

FORM APPROVED COUNTY COUNSEL
BY: Synthia M. Gunzel 6-23-10
DATE
SYNTHIA M. GUNZEL

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

434



FROM: Economic Development Agency

SUBMITTAL DATE:

June 30, 2010

SUBJECT: Delegation of Authority to Accept Grants of Leases from the United States Department of the Interior, Bureau of Land Management for the Public Safety Enterprise Communication Project

RECOMMENDED MOTION: That the Board of Supervisors:

1. Authorize the Assistant County Executive Officer/EDA, or his designee, to accept Grants of Leases for land to build radio and microwave facilities for the specific sites listed herein for the Public Safety Enterprise Project from the United States Department of the Interior, Bureau of Land Management (BLM) without further Board approvals; and
2. Execute other documents and administer all actions necessary to complete these transactions;

(Continued)

Robert Field
Assistant County Executive Officer/EDA

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2010/11

SOURCE OF FUNDS: N/A

Positions To Be Deleted Per A-30	<input type="checkbox"/>
Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: Jennifer L. Sargent

County Executive Office Signature

By: Policy Policy

Consent Consent

Dep't Recomm:
Per Exec. Ofc:

Prev. Agn. Ref.: 3.52 of 9/2/2008
3.52; 3.17 of 10/6/2009

District: ALL

Agenda Number:

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

3.35

RECOMMENDED MOTION: (Continued)

3. Approve the lease documents provided by BLM for each site, which will be substantially similar to the form for the Rice Site Lease, attached hereto as Exhibit A.

BACKGROUND:

Previously, the Board of Supervisors approved funding for the Public Safety Enterprise Communication (PSEC) Project, which will modernize and enhance the County's Voice and Data Emergency Communication System. Included in the funding was the cost of site purchases needed to locate new radio towers and equipment buildings on both private and public owned land. A total of 74 sites are required for implementation of the system. While many sites will be leased or purchased, four existing sites on BLM land that require redevelopment, plus eight new sites are situated on BLM land. At the completion of the environmental assessment process, the eight new sites will be entitled to the County via Grants for Communication Site Leases that carry no financial obligation. The Leases define the terms and conditions and also stipulate the environmental constraints.

Each site will have unique environmental and construction related stipulations set forth by BLM in the lease document. According to BLM representatives, the attached Lease issued by BLM for site known as Rice is substantially similar to each of the Leases that will be issued by BLM for the eight proposed new sites and four existing sites.

In order to expedite the construction process, it is recommended that the Board authorize the Assistant County Executive Officer/EDA to execute the Lease Agreements furnished by BLM, provided they have been approved as to form by County Counsel in each instance.

The BLM grant modification sites are:

- Whitewater
- Chuckwalla
- Cactus City
- Big Maria

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BACKGROUND: (Continued)

The new BLM sites are:

- Avocado Flats
- Black Jack
- Rice
- Box Canyon
- Road 62
- Midland
- Palen McCoy
- Palo Verde

This Form 11 has been reviewed and approved by County Counsel as to legal form.

FINANCIAL DATA:

There are no costs associated with this Form 11.

THE UNITED STATES
Department of the Interior
Bureau of Land Management

COMMUNICATIONS USE LEASE

Riverside County
(Lessee Name)

of 3403 10th St. Suite 500
(Billing Address - 1)

(Billing Address -2)

Riverside
(City)

CA
(ST)

92507
(Zip Code)

THIS LEASE, dated this 29th day of April, 2010, by and between the UNITED STATES OF AMERICA, acting through the Bureau of Land Management, Department of the Interior (hereinafter called the "United States" or "Bureau of Land Management"), as authorized by the Act of October 21, 1976, and implementing regulations (90 Stat. 2743; 43 U.S.C. 1701, et seq.; 43 CFR 2800), and the County of Riverside, a political subdivision of the state of California, its agents, successors, and assigns (hereinafter called the "Lessee").

The United States and the Lessee are jointly referred to herein as the "Parties." As used herein, the "Authorized Officer" refers to the Bureau of Land Management official having the delegated authority to execute and administer this lease. Generally, unless otherwise indicated, such authority may be exercised by the Field Manager or District Manager for the public lands wherein the following described lands are located.

The United States, for and in consideration of the terms and conditions contained herein and the payment to the United States of a rental in advance by the Lessee, does hereby grant to the Lessee a lease for the following described lands in the County

of Riverside, State of California: T. 10S. R. 21E Section 21 (portion of) _____
(Legal Description)

(herein after called the "property"). The Lessee accepts this lease and possession of the property, subject to any valid existing rights, and agrees not to use the property, or any part thereof, except as a site for only the construction, operation, maintenance, and termination of a radio communications facility.
(Type of Communication Use)

The location of the property is shown generally on the site plan, LS-1 Survey, dated May 24, 2010 for the radio Communications Site which is attached and made part hereof as Exhibit A. The facilities specifically authorized under this lease are shown on the Construction Drawings contained in Exhibit B. (Alternately, list all approved facilities here including buildings, roads, fences, towers, generators, tanks, etc.)

The dated and initialed exhibit(s), attached hereto, are incorporated into and made a part of this instrument as fully and effectively as if they were set forth herein in their entirety.

The parties agree that this lease is made subject to the following terms and conditions.

I. TENURE, RENEWAL AND TRANSFERABILITY

A. This lease will terminate at one minute after midnight on May 31, 2040. Termination at the end of the lease term occurs by operation of law and does not require any additional notice or documentation by the Authorized Officer. This lease is not renewable; but the Lessee has the right to request a new lease pursuant to paragraph "C" below.

EXHIBIT "A"

B. The Lessee will undertake and pursue with due diligence construction and operation that is authorized by this lease. To the extent specified in Exhibit B, construction will commence on June 1, 2010.

(Date)

This lease will terminate if operation does not commence by that date, unless the parties agree in writing, in advance, to an extension of the commencement date.

C. If the Lessee desires a new lease upon termination of this lease, the Lessee must notify the Authorized Officer accordingly, in writing. The notice must be received by the Authorized Officer at least one year prior to the end of the lease term. The Authorized Officer will determine if the use should continue and, if it is to continue, if a new lease should be issued to the Lessee and under what conditions. The Authorized Officer will require payment of any amounts owed the United States under any Bureau of Land Management authorization before issuance of another authorization.

D. This lease is assignable with prior written approval of the Authorized Officer. Renting of space does not constitute an assignment under this clause.

II. RENTAL

A. The Lessee must pay in advance an annual rental determined by the Authorized Officer in accordance with law, regulation, and policy. The annual rental will be adjusted by the Authorized Officer to reflect changes in fair market value, annual adjustments using the Consumer Price Index-Urban (CPI-U), changes in tenant occupancy, or phase-in of rental, if applicable.

B. After the initial rental period rental payments are due at the close of the first business day after January 1 of each calendar year for which a payment is due. Payments due the United States for this use must be deposited at Bureau of Land Management, _____ in the form of a check or money order payable to Bureau

(Address)

of Land Management, DOI. Credit card payments (VISA and MasterCard) can be made in person, through the mail, or by telephone. This lease will terminate automatically if accrued rent is not received by the Bureau of Land Management within 90 calendar days after the initial due date for the payment of such rent. ***No rental due unless tenants other than Federal, State, County or city's are allowed in facility.***

C. Pursuant to the Federal Claims Collection Act of 1966, as amended, 31 U.S.C. 3717, *et seq*, regulations at 7 CFR Part 3, Subpart B and 4 CFR Part 102, an interest charge will be assessed on any amount due but not received by the due date. Interest will accrue from the date the payment was due. Administrative costs will also be assessed in the event that two or more billing notices are required for unpaid accounts. In addition, an administrative penalty at a percentage rate prescribed by law or regulation will be assessed for failure to pay any portion of the debt that is more than 90 days past due. This paragraph survives the termination of this lease, regardless of cause.

Other late fee charges may be assessed in accordance with standard BLM accounting procedures and policy.

D. Disputed rentals are due and payable on or before the due date.

III. RESPONSIBILITIES OF THE LESSEE

A. The Lessee is authorized to rent space and provide other services to customers and/or tenants and must charge each customer/tenant a reasonable rental without discrimination for the use and occupancy of the facilities and services provided. The Lessee must impose no unreasonable restrictions nor any restriction restraining competition or trade practices. By October 15th of each year, the Lessee must provide the Authorized Officer a certified statement, listing all tenants and customers, by category of use, located within the facility on September 30th of that year.

B. All development, operation and maintenance of the authorized facility, improvements, and equipment located on the property must be in accordance with stipulations in the communications site plan approved by the Authorized Officer. If required by the Authorized Officer, all plans for development, layout, construction, or alteration of improvements on the property as well as revisions of such plans, must be prepared by a licensed engineer, architect, and or landscape architect. Such plans must be approved in writing by the Authorized Officer before commencement of any work. After completion, as-built plans, maps, surveys, or other similar information will be provided to the Authorized Officer and appended to the communications site plan.

EXHIBIT "A"

C. The Lessee must comply with applicable Federal, State, county, and municipal laws, regulations and standards for public health and safety, environmental protection, siting, construction, operation, and maintenance in exercising the rights granted by this lease. The obligations of the Lessee under this lease are not contingent upon any duty of the Authorized Officer, or other agent of the United States, to inspect the premises. A failure by the United States, or other governmental officials, to inspect is not a defense to noncompliance with any of the terms or conditions of this lease. Lessee waives all defenses of laches or estoppel against the United States. The Lessee must at all times keep the title of the United States to the property free and clear of all liens and encumbrances.

D. Use of communications equipment is contingent upon the possession of a valid Federal Communications Commission (FCC) or Director of Telecommunications Management/Interdepartmental Radio Advisory Committee (DTM/IRAC) authorization (if required), and the operation of the equipment is in strict compliance with applicable requirements of FCC or IRAC. A copy of each applicable license or authorization must at all times be maintained by the Lessee for each transmitter being operated. The Lessee must provide the Authorized Officer, when requested, with current copies of all licenses for equipment in or on facilities covered by this lease.

E. The Lessee must ensure that equipment within his or her facility (including tenant and customer equipment) operates in a manner which will not cause harmful interference with the operation of existing equipment on or adjacent to the communications site. If the Authorized Officer or authorized official of the Federal Communications Commission (FCC) determines that the Lessee's use interferes with existing equipment, the Lessee must promptly take the necessary steps to eliminate or reduce the harmful interference to the satisfaction of the Authorized Officer or FCC official.

F. When requested by the Authorized Officer, the Lessee must furnish technical information concerning the equipment located on the property.

IV. LIABILITIES

A. The Lessee assumes all risk of loss to the authorized improvements.

B. The Lessee must comply with all applicable Federal, State, and local laws, regulations, and standards, including but not limited to, the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, the Comprehensive Environmental Response, Control, and Liability Act, 42 U.S. C. 9601 *et seq.*, and other relevant environmental laws, as well as public health and safety laws and other laws relating to the siting, construction, operation, and maintenance of any facility, improvement, or equipment on the property.

C. The Lessee must indemnify, defend, and hold the United States harmless for any violations incurred under any such laws and regulations or for judgments, claims, or demands assessed against the United States in connection with the Lessee's use or occupancy of the property. The Lessee's indemnification of the United States must include any loss by personal injury, loss of life or damage to property in connection with the occupancy or use of the property during the term of this lease. Indemnification must include, but is not limited to, the value of resources damaged or destroyed; the costs of restoration, cleanup, or other mitigation; fire suppression or other types of abatement costs; third party claims and judgments; and all administrative, interest, and other legal costs. This paragraph survives the termination or revocation of this lease, regardless of cause.

D. The United States has no duty, either before or during the lease term, to inspect the property or to warn of hazards and, if the United States inspects the property, it will incur no additional duty nor any liability for hazards not identified or discovered through such inspections. This paragraph survives the termination or revocation of this lease, regardless of cause.

E. The Lessee has an affirmative duty to protect from damage the land, property, and interests of the United States.

1. The Lessee must maintain \$ One Million Dollars worth of insurance coverage, naming the United States additionally insured on the policies(s), to partially fund the indemnification obligations of the Lessee for any and all losses due to personal injury, loss of life, or property damage, including fire suppression and hazardous waste costs. The Lessee must furnish proof of insurance (such as a surety bond, or certificate of insurance) to the Authorized Officer prior to execution of this lease and verify annually, and in writing, the insurance obligation to the Authorized Officer. The Authorized Officer may allow the Lessee to replace, repair, restore, or otherwise undertake necessary curative actions, to the satisfaction of the Authorized Officer, in order to mitigate damages in addition to or as an alternative to monetary indemnification.

2. If Lessee is a State or political subdivision thereof and such entity has statutory or constitutional authorities limiting the amount of liability or indemnification payable, the Authorized Officer must prepare a risk assessment to determine the United State's potential for losses due to personal injury, loss of life, or property damage caused by the State's use or occupancy. If the Authorized Officer determines, through the risk assessment that the potential for injury, loss, or damage caused by the State's use or occupancy is in excess of the State's liability limitation, the State must procure, as a requirement to be fulfilled before execution of this lease, insurance (see below), and name the United States,

EXHIBIT "A"

together with the State, as an insured on the policy(s), in the amount determined in the risk assessment that exceeds the State's liability limitation.

F. In the event of any breach of the lease by the Lessee, the Authorized Officer may, on reasonable notice, cure the breach at the expense of the Lessee. If the Bureau of Land Management at any time pays any sum of money or does any act which requires payment of money, or incurs any expense, including reasonable attorney's fees, in instituting, prosecuting, and/or defending any action or proceeding to enforce the United States rights hereunder, the sum or sums so paid by the United States, with all interests, costs and damages will, at the election of the Bureau of Land Management, be deemed to be additional rental hereunder and will be due from the Lessee to the Bureau of Land Management on the first day of the month following such election.

V. OTHER PROVISIONS

A. **Nondiscrimination.** The Lessee must at all times operate the described property and its appurtenant areas and its buildings and facilities, whether or not on the property, in full compliance with Title VI of the Civil Rights Act of 1964 and all requirements imposed by or pursuant to the regulations issued thereunder by the Department of the Interior and in effect on the date this lease is granted to the end that no person in the United States will, on the grounds of race, sex, color, religion, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any of the programs or activities provided thereon.

B. Termination and Suspension.

1. General. For purposes of this lease, termination and suspension refer to the cessation of uses and privileges under the lease.

"Termination" refers to an action by the Authorized Officer to end the lease because of noncompliance with any of the prescribed terms, abandonment, or for reasons in the public interest. Termination also occurs when, by the terms of the lease, a fixed or agreed upon condition, event, or time occurs. For example, the lease terminates at expiration. Termination ends the Lessee's right to use the public land for communication purposes.

"Suspension" is a temporary action and the privileges may be restored upon the occurrence of prescribed actions or conditions.

2. This lease may be suspended or terminated upon breach of any of the terms or conditions herein or upon nonuse, or when in the public interest. Nonuse refers to a failure to operate consistently the facilities on the property for any period during the term in excess of 180 days. When suspended or terminated in the public interest, the Lessee will be compensated subject to the availability of appropriated funds. Compensation will be based upon the initial cost of improvements located on the lease, less depreciation as allocated over the life of the improvements as evidenced by the Lessee's Federal tax amortization schedules.

3. Except in emergencies, or in case of nonuse, the Authorized Officer will give the Lessee written notice of the grounds for termination or suspension and a reasonable time, not to exceed 90 days, to complete the corrective action. After the prescribed period, the Bureau of Land Management is entitled to such remedies as are provided herein.

4. Any discretionary decisions or determinations by the Authorized Officer on termination or suspension are subject to appeal in accordance with the regulations in Title 43, Code of Federal Regulations.

C. Restoration

1. In the event the Authorized Officer decides not to issue a new lease, or the Lessee does not desire a new lease, the Lessee must, prior to the termination of this lease, restore and stabilize the site to the satisfaction of the Authorized Officer.

2. In the event this lease is revoked for noncompliance, the Lessee must remove all structures and improvements within a reasonable period as determined by the Authorized Officer, except those owned by the United States, and must restore the site as nearly as reasonably possible to its original condition unless this requirement is otherwise waived in writing by the Authorized Officer.

3. If the Lessee fails to remove all structures or improvements within the prescribed period, they will become the property of the United States and may be sold, destroyed, or otherwise disposed of without any liability to the United States.

D. **Members of Congress.** No member of or Delegate to Congress or Resident Commissioner may benefit from this lease either directly or indirectly, except when the lease provides a general benefit to a corporation.

EXHIBIT "A"

E. Reservations. This lease is granted subject to the following reservations by the United States:

1. The right to all natural resource products now or hereafter located on the property unless stated otherwise herein, and the right to obtain, utilize, or dispose of such resources insofar as the rights and possession of the Lessee are not unreasonably affected.
2. The right to modify the communications site plan as deemed necessary.
3. The right to enter upon the lease and inspect all facilities to assure compliance with the conditions of this lease.
4. The right of the United States to use or to authorize the use of the property for compatible uses, including the subsurface and air space.

In the event of any conflict between any of the proceeding printed clauses or any provisions thereof and any of the following clauses or any provision thereof, the preceding printed clauses control.

User Note: Additional conditions may be added as an exhibit to address special concerns.

ACCEPTED this _____ day of _____, 20____, I, the undersigned have read, understand and accept the terms and conditions of this lease.

Lessee: COUNTY OF RIVERSIDE

FORM APPROVED COUNTY COUNSEL
 BY: Synthia M. Gunzel 6-23-10
 SYNTHIA M. GUNZEL DATE

By: Robert Field, Assistant County Executive Officer/EDA

User Note: If a corporation is the Lessee, the title of the duly authorized official signing on behalf of the corporation should be added to the signature block.

IN WITNESS WHEREOF, the Bureau of Land Management, by its Authorized Officer, has executed this lease on the day and year first written above.

UNITED STATES OF AMERICA

(Signature of Authorized Officer)

(Title of Authorized Officer)

(Printed Name of Authorized Officer)

(Date)

JRF:ra
052410
0591T
13.382

EXHIBIT "A"