

CITY OF OAKLAND
AGENDA REPORT

OFFICE OF THE CITY CLERK
2006 SEP 27 PM 12:23

TO: Office of the City Administrator
ATTN: Deborah A. Edgerly
FROM: Finance and Management Agency (FMA)
DATE: October 10, 2006

RE: **Resolution Authorizing The City Administrator To Negotiate And Execute A License Agreement With East Bay Municipal Utility District ("EBMUD") For The Amount Of Zero Dollar ("\$0") For The Purpose Of Permitting The City To Place A Public Safety Radio Tower , Portable Structure And Associated Equipment At The Gwin Reservoir Site, Located Off Grizzly Peak Boulevard Near Marlborough Terrace**

SUMMARY

The following report summarizes the Finance and Management Agency (FMA), Information Technology Division's (ITD) request for the City Council to authorize the City Administrator to execute a revocable license agreement with East Bay Municipal Utility District (EBMUD) for the placement of a public safety radio tower (50 foot mono pole), portable structure and associated equipment.

On February 7, 2006, the City Council passed Resolution No.79706 C.M.S., authorizing the upgrade and replacement of the City's public safety radio equipment. Part of the upgrade includes the installation of two new radio sites in the North and East Oakland Hills. The two sites were listed in the report as the Gwin Reservoir site in North Oakland and Fire Station 28 in East Oakland.

Since the passage of the Council resolution, the contract with Dailey Wells, Inc. has been executed and work is progressing. Staff of the City's Real Estate Division has negotiated a zero dollar (\$0) revocable license with EBMUD for the placement of the tower and equipment at the Gwin Reservoir site. The attached legislation is the final document required to proceed with this phase of the radio project.

FISCAL IMPACT

Funding for the Radio Replacement project was approved as part of Resolution No.79706 C.M.S. and funds are available in the Radio/Telecommunications Fund (4200), Network Engineering and Maintenance Org (46241), Minor Computer Hardware and Software Account (52213). No additional funds for this zero dollar (\$0) revocable license are requested.

BACKGROUND

Information Technology presented this project to the Finance and Management Committee on December 13, 2005, Public Safety Committee on January 24, 2006 and City Council February 7,

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2006 and identified the Gwin Reservoir site in the staff report and on maps presented at the committees. Information Technology and the Real Estate division negotiated the contract with EBMUD under the authorization and limits given to the City Administrator for these types of leases. It was not until legal review that the potential liabilities of construction, described in the attached agreement, were identified.

KEY ISSUES AND IMPACTS

Information Technology, in cooperation with Engineers from Oakland Public Works Agency and EBMUD, toured the site and determined that the construction risk was low, based on standard construction practices and contractor insurance. Construction insurance for the project has been provided and approved by the City for this project in the amount of ten million dollars (\$10,000,000).

Additional provisions in the license also require that the building be portable and that the electrical connection "shall be via an above ground disconnect". The fifty (50) foot tower will be installed well outside the area of the underground water system as identified on the attached exhibits and buffered by PG&E and AT&T facilities.

After consultation with EBMUD and City Engineers, it was determined that the construction at this site poses minimal exposure to the City due to construction and operational usage and has adequate construction insurance.

PROJECT DESCRIPTION

The resolution authorizes the City Administrator to execute a revocable license agreement with EBMUD for the placement of a public safety radio tower, portable structure and associated equipment.

SUSTAINABLE OPPORTUNITIES

The license will fully utilize this existing public facility owned by EBMUD and will provide additional safety to Police and Fire personnel through expanded coverage of the radio and mobile data system.

DISABILITY AND SENIOR CITIZEN ACCESS

There are no ADA or Senior Citizen access issues contained in this report.

RECOMMENDATION(S) AND RATIONALE

Reasonable measures have been taken to ensure minimal exposure. Any potential damage or harm is adequately covered by the contractor's insurance, sound construction practices and State law.

Staff recommends that the City Council authorize the City Administrator to execute a revocable license agreement with EBMUD for the placement of a public safety radio tower, portable structure and associated equipment.

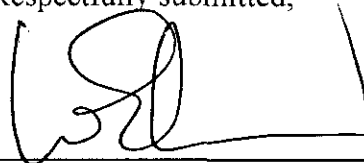
ALTERNATIVE RECOMMENDATION(S)

None

ACTION REQUESTED OF THE CITY COUNCIL

Staff requests that the City Council authorize the City Administrator or her designee to execute a revocable license agreement with EBMUD for the placement of a public safety radio tower, portable structure and associated equipment.

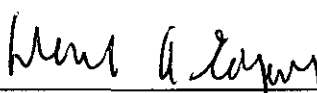
Respectfully submitted,



**William Noland, Director
Finance and Management Agency**

Prepared by:
Bob Glaze, Chief Technology Officer
Information Technology Division

APPROVED AND FORWARDED TO THE
PUBLIC SAFETY COMMITTEE



OFFICE OF THE CITY ADMINISTRATOR

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City Council
October 17, 2006

REVOCABLE LICENSE

R/W X-1622

(not to be recorded)

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between EAST BAY MUNICIPAL UTILITY DISTRICT, a public corporation organized and existing under the laws of the State of California, hereinafter called Licensor, and CITY OF OAKLAND, a municipal corporation, hereinafter called Licensee,

WITNESSETH:

THAT Licensor, for a good and valuable consideration and in further consideration of the faithful performance and observance by Licensee of all of the covenants and agreements herein contained, does hereby give, subject to all of the terms and conditions hereof to Licensee a revocable license for the construction, reconstruction, maintenance, removal and use of a Police and Fire Communication Facility consisting of a fifty (50) foot monopole, an eight foot by ten foot equipment shelter and related cables, together with the necessary appurtenances thereto, all hereinafter referred to as "the structure", within the boundaries of that certain real property as shown on the drawing marked Exhibit "A-1 and A-2" attached hereto and made part hereof.

The license above mentioned is granted by Licensor and accepted by Licensee upon the following terms and conditions and Licensee does covenant with Licensor as follows:

1. Licensee hereby acknowledges the title of Licensor in and to the real property above described and agrees never to assail or to resist said title.
2. Said License may be revoked by Licensor at any time upon giving to Licensee thirty (30) days' previous notice in writing of Licensor's intention so to do, and upon the expiration of said thirty (30) day period all rights herein given to Licensee shall immediately cease and terminate. Prior to the expiration of said thirty (30) day period, or upon any termination or revocation of said License or of any of the rights of Licensee hereunder, Licensee shall promptly remove from said real property at Licensee's own expense the structure and shall restore said real property to as near its original condition as possible.
3. The construction, reconstruction, maintenance, removal and use of, and all work upon or in connection with, the structure shall at no time and in no way whatever interfere with the operations of Licensor; the location of the structure, the construction, reconstruction, maintenance and removal thereof and all work in connection therewith shall be done and made under the supervision and to the satisfaction of Licensor, and the construction, reconstruction, maintenance, removal and use of the aqueducts, pipelines and other facilities or improvements of Licensor, present or future, upon said real property shall at all times be paramount to any rights of Licensee under this agreement.
4. Upon completion of any of its works hereunder Licensee shall promptly restore as near as possible the surface of the ground to the condition in which it was prior to the commencement of said work and leave said real property in a clean and presentable condition,

free from waste, and if Licensee fails so to keep said real property then Licensor may perform the necessary work at the expense of Licensee, which expense Licensee agrees to pay to Licensor upon demand.

5. In the event the structure interferes with the future operations of Licensor, then Licensee at its own expense and cost, upon receiving thirty (30) days' written notice from Licensor so to do, will immediately proceed to relocate the structure upon said real property as may be requested by Licensor and in a manner satisfactory to Licensor, and in the event that Licensee fails so to do, said work may be performed by Licensor at the expense of Licensee, which expense Licensee agrees to pay to Licensor promptly upon demand.

6. Licensee expressly agrees to indemnify, defend and hold harmless Licensor, its directors, officers, and employees from and against any and all loss, liability, expense, claims, costs, suits, and damages, including attorney's fees, arising out of Licensee's operation or performance under this License, including all costs, claims, and damages (including property and personal injury) arising out of any hazardous substances, hazardous materials or hazardous wastes (including petroleum) on the Licensor's property caused, uncovered, released or excavated as a result of Licensee's construction, reconstruction, maintenance, use or removal of its structure.

7. Licensee shall be responsible for, and shall reimburse Licensor for any damage or loss to Licensor's present and future pipelines and appurtenances thereto, directly or indirectly contributed to or caused by Licensee's operation or performance under this License, including, but not limited to, any damage or loss due to corrosion of Licensor's aqueducts or pipelines, present or future, caused by the deposit by Licensee of hazardous substances, hazardous materials or hazardous wastes including petroleum or caused by electrical currents flowing between the structure and the aqueducts or pipelines of Licensor; and Licensee shall not make any physical connection or bonding whatsoever between said aqueducts or pipelines of Licensor and the structure without first having obtained the written permission of Licensor so to do.

8. Licensee agrees to assume all risk of damage to the structure and to any other property of Licensee or any property under the control or custody of Licensee while upon the property or rights of way of Licensor or in proximity thereto, caused by or contributed to in any way by the construction, reconstruction, operation, maintenance, repair or use of aqueducts, pipelines, or other facilities or improvements or roadways of Licensor, present or future.

9. Except in case of ordinary maintenance and emergency repairs, Licensee shall give to Licensor at least ten (10) days' notice in writing before entering upon the real property hereinabove described for the purposes of constructing, reconstructing, repairing or removing the structure or performing any work on or in connection with the structure or the operation thereof, and Licensee agrees to pay to Licensor upon demand the reasonable cost and expense incurred by Licensor in the maintenance of an inspector on said real property during said construction, reconstruction, repair or removal or the performance of said work.

REVOCABLE LICENSE

10. In the event Licensor shall bring suit to compel performance of or to recover for breach of any covenant, agreement or condition herein contained and shall prevail in said suit, Licensee agrees to pay Licensor's reasonable attorney's fees in addition to the amount of the judgment and costs.

11. All rights herein given to Licensee are subject to all existing rights, rights of way, reservations and easements by whomsoever held in and to said real property.

12. If Licensee shall fail to construct the structure and place it in operation within a period of one year after the date hereof, or shall at any time abandon the structure or any portion thereof, or fail to use the structure for the purposes for which this License is granted, then all rights of Licensee in and to said real property or such portions thereof so abandoned or not so used shall thereupon cease and terminate. Upon any termination of the rights of Licensee hereunder Licensee shall at Licensee's expense, promptly upon request by Licensor so to do, remove the structure from said real property and restore said real property to its original condition; upon failure of Licensee so to do, said work may be performed by Licensor at Licensee's expense, which expense Licensee agrees to pay to Licensor promptly upon demand.

13. It is understood that this document contains the entire agreement between the parties hereto and all prior understandings or agreements, oral or written, or whatsoever nature regarding the License hereby given are superseded by this agreement and are hereby abrogated and nullified.

14. Licensee agrees that it has not acquired nor will it hereafter acquire any rights or interest in said real property, nor does Licensee have nor will it obtain any right or claim to the use of said real property beyond those specifically given in this agreement.

15. Licensee recognizes and understands that this License may create a possessory interest subject to property taxation and that Licensee may be subject to the payment of property taxes levied on such interest.

16. No rights of Licensee hereunder shall be transferred or assigned unless the written consent of Licensor is first secured. With that exception, this agreement and each and all of the covenants herein contained shall inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto.

17. Licensee agrees that the structure is only to be used for police and fire communication purposes. Licensee is not allowed to let other entities use the structure.

18. Licensee agrees to mount the equipment shelter on skids and use an electrical quick disconnect connection to the equipment shelter so the building can easily be moved if necessary.

19. Licensee agrees that if Licensor ever has the need to place communication equipment on the monopole (for example, to participate in the build out of a P25 inter operate

REVOCABLE LICENSE

able system), Licensee will allow Licensor's communication equipment to be placed on the monopole providing said communication equipment does not interfere with Licensee's use of the monopole.

IN WITNESS WHEREOF, the parties hereto have executed this agreement, in duplicate, the day and year first above written.

EAST BAY MUNICIPAL UTILITY
DISTRICT

CITY OF OAKLAND

By: _____
Stephen J. Boeri
Manager of Real Estate Services

By: _____
Robert Glaze
Chief Technology Officer

LICENSOR

LICENSEE

RETURN TO:

City of Oakland
Community and Economic Development Agency
Planning and Zoning Division
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

NOTICE OF EXEMPTION

TO: Alameda County Clerk
1106 Madison Street
Oakland, CA 94612

Project Title: GWIN Reservoir Communications Site

Project Applicant: City of Oakland

Project Location: 5115 Grizzly Peak Blvd. Oakland, CA 94705

Project Description: Construction of a 50 foot telecommunications tower and associated ground equipment for City of Oakland Police Department.

Exempt Status: (check one)

Statutory Exemptions

{Article 18:Section 21080;15260}

- Ministerial {Sec.15268}
- Feasibility/Planning Study {Sec.15262}
- Emergency Project {Sec.15269}
- General Rule {Sec.15061(b)(3)}
- Other: {Sec._____}

Categorical Exemptions

{Article 19:Section 21084;15300}

- Existing Facilities {Sec.15301}
- Replacement or Reconstruction {Sec.15302}
- Small Structures {Sec.15303}
- Minor Alterations {Sec.15304}
- Minor Subdivisions {Sec.15315}
- Infill Projects {Sec.15332}
- Other {Sec._____}

Reasons why project is exempt: The proposed project consists of construction of a 50 foot telecommunications pole and associated ground equipment for City of Oakland Police Department use. The site is within the Alameda Whipsnake critical habitat area. Investigation by a certified biologist has indicated the site in question has no habitat value, already completely asphalt covered, and that the site can be adequately safeguarded from whipsnake incursions through the use of standard construction management practices included in the standard conditions of approval for the zoning permits required.

Lead Agency: City of Oakland, Community and Economic Development Agency, Planning and Zoning Division, 250 Frank H. Ogawa Plaza, Suite 2114, Oakland, CA 94612.

Department/Contact Person: Eric Angstadt, Planner IV

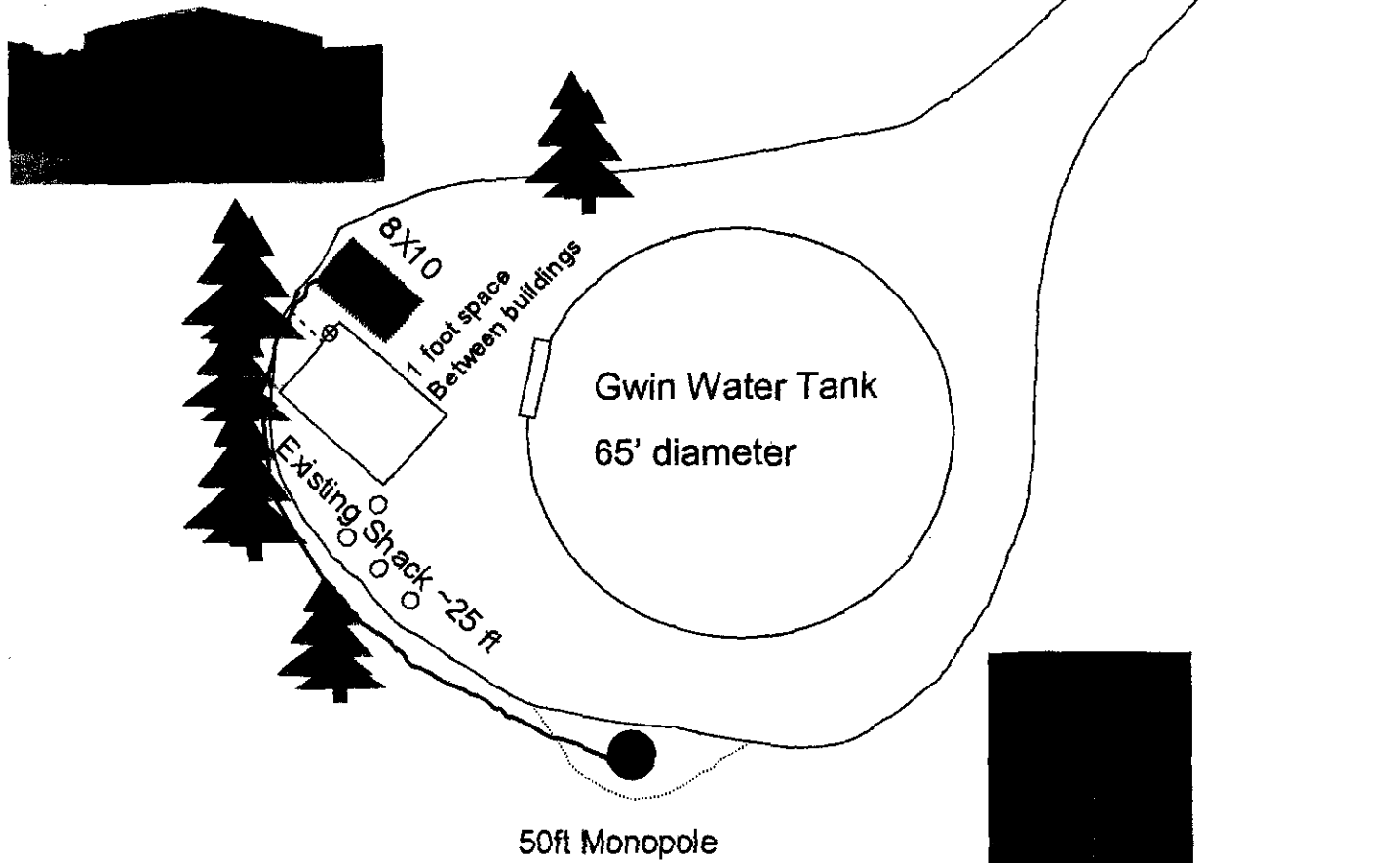
Phone: 510-238-6190

Claudia Cappio, Director of Development

Date:

Gwin Reservoir

Located at
Grizzly Peak & Marlborough



- Denotes a Fence
- Denotes Flat Dirt area
- Denotes Barriers
- ⊗ Denote Power Meter
- Denotes underground cable

EXHIBIT A-1

PROP DEED 54
DWS LM '7

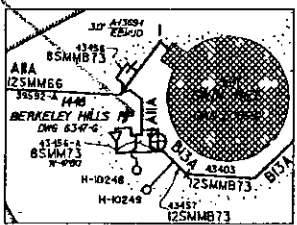
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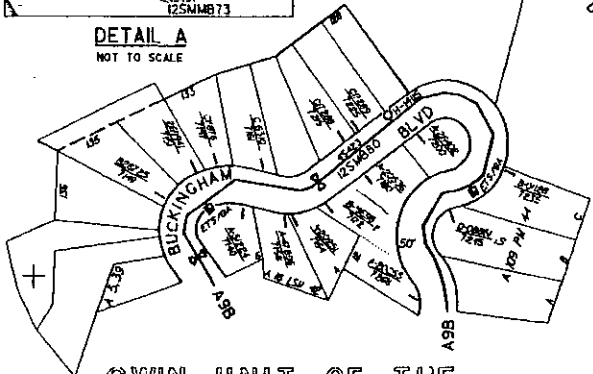
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DETAIL A
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CITY	OAKLAND	STRUCTURE	DE
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U.L.C.C.	OAKLAND EAST		

EXHIBIT 1 A

OFFICE OF THE CITY CLERK
OAKLAND

2006 SEP 27 PM 12:23


Oakland City Attorney's Office

OAKLAND CITY COUNCIL
RESOLUTION No. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A LICENSE AGREEMENT WITH EAST BAY MUNICIPAL UTILITY DISTRICT (“EBMUD”) FOR THE AMOUNT OF ZERO DOLLARS (“\$0”) FOR THE PURPOSE OF PERMITTING THE CITY TO PLACE A PUBLIC SAFETY RADIO TOWER, PORTABLE STRUCTURE AND ASSOCIATED EQUIPMENT AT THE GWIN RESERVOIR SITE, LOCATED OFF GRIZZLY PEAK BOULEVARD NEAR MARLBOROUGH TERRACE.

WHEREAS, the Finance and Management Agency is working to update and improve the service and reliability of the City’s Public Safety Radio system; and

WHEREAS, on February 7, 2006, the City Council passed Resolution No. 79706 C.M.S. authorizing a construction contract for project engineering, radio replacement and upgrades to the City’s radio infrastructure; and

WHEREAS, the installation of an additional radio site will improve mobile and portable radio coverage in north Oakland, will provide needed coverage for the Public Safety Mobile Data systems, and will improve officer safety; and

WHEREAS, the use of the East Bay Municipal Utility District (“EBMUD”) property at the Gwin Reservoir, located off Grizzly Peak Boulevard near Marlborough Terrace, will provide the City with an economical solution for Radio site placement; and

WHEREAS, the City Council authorized acquisition of a new radio site at the Gwin Reservoir and such acquisition requires execution of a license agreement with EBMUD; and

WHEREAS, the EBMUD license agreement requires that the City accept responsibility for and reimburse EBMUD for any damage to or destruction of its pipelines and aqueducts that is caused by the City’s use of its property; and

WHEREAS, the requirements of the California Environmental Quality Act (“CEQA”) the CEQA guidelines as prescribed by the Secretary of Resources, and the provisions of the Environmental Review Regulations of the City of Oakland have been satisfied; now, therefore, be it

RESOLVED: That the City Council authorizes the City Administrator or her designee to execute a license agreement for a zero dollar (“\$0”) fee with EBMUD for the placement of a public safety radio tower, portable structure and associated equipment which license, among other things, requires that the City accept responsibility for the damage or loss to EBMUD’s pipelines and aqueducts caused by the City’s use of the Gwin Reservoir ; and be it

FURTHER RESOLVED: That the City Administrator or her designee is hereby authorized to execute and deliver any and all agreements, and is hereby authorized to approve any subsequent amendments to or extensions of said agreements with the exception of those related to an increase in the contract price or the allocation of additional funds provided that such amendments or extensions shall be filed with the City Clerk’s office; and be it

FURTHER RESOLVED: That the City Council has independently reviewed and considered this environmental determination, and the Council finds and determines that this action complies with CEQA because this action on the part of the City is exempt from CEQA pursuant to Section 15303 (small structures) of the CEQA guidelines, and the Council directs the City Administrator to file a Notice of Exemption with the County of Alameda; and be it

FURTHER RESOLVED: That in accordance with the requirements of City Charter Article IV, the Agreement shall be reviewed and approved by the City Attorney’s Office for form and legality prior to execution, and a copy shall be placed on file with the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2006

PASSED BY THE FOLLOWING VOTE:

AYES-BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council of
the City of Oakland, California