



San Bernardino County

Legislation Text

File #: 6677, Agenda Item #: 57

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

September 13, 2022

FROM

TERRY W. THOMPSON, Director, Real Estate Services Department

BRENDON BIGGS, Director, Department of Public Works - Special Districts

SUBJECT

License Agreement with the City of Los Angeles, Department of Water and Power for the Snowdrop Road Improvement Project

RECOMMENDATION(S)

1. Approve a license agreement, including a non-standard term, with the City of Los Angeles, Department of Water and Power, for the use of approximately 23,670 square feet of land along Haven Avenue needed to construct road and drainage improvements for the Snowdrop Road Improvement Project, for a total fee in the amount of \$5,000, commencing upon mutual execution, and for a term of five years, or the recording of a permanent easement, whichever comes first.
2. Authorize the Director of the Real Estate Services Department to execute any other documents necessary to complete this transaction, subject to County Counsel review.

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

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

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

Ensure Development of a Well-Planned, Balanced, and Sustainable County.

Pursue County Goals and Objectives by Working with Other Agencies and Stakeholders.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). The cost of the five-year license agreement is a one-time fee of \$5,000. This payment is in addition to the \$20,482 anticipated to be paid to the City of Los Angeles for the permanent easements to be granted upon extinguishment of this license agreement. The Snowdrop Road Improvement Project (Project) is funded by voter approved Assessment District 2018-1. Sufficient appropriation is included in the 2022-23 Project budget (1050003600).

BACKGROUND INFORMATION

The recommended action will approve a license agreement with the City of Los Angeles for a term of five years, or the recording of permanent easements, whichever comes first, for a total of approximately 23,670 square feet of land needed along Haven Avenue for the construction of road and drainage improvements for the Project. The acquisitions are situated on portions of Accessor Parcel Numbers (APNs) 0201-043-35 and 0201-281-14 located in unincorporated San Bernardino County (County) in the vicinity of the City of Rancho

Cucamonga.

The Project involves improvements to approximately 2.1 miles of roadway and associated drainage improvements. These improvements will be approximately 1.3 miles of Snowdrop Road between west of Archibald Avenue and east of Haven Avenue, approximately 0.5 miles of Archibald Avenue south of Snowdrop Road, and approximately 0.3 miles of Haven Avenue south of Snowdrop Road within the City of Rancho Cucamonga's sphere of influence, in the unincorporated County. Currently, portions of the existing roadway are partially paved.

The Project requires easements from various property owners fronting Haven Avenue, Snowdrop Road, and Archibald Avenue to allow for the widening and repaving of the road, as well as upgrading the drainage improvements. Two of the parcels, from which right-of-way easements totaling 22,209 square feet and drainage easements totaling 1,461 square feet are needed, are owned by the City of Los Angeles and controlled by the Los Angeles Department of Water and Power (LADWP).

The Department of Public Works-Special Districts (Special Districts) and the Real Estate Services Department (RESD) have discussed the Project with LADWP since early 2020. Special Districts requested that RESD complete an appraisal and make offers to acquire the necessary easements from LADWP. Appraisal No. 20-73, dated November 14, 2020, which established a value of \$20,482 for the 23,670 total square footage of easements on the LADWP property, is on file with RESD.

During negotiations, it became apparent that LADWP's approval process for the County to acquire the permanent easement interests via negotiated purchase will exceed the timeline for completion of the Project. On June 8, 2021 (Item No. 110), the Board of Supervisors (Board) approved the easement acquisitions and Resolution of Necessity No. 2021-71 on the LADWP property. As an alternative to our filing a condemnation court action to acquire the easements, LADWP suggested Special Districts enter into a license agreement to facilitate construction while the process to acquire the permanent easements moves forward. This license agreement will allow the County's entry onto approximately 23,670 square feet of LADWP-owned land during the easement acquisition process for a period of up to five years.

Special Districts and RESD have conferred with both County Counsel and the Department of Risk Management regarding these non-standard provisions, and it was determined they are acceptable given the need for the Project to advance. RESD will work with Risk Management to produce a Certificate of Insurance for LADWP.

Summary of License Terms

Licensors:	City of Los Angeles acting by and through its LADWP
Licensee:	San Bernardino County
Location:	Portions of APNs 0201-043-35 and 0201-281-14 located in the unincorporated San Bernardino County in the vicinity of the City of Rancho Cucamonga
Size:	23,670 Square Feet
Term:	Five years from execution of the Agreement or upon the recording of the permanent easements, whichever comes first
Options:	None

License Fees:	\$5,000 one-time payment
Annual Increases:	None
Improvements:	The County will construct roadway and associated drainage improvements
Maintenance:	Provided by County
Utilities:	None
Insurance:	The Certificate of Liability Insurance, as required by the lease, is on file with the RESD
Right to Terminate:	May be terminated at any time without cause for any reason or no reason at all at the option of LADWP by giving 30 calendar days' written notice of termination or for breach of contract

The license agreement includes the following term that differs from the standard County contract.:

1. Indemnity (by County). The County is required to indemnify, defend, hold harmless LADWP, the City of Los Angeles, the Board of Water and Power Commissioners of the City of Los Angeles (Indemnitees) from any and all claims for death, bodily injury, or personal injury to any persons who enter the licensed area, any destruction or loss of personal property, and any environmental matters, regardless of any negligence of the Indemnitees except due to their sole active negligence of willful misconduct.
 - a. The standard County term is a unilateral indemnification of the County by the licensor. In cases with other public agencies, a mutual indemnity is often used and approved by the Board.
 - b. **Potential Impact:** By agreeing to indemnify LADWP, 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 LADWP without such limitations and the County would be responsible to defend and reimburse LADWP for costs, expenses, and damages, which could exceed the total contract amount.

Through this agreement, the County is also obligated to reimburse LADWP to repair damage, as assessed by LADWP, to any transmission tower, line or other facility given that the licensed area is within a transmission line right of way with a minimum charge of \$5,000 for a minor damage occurrence. The potential impact is minimal as the road improvements traverse under the LADWP overhead transmission lines with sufficient clearance. There are no other LADWP facilities within the vicinity of the road improvements.

RESD and SPD recommend approval of the license agreement, including the non-standard term, as approval of the license will allow SPD to move forward with the construction of road and drainage improvements for the Snowdrop Road Improvement Project and improve needed traffic services to the public pending the County's acquisition of the permanent easement.

The Project was reviewed pursuant to the California Environmental Quality Act. An Initial Study and Mitigated Negative Declaration (IS/MND) was approved by the Board on March 19, 2019 (Item No. 41) and a Notice of Determination (NOD) was posted. In July of 2020, a peer review of a Project redesign to narrow portions of the road determined the MND was still sufficient, and the Board approved an addendum to the IS/MND on November 17, 2020 (Item No. 61). The NOD was refiled with the Clerk of the Board on January 5, 2021.

PROCUREMENT

The procurement process required by County Policy 12-02 - Leasing Privately Owned Real Property for County Use does not apply to agreements for use of real property owned by a federal agency, the state, a city, a county, a school district, special district, or other public entity.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Aaron Gest, Deputy County Counsel, and Mitchell Norton, Deputy County Counsel, 387-5455) on September 1, 2022; Risk Management (Victor Tordesillas, Director, 386-8621) on September 1, 2022; Purchasing (Bruce Cole, Supervising Buyer, 387-2148) on August 26, 2022; Special Districts (Trevor Leja, Assistant Director, 386-8810) on August 22, 2022; Finance (Carl Lofton, Administrative Analyst, 387-5404) on August 26, 2022; and County Finance and Administration (Diana Atkeson, Deputy Executive Officer, 387-4376) on August 29, 2022.

(NA: 501-6726)