



San Bernardino County

Legislation Text

File #: 5112, Agenda Item #: 57

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

November 16, 2021

FROM

TERRY W. THOMPSON, Director, Real Estate Services Department

LARRY AINSWORTH, Chief Information Officer, Innovation and Technology Department

SUBJECT

Right-of-Way Grant/Temporary Use Permit Agreement with the United States of America for Land for the Innovation and Technology Department at the Sandy Communication Site Near Yermo

RECOMMENDATION(S)

1. Approve a 30-year Right-of-Way Grant/Temporary Use Permit Agreement with the United States of America, acting through the United States Department of the Interior, Bureau of Land Management for an existing diesel back-up generator on approximately 15 square feet of federal land installed at the Sandy Communication Site near Yermo, for the Innovation and Technology Department, for the period of January 1, 2022 through December 31, 2051, at no fee to the County.
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 agreement.

(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 30-year Right-of-Way Grant/Temporary Use Permit Agreement (Agreement) for the County's existing diesel back-up generator on approximately 15 square feet of federal land. While the Agreement typically requires the payment of fees as determined by the United States Department of Interior, Bureau of Land Management (DI-BLM), acting on behalf of the United States of America (US), waives collection of Agreement fees from governmental users under current guidelines. Other costs associated with this Agreement are maintenance and fuel costs for the back-up generator, which will be paid by the Innovation and Technology Department (ITD). Sufficient appropriation is included in the ITD Telecommunication Services 2021-22 budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

The recommended action will provide for a new Right-of-Way Grant/Temporary Use Permit Agreement with the US, acting through the DI-BLM, for a term of 30 years, for the period of January 1, 2022 through December 31, 2051, for federal authorization for the operation of an existing diesel back-up generator, which was

previously installed, on approximately 15 square feet of DI-BLM-controlled land in support of the San Bernardino County Public Safety Communication System at the Sandy Communication Site (Sandy) near Yermo, at no cost to the County.

On March 7, 2017 (Item No. 41), the Board of Supervisors (Board) approved License Agreement No. 17-110 with American Towers, LLC (AT) for the County's use of space on AT's tower and ground space at AT's site for antenna and rack space, and back-up generator space, which tower and ground space are located on federal land that is subject to a master agreement between AT and the US. The original term of the AT License is for the period of June 1, 2017 through May 31, 2029, with three five-year automatic options to extend the term of the license (for an aggregate term expiring on May 31, 2044) unless either party terminates the license with at least 180 days' notice prior to the expiration of the then current term.

Under DI-BLM guidelines, despite the master agreement between AT and the US and the AT License, all improvements placed on Federal lands require a separate authorization by the DI-BLM. On September 17, 2020, 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 DI-BLM for a separate authorization for the operation of a diesel back-up generator, which was previously installed on the 15 square feet of land that is already licensed by the County from AT.

This new 30-year Agreement with the US, acting through DI-BLM, provides for the separate federal authorization for the operation of a diesel back-up generator on approximately 15 square feet of DI-BLM-controlled land located at the Sandy Site.

Staff has reviewed the Agreement pursuant to the California Environmental Quality Act (CEQA) and determined it to be categorically exempt from further environmental review in accordance with Section 15301 of the CEQA guidelines.

Summary of Agreement Terms

Lessor:	United States of America, acting by and through the Department of the Interior, Bureau of Land Management
Location:	Sandy Communication Site near Yermo
Size:	Approximately 15 square feet of land
Term:	30 years, commencing January 1, 2022 and expiring on December 31, 2051
Options:	None
Rent:	None - for County use (waived by current DI-BLM policy for government entities)
Improvement Costs:	Provided by County
Maintenance:	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 Agreement will terminate 60 days after the expiration of the Federal Communications Commission license authorizing operation at this location.

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

1. The County will indemnify, defend and hold the US harmless for its use and maintenance of any violations, judgements, claims, or demands in connection with any release of hazardous substances or hazardous waste on the right-of-way, unless the release or threatened release is wholly unrelated to the County's activity on the site. The indemnity applies without regard to whether a release is caused by the County, its agents, or an unrelated third party.
 - The County standard contract does not include any indemnification or defense by the County of a contractor.
 - **Potential Impact:** By agreeing to indemnify the US, the County could be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred against the County, could be brought against the US and the County would be responsible to defend and reimburse the US for costs, expenses, and damages, which could exceed the total contract amount.
2. The term of the Agreement, which expires on December 31, 2051, currently exceeds the term of the AT License, which is scheduled to expire on May 31, 2029, and as extended with all renewal options on May 31, 2044. In addition, the ground area of 15 square feet is subject to both the AT License and the Agreement, which could result in a conflict.
 - **Potential Impact:** The DI-BLM did not agree to adjust the term of the Agreement to match the term of the AT License. Therefore, should the County not extend the term of AT License in the future to match the term of the Agreement, the County would remain subject to the provisions and conditions of the Agreement, which could result in ongoing liabilities for a space that the County may not need.

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 October 20, 2021; Innovation and Technology Department (Tim Trager, Chief, Public Safety Communications Division, 388-5563) on September 27, 2021; Finance (Sophia Almeida, Administrative Analyst, 387-4378 and Carl Lofton, Administrative Analyst, 387-5404) on October 29, 2021; and County Finance and Administration (Diana Atkeson, Deputy Executive Officer, 387-4376) on October 29, 2021.

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