

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

545



FROM: Economic Development Agency

SUBMITTAL DATE:
September 13, 2016

SUBJECT: First Amendment to Communications Site Lease Agreement with SBA Steel at Lake Elsinore Fire Station #11, Ten Year Lease, District 1, CEQA Exempt [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find the Lease Agreement to be exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301, Class 1, Existing Facilities Exemption; and Section 15061(b)(3), General Rule or "Common Sense" Exemption;
2. Approve the attached First Amendment to Communications Site Lease Agreement and authorize the Chairman of the Board to execute the same on behalf of the County;
3. Authorize the Assistant County Executive Officer of the Economic Development Agency, or his designee, to execute any other documents and administer all actions necessary to complete or memorialize this transaction; and

(Continued)

Robert Field
Assistant County Executive Officer/EDA

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 0	\$ 0	\$ 0	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	
SOURCE OF FUNDS: N/A, Revenue Lease				Budget Adjustment: No	
				For Fiscal Year: 2021-2031	

C.E.O. RECOMMENDATION:

APPROVE

BY:
Rohini Dasika

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

FORM APPROVED COUNTY COUNSEL
BY: Karin L. Watts, Esq. 8/17/16
DATE: KARIN L. WATTS-BAZAN

Departmental Concurrence

- A-30
- 4/5 Vote
- Positions Added
- Change Order

Prev. Agn. Ref.: N/A

District: 1

Agenda Number:

3-20

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

Economic Development Agency

FORM 11: First Amendment to Communications Site Lease Agreement with SBA Steel at Lake Elsinore Fire Station #11, Ten Year Lease, District 1, CEQA Exempt [\$0]

DATE: September 13, 2016

PAGE: 2 of 3

RECOMMENDED MOTION: (Continued)

4. Direct the Clerk of the Board to file the Notice of Exemption with the County Clerk upon approval of the project.

BACKGROUND:

Summary

In 2006 the County of Riverside (County) entered into a ground lease with Nextel of California, Inc., (Sprint/Nextel) for the purpose of building, operating, and maintaining a communication facility on County owned property located at 33020 Maiden Lane, in the unincorporated area of Lakeland Village and identified as Assessor's Parcel Number: 381-252-005 (Premises), commonly known to the County as Fire Station #11 (Prior Lease). The Prior Lease was for initial term of five years, with one option to extend the term by five further years. In 2009, TowerCo Acquisitions LLC (TowerCo) became the successor in interest to Sprint/Nextel through an Assignment and Assumption of Ground. Sprint/Nextel retained space at the facility, as the primary sublessee.

On January 24, 2012, the County entered into a new communication site Lease (Existing Lease) with TowerCo Assets LLC who subsequently sold their interest, to SBA STEEL LLC, doing business as SBA Wireless (SBA). The Lease Agreement gave SBA the authorization to operate, and maintain an existing communication facility on the Premises. Since entering into the Existing Lease Sprint/Nextel has vacated the facility, leaving SBA without a tenant.

In a recent inquiry, SBA requested to extend the term of the existing Lease Agreement from the conclusion of the current expiration date of December 31, 2021, in order to accommodate Verizon, the newly proposed primary sublessee. The amended term shall commence on January 1, 2022 and expire on December 31, 2032. Additionally, SBA will be awarded three consecutive five year terms. Under the current contract SBA shares 40% of their non-primary sublease revenue with the County. The Economic Development Agency, Real Estate Division sees a potential for colocation at this facility, and the term extension on the lease makes the site more attractive to other carriers. As outlined above, the potential for colocation at the facility can transpire into a higher revenue share for the County.

The First Amendment to the Lease Agreement has been reviewed and determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15061(b) (3) and Section 15301 Class 1, Existing Facility, as it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. The County's approval of the activity does not create any reasonably foreseeable physical change to the environment for this transaction.

(Continued)

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

Economic Development Agency

FORM 11: First Amendment to Communications Site Lease Agreement with SBA Steel at Lake Elsinore Fire Station #11, Ten Year Lease, District 1, CEQA Exempt [\$0]

DATE: September 13, 2016

PAGE: 3 of 3

BACKGROUND: (Continued)

Summary

Tenant:	SBA STEEL LLC, a Florida limited liability company	
Premises Location:	33020 Maiden Lane, Lake Elsinore, California 92530	
	<u>Current</u>	<u>New</u>
Term:	January 24, 2012 – December 31, 2021	January 1, 2022 – December 31, 2032
Option to Extend:	None	Three consecutive five year terms
Monthly Rent:	\$2,953.77	Monthly rent to increase by 3% annually
Utilities:	Provided by SBA	

The rent derived from this lease minus an Administrative charge to EDA (currently 4.92%) will be directed to a dedicated public safety communications account and used to fund operation of the County's public safety communications system.

Impact on Citizens and Businesses

The revenue from this Lease Agreement is used to support Public Safety Enterprise Communications (PSEC) operations throughout the County. Citizens and Businesses benefit from the enhanced public safety benefits borne from this improved communication system.

SUPPLEMENTAL:

Additional Fiscal Information

No net County costs will be incurred and no budget adjustment is necessary.

Attachments:

First Amendment to Lease Agreement

CEQA Notice of Exemption

Aerial Image

Recorded at request of and return to:
Economic Development Agency
Real Estate Division
3403 Tenth Street, Suite 400
Riverside, CA, 92501

FREE RECORDING
This instrument is for the benefit of the County
of Riverside, and is entitled to be
recorded without fee.
(Govt. Code 6103)

(Space above this line reserved for Recorder's use)

APN: 381-252-009

MEMORANDUM AND FIRST AMENDMENT OF LEASE

THIS MEMORANDUM AND FIRST AMENDMENT TO COMMUNICATION SITE LEASE AGREEMENT ("First Amendment"), dated as of _____, 2016, is entered into by and between the **COUNTY OF RIVERSIDE**, a political subdivision of the State of California, ("County"), and **SBA STEEL LLC**, a Florida limited liability company, herein called ("Lessee"), (collectively, the "Parties"), to use the property described below upon the following terms and conditions:

RECITALS

A. WHEREAS, County and TowerCo Assets LLC, a Delaware limited liability company entered into that certain unrecorded Communications Site Lease Agreement effective as of January 24, 2012 for a ten year term, and ultimately assigned the New Lease Agreement to Lessee pursuant to that certain unrecorded Master Assignment and Assumption Agreement dated October 15, 2014 (collectively, "Lease"), for Lessee's use of a portion of the real property for the purpose of maintaining and operating facilities for electronic communication equipment on County owned property ("Premises") located at 33020 Maiden Lane, Lake Elsinore, CA (Assessor's Parcel Number: 381-252-009) ("Property"), being more particularly described in the attached Exhibit "A"; and

B. WHEREAS, County and Lessee propose to amend and restate the Term of the Lease as set forth below; and

NOW, THEREFORE, by mutual agreement of the Parties and in consideration of the mutual promises, rights and obligations hereinafter set forth, the Lease is hereby amended as follows:

1. **Defined Terms.** Any capitalized terms used in this First Amendment that are not defined herein shall have the meanings given those terms in the Lease.

2. **Term.** Section 3 is hereby amended.

In addition to the Term referenced in the Lease, the Lease is hereby amended to include one (1) additional successive term of ten years and three (3) additional successive terms of five (5) years (each an "Additional Renewal Term") beginning on January 1, 2022. Subject to the termination rights in Section 9 of the Lease, each Additional Renewal Term shall be deemed automatically extended, unless Lessee notifies County of its intention not to renew the Lease prior to the commencement of the succeeding Additional Renewal Term. The first Additional Renewal Term shall commence on January 1, 2022 ("Additional Renewal Term Commencement Date"), upon the expiration of the Term expiring on December 31, 2021.

3. **Use.** Section 2 Paragraph 2 is hereby amended.

County consents to the occupancy of the Premises by Lessee's proposed sub-tenant, Los Angeles SMSA Limited Partnership, a California limited partnership, d/b/a Verizon Wireless and its affiliates, successors or assigns ("Verizon"). The sublease to any further subtenant shall be in accordance with Article 4(C) and 13 of the Lease.

4. **Rent.** Section 4(c) is hereby modified.

(c) Upon written consent to sublease or license in accordance with Article 13 of the Lease, Lessee agrees to pay the County forty percent (40%) of the rental, license or similar payments actually received by Lessee (excluding any reimbursement of taxes, construction costs, installation costs, revenue share reimbursement or other expenses incurred by Lessee) within thirty (30) days after receipt of said payment by Lessee ("Additional Rent"). The obligation to pay Additional Rent will not apply to the Verizon sublease.

5. **Assignment and Subleasing.** The first three (3) sentences of Section 13(a) of the Lease are hereby deleted in their entirety and replaced as follows:

Lessee may not assign, or otherwise transfer all or any part of its interest in this Lease or in the Premises without the prior written consent of County; provided, however, that Lessee may assign its interest to its parent company, any subsidiary or affiliate, or to any successor-in-interest or entity acquiring fifty-one percent (51%) or more of its stock or assets, subject to any financing entity's interest, if any. Notwithstanding the foregoing, Lessee may sublet all or a portion of the Premises to one or more entities for communications uses only.

6. **Miscellaneous.** Section 19 is hereby amended as follows:

Lessee:

SBA Steel LLC
Attn: Site Administration
8051 Congress Avenue
Boca Raton, FL 33487-1307
RE: CA45808-A/West Lake 2, CA

County:

County of Riverside
Attn: Economic Development Agency
3403 10th Street, Suite 400
Riverside, CA 92501

7. **Further Cooperation.** The Parties agree to execute such other instruments, agreements and amendments to documents as may be necessary or appropriate to effectuate the Lease as amended by this First Amendment.

8. **Interpretation.** This First Amendment, when combined with the Lease, sets forth and contains the entire understanding and agreement of the Parties hereto and correctly sets forth the rights, duties and obligations of each to the other as of this date.

9. **Waivers; Amendments.** All waivers of the provisions of this First Amendment and all amendments hereto must be in writing and signed by the appropriate authorities of County and Lessee.

10. **Effectiveness of Lease Agreement; First Amendment to Prevail.** Except as modified and amended by this First Amendment all other terms and conditions of the Lease remain unmodified and in full force and effect. The provisions of this First Amendment shall prevail over any inconsistency or conflicting provisions of the Lease.

11. **Severability.** If any term or provision of this First Amendment shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this First Amendment shall not be affected thereby and each other term and provision of this First Amendment shall be valid and enforceable to the fullest extent permitted by law.

12. The effective date of this First Amendment is the date the Parties execute this First Amendment. If the Parties execute this First Amendment on more than one date, then the last date this First Amendment is executed by a party shall be the Effective Date.

13. This Memorandum and Amendment will be governed by and construed and enforced in accordance with the laws of the state in which the Property is located without regard to principles of conflicts of law.

14. County represents and warrants to Lessee that the County is the sole owner in fee simple title to the Premises and easements and the County's interest under the Lease and that consent or approval of no other person is necessary for the County to enter into this Memorandum and Amendment.

15. This Memorandum and Amendment may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same Memorandum and Amendment.

16. Lessee shall have the right to record this Memorandum and Amendment.

Dated: _____

County:

COUNTY OF RIVERSIDE, political
subdivision of the State of California

By: _____
John J. Benoit, Chairman
Board of Supervisors

Lessee:

SBA Steel, a Florida Limited liability
company

By: 
Alyssa Houlihan
Vice President, Site Leasing

ATTEST:
KECIA HARPER-IHEM,
Clerk of the Board

By: _____
Deputy

APPROVED AS TO FORM:
Gregory P. Priamos,
County Counsel

By: 
Todd Frahm
Deputy County Counsel

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)ss
)

On _____ before me, _____, a Notary Public in and for said County and State, personally appeared _____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (SEAL)

EXHIBIT 'A'

Parcel 1 and Lettered Lot B of Parcel Map 7025, as shown by Map on File in Book 36, Page 22, of Parcel Maps, Records of Riverside County, California.

WITNESSES:


Daisy Menchik

Print Name: _____


ERIKA LEBRINI

Print Name: _____

LESSEE:

SBA STEEL LLC, a Florida limited liability company



By: _____

Alyssa Houlihan
Vice President, Site Leasing

**STATE OF FLORIDA
COUNTY OF PALM BEACH**

The foregoing instrument was acknowledged before me on the 1 day of August 2016, by Alyssa Houlihan, Vice President, Site Leasing of SBA Steel LLC, a Florida limited liability company on behalf of the company and who is personally known to me.





Notary Public

(NOTARY SEAL)

Print Name: _____

My Commission Expires: _____



NOTICE OF EXEMPTION

June 27, 2016

Project Name: County of Riverside, Economic Development Agency (EDA) First Amendment to Communication Site Lease, SBA-Fire Station #11, Lake Elsinore

Project Number: FM0473431002200

Project Location: 33020 Maiden Lane, Lake Elsinore, California 92530; Assessor's Parcel Number (APN) 381-252-005 (See Attached Exhibit)

Description of Project: The County of Riverside (County) has an existing ground lease with SBA STEEL LLC, doing business as SBA Wireless (SBA) as the successor in interest to Sprint. The Lease Agreement entitles SBA to operate, and maintain an existing communication facility on that certain real property located at 33020 Maiden Lane, Lake Elsinore, California and identified as Assessor's Parcel Number: 381-252-005, commonly known to the County as Fire Station #11. SBA has requested to modify the existing Lease Agreement, for the purpose of extending the term from the conclusion of the current expiration date of December 31, 2021. The amended term shall commence on January 1, 2022 and expire on December 31, 2032. Additionally SBA will be awarded three consecutive five year terms. The term extension on the lease is anticipated to make the site more attractive to other carriers, resulting in a colocation of the facility and increased revenue. The First Amendment to the Lease is identified as the Project under the California Environmental Quality Act (CEQA). The use of the site under the First Amendment to the Lease would occur in the same manner as with the existing use. The operation of the facility will continue to provide communications services and will not result in a change or an expansion of existing use. No additional direct or indirect physical environmental impacts are anticipated.

Name of Public Agency Approving Project: County of Riverside, Economic Development Agency

Name of Person or Agency Carrying Out Project: County of Riverside, Economic Development Agency, and SBA STEEL LLC, a Florida limited liability company, doing business as SBA Wireless

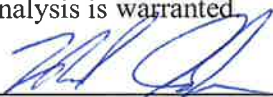
Exempt Status: State CEQA Guidelines, Section 15301, Class 1, Existing Facilities Exemption; Section 15061(b) (3), General Rule or "Common Sense" Exemption, Codified under Title 14, Articles 5 and 19, Sections 15061 and 15300 to 15301.

Reasons Why Project is Exempt: The proposed Project is categorically exempt from the provisions of CEQA specifically by the State CEQA Guidelines as identified below. The Project will not result in any specific or general exceptions to the use of the categorical exemption as detailed under State CEQA Guidelines Section 15300.2. The Project will not cause an impact to an environmental resource of hazardous or critical concern nor would the Project include a reasonable possibility of having a significant effect on the environment due to unusual circumstances. The Project would not result in impacts to scenic highways, hazardous waste sites, historic resources, or other sensitive natural environments, or have a cumulative effect to the environment. No significant environmental impacts are anticipated to occur with the Lease which includes the operation of communication services.

- **Section 15301 – Class 1 Existing Facilities Exemption:** This categorical exemption includes the operation, repair, maintenance, leasing, or minor alteration of existing public or private structures or facilities, provided the exemption only involves negligible or no expansion of the previous site’s use. The Project, as proposed, is limited to the Lease that includes operation of communication services. The use of the site would continue in the same manner as under the current lease and would not require any expansion of service or facilities; therefore, the Project is exempt as the Project meets the scope and intent of the Class 1 Exemption identified in Section 15301, Article 19, Categorical Exemptions of the CEQA Guidelines.
- **Section 15061 (b) (3) – “Common Sense” Exemption:** In accordance with CEQA, the use of the Common Sense Exemption is based on the “general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment.” State CEQA Guidelines, Section 15061(b) (3). The use of this exemption is appropriate if “it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” *Ibid*. This determination is an issue of fact and if sufficient evidence exists in the record that the activity cannot have a significant effect on the environment, then the exemption applies and no further evaluation under CEQA is required. See *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68. The ruling in this case stated that if a project falls within a category exempt by administrative regulation or 'it can be seen with certainty that the activity in question will not have a significant effect on the environment', no further agency evaluation is required. With certainty, there is no possibility that the Project may have a significant effect on the environment. The proposed amendment to the Lease Agreement is limited to a time extension and will not result in any direct or indirect physical environmental impacts. The use and operation of the facility will be substantially similar to the existing use and will not create any new environmental impacts to the surrounding area. No alterations and no impacts beyond the ongoing, existing use of the site would occur. Therefore, in no way, would the Project as proposed have the potential to cause a significant environmental impact and the Project is exempt from further CEQA analysis.

Based upon the identified exemptions above, the County of Riverside, Economic Development Agency hereby concludes that no physical environmental impacts are anticipated to occur and the Project as proposed is exempt under CEQA. No further environmental analysis is warranted.

Signed: _____



Date: _____

6/27/16

Mike Sullivan, Senior Environmental Planner
County of Riverside, Economic Development Agency

RIVERSIDE COUNTY CLERK & RECORDER

**AUTHORIZATION
TO BILL
BY JOURNAL VOUCHER**

Project Name: First Amendment to Communication Site Lease SBA-Fire Station #11,
Lake Elsinore

Accounting String: 524830-47220-7200400000- FM0473431002200

DATE: June 27, 2016

AGENCY: Riverside County Economic Development Agency

THIS AUTHORIZES THE COUNTY CLERK & RECORDER TO BILL FOR FILING AND HANDLING FEES FOR THE ACCOMPANYING DOCUMENT(S).

NUMBER OF DOCUMENTS INCLUDED: One (1)

AUTHORIZED BY: Mike Sullivan, Senior Environmental Planner, Economic Development Agency

Signature:  _____

PRESENTED BY: Jose Ruiz, Real Property Agent I, Economic Development Agency

-TO BE FILLED IN BY COUNTY CLERK-

ACCEPTED BY: _____

DATE: _____

RECEIPT # (S) _____



Date: June 27, 2016

To: Mary Ann Meyer, Office of the County Clerk

From: Mike Sullivan, Senior Environmental Planner, Project Management Office

Subject: **County of Riverside Economic Development Agency Project # FM0473431002200**
First Amendment to Communication Site Lease SBA Fire Station #11, Lake Elsinore

The Riverside County's Economic Development Agency's Project Management Office is requesting that you post the attached Notice of Exemption. Attached you will find an authorization to bill by journal voucher for your posting fee.

After posting, please return the document to:

Mail Stop #1330

Attention: Mike Sullivan, Senior Environmental Planner,

Economic Development Agency,

3403 10th Street, Suite 400, Riverside, CA 92501

If you have any questions, please contact Mike Sullivan at 955-8009.

Attachment



cc: file

First Amendment to Communication Site Lease - SBA

33020 Maiden Lane, Lake Elsinore, CA 92530



Legend

-  City Boundaries
-  Cities



0 251 502 Feet



IMPORTANT Maps and data are to be used for reference purposes only. Map features are approximate, and are not necessarily accurate to surveying or engineering standards. The County of Riverside makes no warranty or guarantee as to the content (the source is often third party), accuracy, timeliness, or completeness of any of the data provided, and assumes no legal responsibility for the information contained on this map. Any use of this product with respect to accuracy and precision shall be the sole responsibility of the user.

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Notes

APN: 381-252-009