



# San Bernardino County

## Legislation Text

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**File #: 4542, Agenda Item #: 42**

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

**July 13, 2021**

#### **FROM**

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

**LARRY AINSWORTH, Chief Information Officer, Innovation and Technology Department**

#### **SUBJECT**

License Agreement with SBA Structures LLC for Rack and Antenna Space for the Innovation and Technology Department in Wrightwood

#### **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 SBA Structures LLC for a term of five years, commencing upon the earlier of (1) October 1, 2021 or (2) the installation of the County's equipment, which will automatically renew for four additional terms of five years each unless either party exercises its option to terminate the automatic renewal by providing 120 days' notice prior to the expiration date of the then current term, for the use of rack and antenna space at SBA Structures LLC's communications site on Rivera Drive in Wrightwood for the Innovation and Technology Department.
  2. Approve a License Agreement with SBA Structures LLC for a term of five years, commencing upon the earlier of (1) October 1, 2021 or (2) the installation of the County's equipment, which will automatically renew for four additional terms of five years each unless either party exercises its option to terminate the automatic renewal by providing 120 days' notice prior to the expiration date of the then current term, for the use of rack and antenna space at licensor's communication site on Rivera Drive in Wrightwood for the Innovation and Technology Department in the total amount of \$97,494.
  3. Direct the Clerk of the Board of Supervisors to maintain the confidentiality of Exhibit B to the License Agreement with SBA Structures LLC, 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 \$97,494. Other costs associated with this license include utilities and maintenance, which will be paid from the Innovation and Technology Department (ITD) Telecommunication Services budget. Sufficient appropriation is included in the ITD Telecommunication Services 2021-22 budget and will be included in future recommended budgets. Annual license costs are as follows:

<u>Year</u>	<u>Annual License Cost</u>
October 1, 2021 - September 30, 2022	\$18,000
October 1, 2022 - September 30, 2023	\$18,720
October 1, 2023 - September 30, 2024	\$19,469
October 1, 2024 - September 30, 2025	\$20,248
October 1, 2025 - September 30, 2026	<u>\$21,057</u>
<b>Total Cost</b>	<b>\$97,494</b>

### **BACKGROUND INFORMATION**

The recommended actions will provide for a new license agreement with SBA Structures LLC (SBA) for a term of five years, commencing upon the earlier of (1) October 1, 2021 or (2) the installation of the County's equipment, which will automatically renew for four additional terms of five years each unless either party exercises its option to terminate the automatic renewal by providing 120 days' notice prior to the expiration date of the then current term, for the County's use of rack space in SBA's equipment shelter and antenna space on SBA's antenna tower, located at SBA's communications site on Rivera Drive (Rivera Site) in Wrightwood for ITD, which will enhance the first responder emergency radio communication coverage provided by the County's Public Safety Communication System in the Wrightwood area.

ITD requested the Real Estate Services Department (RESD) negotiate a license agreement with SBA for the use of antenna and rack space at SBA's Rivera Site. This prominent site location will support ITD's public safety radio system and microwave network. These essential services require specific physical locations with desired line of sight characteristics to maintain system connectivity. Terrain impediments in the Wrightwood area prevent the site at Frost Peak from providing the County's desired level of communication coverage and redundancy in the Wrightwood community. The site at Frost Peak is occupied by the County under the provisions of License Agreement No. 07-991, as approved by the Board of Supervisors (Board) on November 6, 2007 (Item No. 49), which was extended for the period of September 4, 2016 through September 3, 2021, by Board action on August 23, 2016 (Item No. 58). The County will continue to lease the Frost Peak site; ITD's equipment installation and operation at SBA's Rivera Site will improve system availability and reliability, providing improved radio coverage for law, fire, and EMS communications.

This new license agreement with SBA provides for the County's use of rack space within SBA's equipment shelter and antenna space on the SBA antenna tower at SBA's Rivera Site, which will provide enhanced radio and microwave connectivity in the Wrightwood area.

RESD requests the Board protect the confidentiality of Exhibit B of the License Agreement to provide security for 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.

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.

### **Summary of License Terms**

Licensors:	SBA Structures LLC (Jason Silberstein, Executive Vice President, Site Leasing)
Location:	Rivera Drive Communication Site, Wrightwood
Size:	Rack and Antenna Space

Term:	Five years commencing on the earlier of (1) October 1, 2021, or (2) the installation of County equipment at the site
Options:	Four five-year automatic renewal terms unless either party exercises its option to terminate the automatic renewal by providing 120 days' notice prior to the expiration date of the then current term
Rent:	Monthly: \$1,500* Annual: \$18,000 *Low-range for comparable facilities in the Wrightwood area per the competitive set analysis on file with RESD
Annual Increases:	4%
Improvement Costs:	Equipment to be provided by County
Maintenance:	Provided by Licensor for the tower and equipment shelter and fencing; Provided by County for antennas and radio equipment
Utilities:	Provided by County for its equipment
Insurance:	The Certificate of Liability Insurance, as required by the license, is on file with RESD
Right to Terminate:	The County has no right to terminate except due to default

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

1. Upon not less than five business day notice or the earliest possible notice by licensor, the County will cooperate with the licensor to reschedule the County's transmitting activities, reduce power, or interrupt its activities for limited periods of time, as is reasonably necessary in the event of an emergency or in order to permit the safe installation of new equipment or new facilities or repair of said equipment or facilities of any user of the Rivera Site.
  - The County Standard contract does not contain this provision.
    - **Potential Impact:** If deemed necessary by SBA, rescheduling or interrupting the County's transmitting and powering down of the County's equipment for other users at SBA's Rivera Site may impair the operation of the County's system by preventing or delaying the distribution of information at critical times and impact response times to emergency procedures. The licensor would not modify this language despite staff's repeated efforts. Despite the potential impact, the Rivera Site is still required to provide the desired level of coverage and redundancy in the County's Public Safety Communication System in the Wrightwood area.
2. Each party will indemnify, defend the other party for any of its respective use of the property, except due to the gross negligence or intentional misconduct of the party to be indemnified.
  - The County standard contract does not include any indemnification or defense by the County of a

contractor.

- **Potential Impact:** The County is required to provide an indemnity and defense to the licensor, which may result in the County contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred against the County, time limited, or expense limited could be brought by and against the licensor and the County would be responsible to reimburse the licensor for costs, expenses, and damages from the County's use of the property, which could exceed the total contract amount. Both the County and the licensor waive any right to damages other than direct, i.e. general, damages against each other. "Direct" damages are damages as may fairly and reasonably be considered arising naturally, i.e. according to the usual course of things, from such breach of contract itself. A limit to "direct" damages usually excludes such damages as lost future profits, loss of use, financing, business and reputation, loss of management or employee productivity, and home office overhead.

### **PROCUREMENT**

This 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 the Board may approve the use of an alternative procedure in lieu of a Formal Request for Proposals (RFP) process whenever the Board determines compliance with the 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's designee to review proposed real property leases and licenses 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 of the department. RESO 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, Deputy County Counsel, 387-5455) on May 19, 2021; Innovation and Technology Department (Tim Trager, Chief, Public Safety Communications Division, 388-5563) on May 12, 2021; Purchasing Department (Bruce Cole, Supervising Buyer, 387-2148) on May 3, 2021; Finance (Carolina Mendoza, Administrative Analyst, 387-0294 and Carl Lofton, Administrative Analyst, 387-5404) on June 25, 2021; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on June 25, 2021.

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