

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

June 8, 2021

FROM

TERRY W. THOMPSON, Director, Real Estate Services Department

LARRY AINSWORTH, Chief Information Officer, Innovation and Technology Department

SUBJECT

Lease Agreement with the United States of America for Land at Skyland Peak in Crestline for the Innovation and Technology Department

RECOMMENDATION(S)

1. Approve an approximately 29-year Communications Use **Lease Agreement 21-392** with the United States of America, acting through the United States Department of Agriculture, Forest Service, for the use of approximately 1.5 acres of land for the operation and maintenance of a County of San Bernardino public safety communication facility, located at the Skyland Peak Communication Site in Crestline, commencing upon full execution of the Communication Use Lease Agreement through December 31, 2049 for the Innovation and Technology Department, at no fee to the County, for County's use of the site under current United States Department of Agriculture, Forest Service, fee policy.
2. Adopt a finding of exemption under the California Environmental Quality Act and direct the Clerk of the Board to post the Notice of Exemption for the project.
3. Direct the Clerk of the Board of Supervisors to maintain the confidentiality of Exhibit B to the Communications Use Lease Agreement with the United States of America 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.

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). There are no fees payable by the County for this approximately 29-year lease for the County's 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 lease fees from governmental users under current guidelines. Other costs associated with this lease, which are considered minimal, include utilities and maintenance, which will be paid by the Innovation and Technology Department (ITD). Sufficient appropriation is available in the ITD Telecommunication Services 2020-21 budget and will be included in future recommended budgets.

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BACKGROUND INFORMATION

The recommended action will provide for a new Communications Use Lease Agreement with the US, acting through the DA-FS, for a term of approximately 29 years, commencing upon full execution, and expiring on December 31, 2049, providing for the continued use of approximately 1.5 acres of DA-FS-controlled land, for the operation and maintenance of a public safety communication facility in support of the County's Public Safety Communication System at Skyland Peak in Crestline, at no cost to the County for the use of the County's site and its improvements on the land.

Skyland Peak is a pass-through link in the Public Safety Radio System providing radio and microwave network connectivity in the Crestline area and portions of the San Bernardino mountain area. ITD's microwave network transports the voice and high-speed data information for the County's Public Safety Communication System, the enterprise telephone network, and the County's Wide Area Network. These essential services require microwave connectivity with a high level of availability and reliability. Skyland Peak is an essential link in the Public Safety Communication System.

On February 4, 1997 (Item No. 8), the Board of Supervisors (Board) approved an approximately 20-year Lease Agreement No. 97-82 (Initial Lease) with the US acting through the DA-FS for the use of approximately 1.5 acres of DA-FS-administered land at Skyland Peak in Crestline used for the development, operation and maintenance of a public safety communication facility. The original term of the Initial Lease was for the period of September 16, 1996 through December 31, 2016.

The site is designated as Government Only by the DA-FS's Land Management Plan, and aside from County operations, Omnitrans is currently co-located at the site under the provisions of a revenue license agreement, No. 05-324, approved by the Board on May 3, 2005 (Item No. 82).

On February 2, 2016, at the request of ITD, the Real Estate Services Department (RESO) submitted an application for Transportation and Utility Systems and Facilities on Federal Lands to DA-FS for a new authorization for the continued use of the 1.5 acres of land at Skyland Peak, as the term of the Initial Lease cannot be extended without approval of DA-FS and renewal is at the discretion of DA-FS. While DA-FS completed its site assessment and other historical and environmental reports, the Initial Lease went into holdover as of January 1, 2017, and the County has continued to occupy the 1.5 acre site at Skyland Peak and abide by the conditions of the Initial Lease with the express written permission of DA-FS in a letter dated May 3, 2016 executed by Marc Stamer, District Ranger, Mountaintop Ranger District.

This new, approximately 29-year Communications Use Lease Agreement (Renewal Lease) with the US, acting through DA-FS, provides for the continued use of approximately 1.5 acres of DA-FS-controlled land located at Skyland Peak in Crestline, for the operation and maintenance of a County of San Bernardino public safety communication facility. In conjunction with ITD's application for the Renewal Lease, ITD requested DA-FS's consent for proposed site improvements, comprising a new 80' tall lattice-work antenna tower and upgrades to the existing equipment shelter. DA-FS granted consent for the proposed site improvements, which are documented in the Renewal Lease. ITD will coordinate with RESO's - Project Management Division to procure the completion of the site improvements in compliance with County policy.

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Staff has reviewed the proposed project pursuant to the California Environmental Quality Act (CEQA) and has determined it to be categorically exempt from further environmental review in accordance with Section 15303 Class 3 (e) of the CEQA guidelines.

Summary of Lease Terms

Lessor:	United States of America, Department of Agriculture, Forest Service (Jody Noiron, Forest Supervisor, San Bernardino National Forest)
Location:	Skyland Peak Communication Site, Crestline
Size:	Approximately 1.5 acres of land
Term:	Approximately 29 years, commencing upon full execution and expiring on December 31, 2049
Options	None
Rent:	None for County use (waived by current DA-FS policy for government entities)
Improvement Costs:	Provided by County for proposed improvements
Maintenance:	Provided by County
Utilities:	Provided by County
Insurance:	Both parties are self-insured public entities
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 Renewal Lease includes terms that differ from the standard County contract. The non-standard terms include the following:

The County will indemnify, defend and hold 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 any 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.

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RESO requests the Board protect the confidentiality of Exhibit "B" of the lease documents to provide security of the frequencies used by ITD and the location details of the County equipment protecting the Public Safety Communication System at this communication site from targeted vandalism and interference of the technical capabilities of the County system.

PROCUREMENT

This Agreement is exempt from the provisions of County Policy No. 12-02 – Leasing Privately Owned Real Property for County Use, because the real property is owned by a governmental agency.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Agnes Cheng, Deputy County Counsel and Bonnie Uphold, Deputy County Counsel, 387-5455) on April 13, 2021; Innovation and Technology Department (Tim Trager, Chief, Public Safety Communications Division, 388-5563) on April 19, 2021; Finance (Kelly Welty, Deputy Executive Officer, 387-5423 and Carl Lofton, Administrative Analyst, 387-5404) on May 24, 2021; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on May 24, 2021.

(KB: 677-7961)

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

APPROVED (CONSENT CALENDAR)

Moved: Janice Rutherford Seconded: Joe Baca, Jr.

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: June 8, 2021



cc: RESD- Thompson w/agree for sign
Contractor- C/O RESD w/agree
File- w/agree
File- Confidential w/attach
LA 06/8/2021