



Legislation Text

File #: 2018-0339, **Version:** 1

DATE: September 12, 2018

SUBJECT:

RESOLUTION AUTHORIZING AMENDMENT NO. 3 TO TELECOMMUNICATIONS LICENSE AGREEMENT WITH THE IRVINE COMPANY, LLC, A DELAWARE LIMITED LIABILITY COMPANY, EXTENDING THE TERM FOR AN ADDITIONAL TWO (2) YEARS PLUS ONE (1), ONE (1) YEAR OPTION THROUGH JUNE 30, 2021 AND GRANTING INDEMNITY AND JURY TRIAL WAIVER UNDER THE TELECOMMUNICATIONS LICENSE AGREEMENT FOR ANY CLAIMS ARISING OUT OF THE USE, OPERATION, MAINTENANCE AND REPAIR OF THE TELECOMMUNICATIONS EQUIPMENT FOR THIS AGREEMENT AND FUTURE SIMILAR AGREEMENTS

EXECUTIVE SUMMARY:

The San Diego Unified Port District (District) is requesting an extension of an existing Telecommunications License Agreement (Agreement) with The Irvine Company, LLC, a Delaware Limited Liability Company (The Irvine Company), for the District's communication relay station located at the One America Plaza building, 600 West Broadway in the City of San Diego (Attachment A - Location Map). The Agreement is for bay-wide communication and security for various law enforcement agencies throughout the San Diego region. Continued use and maintenance of the elevated relay station is required to provide enhanced security and uninterrupted communication signals among District facilities in the South Bay, along the Embarcadero, across the bay from Coronado, and the District's Administration Building.

The Irvine Company has agreed to extend the term by an initial two (2) years, and one (1), one (1) year option to extend, with a new expiration date of June 30, 2021. Proposed Amendment No. 3 (Amendment) requires Board approval because the total term exceeds five years, and as a condition of the Agreement, the District must continue to indemnify The Irvine Company and agree to a jury trial waiver in favor of a court-appointed referee for dispute resolutions. Due to the security nature of the Agreement and Amendment, both documents are exempt from public disclosure under California Government Code sections 6254(a) and 6255 and, therefore, not attached to this agenda.

RECOMMENDATION:

Adopt a Resolution authorizing Amendment No. 3 to Telecommunications License Agreement with The Irvine Company, LLC, a Delaware Limited Liability Company, extending the term for an additional two (2) years plus one (1), one (1) year option through June 30, 2021 and granting indemnity and jury trial waiver under the Telecommunications License Agreement for any claim arising out of the use, operation, maintenance and repair of the telecommunications equipment for this Agreement and future similar agreements.

FISCAL IMPACT:

Funds for the first year of this expenditure of \$46,800 are included in the approved FY 18/19 budget within Maritime's Space Rental expense account. Funds required for future fiscal years will be budgeted for in the appropriate year subject to Board approval upon adoption of each fiscal year's budget.

This agenda item is not subject to Board of Port Commissioners Policy 106 - Cost Recovery User Fee Policy since the Agreement solely benefits the District as licensee.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s):

- A thriving and modern maritime seaport.
- A Port that is a safe place to visit, work and play.

DISCUSSION:

On September 7, 2010, the District's Board approved a Telecommunication License Agreement with The Irvine Company for the installation of a telecommunications relay station at the One America Plaza building at 600 West Broadway in the City of San Diego. The Agreement facilitates bay-wide communication among District facilities and security for various law enforcement agencies throughout the San Diego region. The original Agreement commenced July 1, 2010 and has been amended twice to extend the expiration date to June 30, 2018, and is currently on month-to-month holdover.

At the District's request to continue utilizing space for its telecommunications relay station at One America Plaza, The Irvine Company provided the proposed Amendment No. 3 to further extend the current Agreement. The proposed Amendment No. 3 extends the Agreement for an additional two (2) years plus one (1), one (1) year option commencing July 1, 2018 through June 30, 2021 (Attachment B - Amendment No. 3 to Telecommunications License Agreement Information Summary). The proposed Amendment requires Board approval since the total term exceeds five years and, as a condition of the Agreement, the District must continue to indemnify The Irvine Company and agree to a jury trial waiver in favor of a court-appointed referee for dispute resolutions. Due to the enhanced bay-wide security this Agreement provides, staff believes the benefits to the District and law enforcement agencies outweigh the risks imposed by assumption of liability and loss of right to a jury trial.

District staff's analysis of the current site indicates that it continues to be the best location for a security communication network for the District. Line-of-site transmitting and receiving equipment continue to be undisturbed at this site based upon the existing downtown San Diego skyline. The three antennas on One America Plaza continue to be required to maintain uninterrupted communication signals between District facilities in the South Bay, along the Embarcadero, across the bay from Coronado, and the District's Administration Building. For these reasons, staff recommends the Board approve Amendment No. 3 to the Agreement and grant indemnity to The Irvine Company under the Amendment and any future similar Agreements via one resolution rather

than necessitating Board action every time the Agreement is periodically renewed or extended.

General Counsel's Comments:

The Office of the General Counsel has reviewed Amendment No. 3 to the Agreement, along with the indemnity provision and jury waiver and approves as to form and legality.

Environmental Review:

The proposed Board direction or action, including without limitation, a resolution authorizing an amendment to a telecommunications license agreement to extend the term and grant indemnity, does not constitute a "project" under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because no direct or indirect changes to the physical environment would occur. CEQA requires that the District adequately assess the environmental impacts of projects and reasonably foreseeable activities that may result from projects prior to the approval of the same. Any project developed as a result of Board's action or direction that requires the District or the Board's discretionary approval resulting in a physical change to the environment will be analyzed in accordance with CEQA prior to such approval. CEQA review may result in the District, in its sole and absolute discretion, requiring implementation of mitigation measures, adopting an alternative, including without limitation, a "no project alternative" or adopting a Statement of Overriding Consideration, if required. The current Board direction in no way limits the exercise of this discretion. Therefore, no further CEQA review is required.

In addition, the proposed Board action complies with Sections 21 and 35 of the Port Act, which allow for the Board to pass all necessary ordinances and resolutions for the regulation of the District and to do all acts necessary and convenient for the exercise of its powers. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

The proposed Board direction or action does not allow for "development," as defined in Section 30106 of the California Coastal Act, or "new development," pursuant to Section 1.a. of the District's Coastal Development Permit (CDP) Regulations because they will not result in, without limitation, a physical change, change in use or increase the intensity of uses. Therefore, issuance of a Coastal Development Permit or exclusion is not required. However, development within the District requires processing under the District's CDP Regulations. Future development, as defined in Section 30106 of the Coastal Act, will remain subject to its own independent review pursuant to the District's certified CDP Regulations, PMP, and Chapters 3 and 8 of the Coastal Act. The Board's direction or action in no way limits the exercise of the District's discretion under the District's CDP Regulations. Therefore, issuance of a CDP or exclusion is not required at this time.

Equal Opportunity Program:

Not applicable.

PREPARED BY:

Isabel Ortega
Asset Manager, Real Estate

Attachment(s):

Attachment A: Location Map

Attachment B: Amendment No. 3 to Telecommunications License Agreement
Information Summary