

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

510



FROM: Economic Development Agency / Facilities Management

SUBMITTAL DATE:
April 12, 2012

SUBJECT: First Amendment to Lease Agreement – Box Springs Mountain Communication Site – American Tower

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the attached First Amendment to Lease Agreement and authorize the Chairman of the Board to execute the same on behalf of the County of Riverside (County);
2. Authorize the Assistant County Executive Officer/EDA, or designee, to execute any other documents and administer all actions necessary to complete or memorialize this transaction ;

(Continued)

REVIEWED BY CIP
Christopher Hans
Christopher Hans

Robert Field
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:	2011/12

COMPANION ITEM ON BOARD OF DIRECTORS AGENDA: No

SOURCE OF FUNDS: Revenue lease agreement	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 Jennifer L. Sargent

FORM APPROVED COUNTY COUNSEL
 BY: *Stephanie M. Gurdal 3-30-12*
 DATE: _____
 BY: *Kevin Crawford*
 Kevin Crawford, Chief Information Officer
 Riverside County Information Technology Departmental Support Team
 M. GUNZEL
 DATE: _____
 Policy Policy
 Consent Consent
 Dept't Recomm.: Per Exec. Ofc.:

Prev. Agn. Ref.: N/A

District: 5/5

Agenda Number:

3.15

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

RECOMMENDED MOTION: (Continued)

3. Find that the Project, the First Amendment to Lease Agreement, is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 Existing Facilities; and
4. Direct the Clerk of the Board to file the Notice of Exemption with the County Clerk.

BACKGROUND:

In September, 1989, the County, as Lessor, entered into a thirty year lease with Sigma Communications, predecessor in interest to Spectrasite Communications, LLC, doing business as American Tower, for land at the Box Springs Mountain communication site. The current term will expire August 31, 2019. As part of the Public Safety Enterprise Communication (PSEC) project, the Real Estate Division of the Economic Development Agency (EDA) negotiated favorable terms with American Tower for sites called Joshua Tree (saving over \$80,000) and Santiago Peak (saving over \$90,000) in exchange for a term extension at Box Springs. In addition, rent will be increased from \$148 per month to \$2,000 per month with annual 3% increases, retroactive to September, 2009.

Pursuant to the California Environmental Quality Act (CEQA), the Lease Amendment was reviewed and determined to be categorically exempt from CEQA under CEQA Guidelines Section 15301, Class 1 – Existing Facilities. The proposed project, the Lease Amendment, is the letting of property involving existing facilities and no expansion of an existing use will occur.

Pursuant to the California Environmental Quality Act (CEQA), the Lease Amendment was reviewed and determined to be categorically exempt from CEQA under CEQA Guidelines Section 15301, Class 1 – Existing Facilities. The proposed project, the Lease Amendment, is the letting of property involving existing facilities and no expansion of an existing use will occur.

Board Policy B-26 requires that the income generated by this agreement shall be directed toward public safety, into a fund that is controlled by the Executive Office. Riverside County Information Technology has consented to this extension of the existing tenancy.

Lessee:	Spectrasite Communications, LLC dba American Tower
Premises Location:	Box Springs Mountain, Moreno Valley, California
Term:	Shall extend from 8/31/2019 to 8/31/2030, and Lessee shall have options for two more consecutive ten year extensions (through 8/31/2050).
Size:	8,756 square feet of exclusive ground space and 8,588 square feet of non-exclusive parking and access
Rent:	\$2,000.00 per month retroactive to September 1, 2009. \$24,000.00 per year 3% annual increases

(Continued)

FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT ("*First Amendment*") is entered into as of the _____ day of _____, 2012 ("*Effective Date*"), by and between **The County of Riverside** (hereinafter referred to as "*County*") and **Spectrasite Communications, LLC**, a Delaware limited liability company (hereinafter referred to as "*Lessee*").

W I T N E S S E T H:

- A. County is the owner of that certain parcel of land (the "*Property*") located in the County of Riverside, State of California, and County and Sigma Telecommunications, predecessor in interest to Lessee, entered into that certain **Lease Proposal** dated September 1, 1989, (the "*Lease*"), whereby the Lessee leases a portion of the Property ("*Premises*"), together with any easements for ingress and egress and the installation and maintenance of utilities, all as set forth in the Lease and only for the purposes described herein and for the duration of the term of the Lease (hereinafter collectively the "*Site*"). The Property and Premises/Site are depicted in **Exhibit A** attached hereto.
- B. County and Lessee desire to amend the terms of the Lease as provided herein.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Upon the Effective Date, County agrees that Lessee has satisfied all obligations for construction of improvements on Parcel No. 1, as defined in the Lease, for the benefit of County as required under the Lease. County agrees that Lessee has satisfied all conditions set forth in Paragraph 8 (a) of the Lease. County and Lessee agree that Paragraph 8 (b) remains in full force and effect. Paragraph 8 (c) of the Lease and Paragraph 8 (d) of the Lease shall be deleted in their entirety. Paragraph 8 (e) of the Lease and Paragraph 8 (f) of the Lease shall remain in full force and effect. County and Lessee agree and acknowledge that any and all improvements, alterations and fixtures as referenced in Paragraph 8 (g) of the Lease shall be the exclusive personal property of Lessee.
2. **Use.** Paragraph 3 (b) of the Lease is hereby deleted in its entirety and replaced with the following:
 - (a) Lessee shall be permitted to use the Site for the purpose of constructing, maintaining, securing and operating a communications facility, including, but not limited to, the construction or installation and maintenance of towers, structural tower base(s), communications equipment, one or more buildings or equipment cabinets, radio transmitting and receiving antennas, and related facilities on the Premises ("*Tower Facilities*"), to facilitate the use of the Site as a site for the transmission and receipt of wireless communication signals including, but not limited to, voice, data and internet transmissions and for any other uses which are incidental thereto. Lessee may, at its sole expense, use any and all appropriate means of restricting access to the Premises or the Tower Facilities, including, without limitation, construction of a fence.
 - (b) Without limiting any of Lessee's other rights under the Lease, County shall cooperate with Lessee, at no out-of-pocket expense to County, in Lessee's efforts to obtain, maintain, renew and reinstate any and all of the certificates, permits, licenses, zoning, variances and other approvals which may be required from any federal, state or local authority as well as any necessary easements for Lessee or Lessee's sublessees, licensees, and/or customers' occupation or use of

the Site (collectively, the “**Approvals**”). County agrees to execute within 30 days after receipt of a written request from Lessee any and all documents necessary, in Lessee’s reasonable judgment, and in a form reasonably acceptable to Lessee to allow Lessee and its sublessees, licensees, and/or customers to obtain, maintain, renew or reinstate the Approvals.

3. **Lease Term.** The expiration of the current term of the Lease as set forth in paragraph 4 of the Lease is currently set for August 31, 2019. Notwithstanding the foregoing, County and Lessee agree and acknowledge that upon the Effective Date, the current term shall be extended until August 31, 2030. Subsequent to the current term, Lessee shall have the option to extend the term of the Lease for each of two (2) additional ten (10) year renewal terms (each a “**Renewal Term**”). The first such Renewal Term shall commence on the day following the expiration of the current term. The Lease will automatically renew and extend for each successive Renewal Term unless, at least 90 days prior to the expiration of the then current term, Lessee notifies County that Lessee elects not to renew the Lease.

4. **Rent.** Commencing on September 1, 2009, the monthly basic rent payable under the Lease shall be modified to a total of Two Thousand and No / 100 Dollars (\$2,000.00) per month (“**Rent**”). The Rent hereby replaces and supersedes any references to rent, basic rent, or any rental payments under the Lease which are hereby null, void and of no further force and effect.

5. **Escalations.** Commencing on September 1, 2010 and on each anniversary thereof, Rent shall increase by an amount equal to 3% of such Rent payable for the year immediately preceding such increase (“**Escalation**”). County and Lessee agree that the Escalation is the only applicable future increase or escalation to any and all rents under the Lease and any other rent increase or escalation contained in the Lease is hereby null and void and of no further force or effect.

6. **Existing Subleases.** County hereby consents to and ratifies any prior or existing subleases and/or licenses of the Site, or a portion thereof, and/or Lessee’s facilities, by Lessee (“**Existing Subleases**”), including to the parents, subsidiaries, affiliates, successors and assigns of any existing sublessees or licensees, and agrees that, except as set forth in this Amendment, no consideration is owed or will be owed to County for such Existing Subleases.

7. **Notices.** All notices or demands by or from Lessee to County, or County to Lessee, required under this Lease will be in writing and sent (United States mail postage pre-paid, certified with return receipt requested or by reputable national overnight carrier service, transmit prepaid) to the other party at the addresses set forth below, as applicable, or to such other addresses as the parties hereto may, from time to time, designate consistent with this paragraph, with such new notice address being effective 30 days after receipt by the other party. Notices will be deemed to have been given upon either receipt or rejection.

County: County of Riverside
3403 10th Street
Suite 500
Riverside, CA 92501

Lessee: American Tower
10 Presidential Way
Woburn, MA 01801
Attn: Land Management

With a copy to: American Tower
116 Huntington Ave.
Boston, MA 02116

Attn: Legal

6. **Subletting or Licensing by Lessee.** Notwithstanding anything to the contrary in the Lease, Lessee at its sole discretion shall have the right, without prior notice or the consent of County, to license or sublease all or a portion of the Premises and/or any facilities or structures thereon, to other parties. Lessee's licensee(s) and sublessee(s) shall be entitled to modify the Premises and any facilities or structures thereon and to erect additional improvements on the Premises, including but not limited to, antennas, dishes, cabling, additional storage buildings or equipment shelters. Lessee's licensee(s) or sublessee(s) shall be entitled to all rights of ingress and egress to the Site and the right to install utilities on the Site as if said licensee(s) or sublessee(s) were Lessee under this Lease.

7. **Modification of Premises.** Lessee, and its licensees and sublessees, without prior notice to or consent of County, shall have the right: (i) to modify, replace or repair any facilities, utilities, equipment, structures, property or improvements ("Improvements") now or hereafter located on the Premises and (ii) to add additional Improvements on the Premises. Improvements include, but are not limited to towers, antennas, cabling, additional storage buildings, cabinets and shelters. Any provision of the Lease that requires additional consideration to be paid to County for the modification or addition of any Improvements is null, void and of no further force and effect. Lessee understands and acknowledges that it will still need to obtain any and all of the certificates, permits, licenses, zoning, variances and other approvals which may be required from any federal, state or local authority for the Improvements. County grants Lessee the right to clear all trees, undergrowth, or other obstructions and to trim, cut, and keep trimmed all tree limbs which may interfere with or fall upon the Premises. County grants Lessee a non-exclusive easement in, over, across and through the Property and other real property owned by County as may be reasonably required for construction, installation, maintenance, and operation of the Tower Facilities. County grants Lessee (including, without limitation, Lessee's sublessee's and licensees) a license to use such portions of the County's property contiguous to the Site on a temporary basis as are reasonably required from time to time during the Term of this Lease for the construction, installation and maintenance of equipment at the Tower Facilities, including (i) access to the Site for construction machinery and equipment, (ii) storage of construction materials and equipment during construction of the Site, and (iii) use of a staging area for construction, installation and removal of equipment.

8. **Utilities/Access.** Lessee shall have the right to install utilities, at Lessee's expense, and to improve present utilities on the Property and the Site (including but not limited to the installation of emergency power generators). Lessee shall have the right to permanently place utilities on (or to bring utilities across or under) the Site to service the Site and the Premises. If utilities necessary to serve the equipment of Lessee or the equipment of Lessee's licensee(s) or sublessee(s) cannot be located within the Site, County agrees to cooperate with Lessee and to act reasonably in allowing the location of utilities on the Property or other real property owned by County without requiring additional compensation from Lessee or Lessee's licensee(s) or sublessee(s). County shall, upon Lessee's request, execute a separate recordable written easement or lease to the utility company providing such service evidencing this right. County represents and warrants to Lessee that Lessee shall at all times during this Lease enjoy ingress, egress, and access from the Site 24 hours a day, 7 days a week, by both foot and vehicle, including but not limited to trucks, to an open and improved public road which are adequate to service the Site and the Premises. Nothing in this section shall limit any of Lessee's existing rights under the Lease.

9. **Approvals.** Without limiting any of Lessee's other rights under the Lease, County shall cooperate with Lessee, at no out-of-pocket expense to County, in Lessee's efforts to obtain, maintain, renew and reinstate any and all of the certificates, permits, licenses, zoning, variances and other approvals which may be required from any federal, state or local authority as well as any necessary easements for Lessee or Lessee's sublessees, licensees, and/or customers' occupation or use of the Site (collectively, the "***Approvals***"). County agrees to execute within 30 days after receipt of a written request from Lessee any

and all documents necessary, in Lessee's reasonable judgment, and in a form reasonably acceptable to Lessee to allow Lessee and its sublessees, licensees, and/or customers to obtain, maintain, renew or reinstate the Approvals.

10. Memorandum of Lease. Upon request by Lessee, County shall execute and deliver to Lessee a Memorandum(s) of Lease, reflecting this Amendment, in a form reasonably acceptable to Lessee and which is recordable in the county in which the Property is located. Lessee shall perform all necessary affirmative actions to memorialize the expiration, cancellation or termination of the Lease, including delivering to County a Memorandum of Termination of Lease to be recorded in the County of Riverside Clerk/Recorder's Office to provide constructive notice thereof.

11. Site. The parties agree and acknowledge that the Site shall be as depicted in **Exhibit A** attached hereto and incorporated herein. The depiction of the Site contained in Exhibit A replaces and supersedes any depictions of the Site previously included in the Lease which are hereby null, void and of no further force and effect.

12. Termination. Paragraph 20 (e) of the Lease is hereby deleted and replaced by the following: Upon a default of any covenant or term hereof by Lessee which default is not cured within 60 days of receipt of written notice of default (without, however, limiting any other rights available to the parties in law or equity); provided, that if the defaulting party commences efforts to cure the default within such period and diligently pursues such cure, the non-defaulting party shall no longer be entitled to declare a default;

13. Ratification/Estoppel. Lessee and County each hereby ratifies and confirms that the Lease is in full force and effect. County represents and warrants that, as of the Effective Date, Lessee is not in default in the payment or performance of its obligations under the Lease and, to the best of County's current knowledge, there is no existing condition that, although not presently a default, may result in a default under the Lease. Except as modified herein, the Lease and all the covenants, agreements, terms, provisions and conditions thereof remain in full force and effect and are hereby ratified and affirmed. If any inconsistency exists or arises between the terms of the Lease and the terms of this Amendment, the terms of this Amendment shall prevail.

14. Entirety; Amendment; Counterparts. This Amendment, together with the Lease, constitutes the entire agreement among the undersigned parties hereto. Any modification to this Amendment must be in writing and signed and delivered by authorized representatives of the affected parties in order to be effective. This Amendment will be governed by the laws of the state in which the Site is situated. This Amendment may be executed in any number of counterparts, each of which shall be an original, which may be delivered via facsimile, but all of which taken together shall constitute one instrument.

IN WITNESS WHEREOF, County and Lessee have each executed this First Amendment as of the Effective Date written above

Date: _____

LESSOR:

**COUNTY OF RIVERSIDE, a political
subdivision of the State of California**

ATTEST:
Kecia Harper-Ihem
Clerk of the Board

By: _____
John Tavaglione, Chairman
Board of Supervisors

By: _____
Deputy

County of Riverside Tax ID#: 95-6000930

APPROVED AS TO FORM:
PAMELA J. WALLS, County Counsel

By: Synthia M. Gunzel
Synthia M. Gunzel
Deputy County Counsel

LESSEE:

Spectrasite Communications, LLC,
a Delaware limited liability company


By: RICHARD ROSSI
Its: Vice President, Contract Management

WITNESSES:


Signature
Print Name: Ed Mayza


Signature
Print Name: Anthony V Rosa

ACKNOWLEDGEMENT


LESSEE

Commonwealth of Massachusetts

County of Middlesex

On 2/6/2012 before me, David Guerette (here insert name), a Notary Public, personally appeared Richard Rossi, the VP of Spectrasite Comm. personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.


Notary Public
Print Name: David Guerette
My commission expires: _____

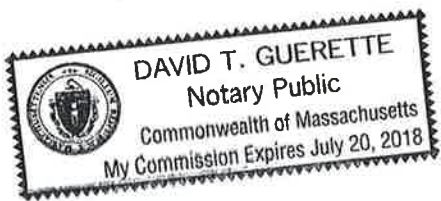


EXHIBIT A

DESCRIPTION AND/OR DEPICTION OF THE SITE

Survey attached hereto

