of the license agreement to provide security for the location details of County equipment from targeted vandalism and interference of the technical capabilities of the County system.

Staff has reviewed the recommended action pursuant to the California Environmental Quality Act (CEQA) and has determined that it does not constitute a project. Accordingly, no further action is required under CEQA.

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Summary of License  
Terms

Licensors:	Estrella Media, Inc. (Aryaa Towfighi, General Counsel)
Location:	Sunset Hill Communication Site Near Upland
Size:	Rack and Antenna Space
Term:	Five years commencing the first day of the month following full execution of the license, projected to be November 1, 2022 through October 31, 2027
Options:	None
Rent:	Fee Per Rack Space, including Antenna Space: \$750.00* Two Spaces Monthly: \$1,500 Annual: \$18,000 *Low-range for comparable communication sites in the Upland area per the competitive set analysis on file with RESD
Annual Increases:	3%
Improvement Costs:	Provided by County
Maintenance:	Provided by Licensors for Licensors' equipment shelter; provided by County for County's equipment
Utilities:	Provided by Licensors
Insurance:	The Certificate of Liability Insurance, as required by the license, is on file with RESD
Right to Terminate:	Both the County and Licensors have the right to terminate with 120 days' prior written notice

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

1. The license agreement does not require EM to waive subrogation or agree that EM insurance is primary. It also requires the County to carry its own insurance coverage.
  - County Policy 11-07 requires contractors to waive subrogation against the County and affirm that their insurance is primary.
  - Potential Impact: Without the waiver of subrogation, it may allow EM's insurer to bring suit against the County, without EM's insurance being primary, the County may be required to pay claims that would be covered by EM's insurance under the standard County contract, and by requiring the County to carry its own insurance, it could create confusion regarding what policies are available for claims, all of which could result in expenses that exceed the total agreement amount.

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2. EM's indemnification obligations are limited to third-party claims arising from improvements constructed by EM, EM's operation of the communication site, the users of the site other than the County, and toxic waste and environmental contamination not caused by the County.
  - The County standard contract indemnity provision requires contractors to indemnify, defend, and hold County harmless claims arising out of the acts, errors or omissions of any person.
  - Potential Impact: The limitation of EM's indemnification obligation means that any claim that does not meet these conditions, such as breach of contract, are excluded from EM's indemnification obligations, and could result in expenses that exceed the total agreement amount.
3. The County is required to indemnify and hold EM harmless for injury to persons and damage to property arising out of the acts or omissions of the County in connection with the County's use of the licensed area.
  - The County standard contract does not include any indemnification by the County of a Contractor.
  - Potential Impact: By agreeing to indemnify EM, the County could be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred against the County, time limited, or expense limited could be brought against EM without such limitations and the County would be responsible to defend and reimburse EM for costs, expenses, and damages, which could exceed the total agreement amount.

RESD and ITD recommend approval of this agreement with the non-standard terms as the benefit of the proposed County facility at Sunset Hill, which provides a greatly improved level of radio communication connectivity to the County's Public Safety Radio Communications System, which outweighs the risk inherent in the non-standard terms.

**PROCUREMENT**

This license agreement was procured in accordance with County Policy 12-02 – Leasing Privately Owned Real Property for County Use (Policy 12-02), using an alternative procedure. Policy 12-02 provides that the Board may approve the use of an alternative procedure in lieu of a Formal Request for Proposals (RFP) process whenever the Board determines that compliance with the Formal RFP requirements would unreasonably interfere with the financial or programmatic needs of the County or when the use of an alternative procedure would otherwise be in the best interest of the County.

RESD, acting in its approved capacity as the County Administrative Office designee to review proposed real property agreements under Policy 12-02, completed a competitive analysis of the area and found the negotiated rental rate to be competitive, and the facility best meets the technological requirements required by the department of the two sites available in the area. RESD requests the Board approve the use of an alternative procedure in lieu of a Formal RFP to procure the new license.

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Agnes Cheng, Deputy County Counsel, and Bonnie Uphold, Supervising Deputy County Counsel, 387-5455) on September 28, 2022; Innovation and Technology (Tim Trager, Chief Public Safety Communications Division, 388-5563) on August 24, 2021; Risk Management (Victor Tordesillas, Director, 386-8623) on September 26, 2022; Purchasing (Bruce Cole, Supervising Buyer, 387-2148) on August 22,

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2022; Finance (Penelope Chang, Administrative Analyst, 387-4886) on October 25, 2022; and County Finance and Administration (Diana Atkeson, Deputy Executive Officer, 387-5423) on October 25, 2022.

(KB: 677-7961)

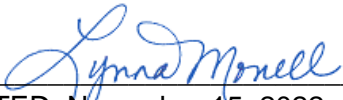
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Record of Action of the Board of Supervisors  
San Bernardino County

**APPROVED (CONSENT CALENDAR)**

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

Lynna Monell, CLERK OF THE BOARD

BY   
DATED: November 15, 2022



cc: RESD- Thompson w/agree  
Contractor- C/O RESD w/agree  
File- w/agree  
File- Confidential (BAI w/Exhibit B only)  
LA 11/16/2022