

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

May 23, 2023

FROM

TERRY W. THOMPSON, Director, Real Estate Services Department

BRENDON BIGGS, Director, Department of Public Works, Solid Waste Management

SUBJECT

License Agreement with Southern California Edison Company for Land for Water Monitoring Wells in Ontario

RECOMMENDATION(S)

1. Find that approval of a five-year license agreement with Southern California Edison Company, for Southern California Edison Company land, is an exempt project under the California Environmental Quality Act Section 15301 – Existing Facilities (Class 1).
2. Approve the Real Estate Services Department's use of an alternative procedure in lieu of a formal Request for Proposal as allowed per San Bernardino County Policy 12-02 – Leasing Privately Owned Real Property for San Bernardino County Use for the non-exclusive use of approximately 2,950 square feet of Southern California Edison Company land (portion of Accessor's Parcel Numbers 1083-351-02 and 1083-321-08) located near the Milliken Landfill in Ontario, for four groundwater monitoring wells.
3. Approve payment to Southern California Edison Company for continued permitted use of approximately 2,950 square feet of Southern California Edison Company land (portion of Accessor's Parcel Numbers 1083-351-02 and 1083-321-08) located near the Milliken Landfill in Ontario, for four groundwater monitoring wells for the Department of Public Works-Solid Waste Management Division, for the period of January 1, 2021 through June 30, 2023, in the amount of \$12,972.
4. Approve a five-year license **Agreement No. 23-478** with Southern California Edison Company for the period of July 1, 2023 through June 30, 2028, for the non-exclusive use of approximately 2,950 square feet of Southern California Edison Company land (portion of Accessor's Parcel Numbers 1083-351-02 and 1083-321-08) located near the Milliken Landfill in Ontario for four groundwater monitoring wells, for the Department of Public Works-Solid Waste Management Division, in the amount of \$30,153.
5. Direct the Clerk of the Board of Supervisors to file and post the Notice of Exemption for the project as required under 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.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost) as the Department of Public Works (DPW) – Solid Waste Management Division (SWMD) is financed by fee revenue. SWMD establishes fees that are charged to the public and other

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agencies for utilization of the County's Waste Disposal System. The total cost of this five-year license agreement is \$30,153, plus \$12,972 for the initial period of January 1, 2021 through June 30, 2023. Payments will be made directly from the DPW Environmental Fund budget (6706784250). Sufficient appropriation is included in the SWMD 2023-24 budget and will be included in future recommended budgets. Annual license costs are as follows:

<u>Licensed Period</u>	<u>Annual License Fee</u>
January 1, 2021 – June 30, 2023	\$12,972
July 1, 2023 – June 30, 2024	\$5,457
July 1, 2024 – June 30, 2025	\$5,730
July 1, 2025 – June 30, 2026	\$6,016
July 1, 2026 – June 30, 2027	\$6,317
July 1, 2027 – June 30, 2028	<u>\$6,633</u>
Total Cost	\$43,125

BACKGROUND INFORMATION

The recommended action will approve a five-year license agreement with Southern California Edison Company (SCE) for the period of July 1, 2023 through June 30, 2028, for the non-exclusive use of approximately 2,950 square feet of SCE Company land [portion of Accessor's Parcel Numbers (APNs) 1083-351-02 and 1083-321-08] located near the Milliken Landfill in Ontario for the continued use of four groundwater monitoring wells for SWMD.

Since June 1, 1997, SWMD has used the land for four groundwater monitoring wells located near the Milliken Landfill on the south side of Mission Boulevard. These monitoring well sites have been operated under multiple license agreements during that time. SCE, the licensor, requires a new license agreement for each extended five-year term. The last license agreement, License Agreement No. 15-900, expired on December 31, 2020. SCE requests payment in the amount of \$12,972 for San Bernardino County's (County) continued permitted use of the monitoring well sites from January 1, 2021 through June 30, 2023, while the parties negotiated a new license agreement. The negotiations for the new license agreement were delayed due to the staffing shortages during the COVID-19 pandemic. SWMD requested the Real Estate Services Department (RESO) negotiate a new five-year license agreement for the continued use of the land for groundwater monitoring purposes.

The project to approve the proposed license agreement was reviewed pursuant to the California Environmental Quality Act (CEQA) and determined to be categorically exempt under Section 15301 – Existing Facilities (Class 1) because there is no possibility that the licensing of the subject property will have a significant effect on the environment.

Summary of Lease Terms

Lessor:	Southern California Edison Company (Joseph C. Schaefer, Land Services Agent)
Location:	Near the Milliken Landfill on the south side of Mission Boulevard
Size:	Approximately 2,950 square feet
Term:	Five-year license term

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Options:	None
Rent:	Cost per square foot per month: \$0.15* Annual: \$ 5,457 *Low-range for comparable facilities in the Ontario area per the competitive set analysis on file with RESD
Annual Increases:	5%
Improvement Costs:	None
Maintenance:	Provided by Tenant
Utilities:	Provided by Tenant
Insurance:	The Certificate of Liability Insurance as required by the license will be obtained by RESD prior to commencement
Holdover:	No holdover language in license
Right to Terminate:	Either party may terminate with 30 days' written notice
Parking:	Not applicable

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

1. The County will indemnify and hold SCE harmless for any liabilities to the extent resulting from the damage to property, regardless of cause, and failing to comply with laws. While staff attempted to limit the indemnity to liabilities caused by the County, SCE did not agree.
 - The County standard contract does not include any indemnification or defense by the County of a licensor.
 - Potential Impact: By agreeing to indemnify SCE, 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 the licensor without such limitations and the County would be responsible to reimburse the licensor for costs, expenses, and damages, which could exceed the total agreement amount.
2. SCE's liability to the County is limited to the total fees to be received by SCE under this license.
 - The County's standard contract does not include a limitation of liability.
 - Potential Impact: The Licensor caps its liability to the County at not to exceed amount of \$30,153 for all claims arising under the agreement. Claims could exceed the liability cap and the agreement amount leaving the County financially liable for the excess. In addition, the County's liability under the agreement is not similarly limited.
3. The prevailing party is entitled to recover attorneys' fees and costs.

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- The County's standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
- Potential Impact: If either party institutes any legal proceedings related to the agreement, the prevailing party will be entitled to recover reasonable attorneys' fees, which could exceed the total agreement amount.

Approval of the license agreement is recommended, including the non-standard terms, as the four monitoring wells have been established in this location since 1997, and are necessary for DPW-SWMD management of the Milliken Landfill in Ontario for required groundwater monitoring.

PROCUREMENT

RESO is requesting the Board of Supervisors (Board) approve the use of an alternative procedure in lieu of a Formal Request for Proposals (RFP) as allowed per County Policy 12-02 - Leasing Privately Owned Real Property for County Use (Policy 12-02) to license approximately 2,950 square feet of SCE's land (portion of APNs 1083-351-02 and 1083-321-08). Policy 12-02 provides that the Board may approve the use of an alternative procedure in lieu of a formal 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.

RESO, acting in its approved capacity as the County Administrative Office designee to review proposed real property licenses under Policy 12-02, completed a competitive analysis of the area and found the license fee is competitive for a five-year term and the premises best meet the needs and requirements of DPW-SWMD.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (John Tubbs II, Deputy County Counsel, and Maria Insixiengmay, Deputy County Counsel, 387-5455) on April 10, 2023; Department of Risk Management (Victor Tordesillas, Director, 386-8655) on May 2, 2023; Solid Waste Management Division (Darren Meeka, Deputy Director, 386-8703) on April 27, 2023; Purchasing (Bruce Cole, Supervising Buyer, 387-2148) on May 1, 2023; Finance (Carl Lofton, Administrative Analyst, and Garrett Baker, Administrative Analyst, 387-5423) on May 3, 2023; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on May 4, 2023.

(PN: 677-8321)

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Record of Action of the Board of Supervisors
San Bernardino County

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, CLERK OF THE BOARD

BY 
DATED: May 23, 2023



cc: RESD - Thompson w/agree w/CEQA & receipt
Contractor - c/o RESD w/agree
File - w/agree w/CEQA & receipt
CCM 06/1/2023