

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

407



SUBMITTAL DATE:
April 25, 2013

FROM: Economic Development Agency / Facilities Management

SUBJECT: First Amendment to Lease – PSEC Beacon Hill

RECOMMENDED MOTION: That the Board of Supervisors:

1. Ratify the attached First Amendment to Lease and authorize the Chairman of the Board to Execute same on behalf of the County; and
2. Find that the project is exempt from The California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301, Existing Facilities.

BACKGROUND: (Commences on Page 2)

FISCAL PROCEDURES APPROVED
PAUL ANGULO, CPA AUDITOR-CONTROLLER
BY: Lisette Rose 4/24/13
Lisette Rose

Robert Field
Robert Field
Assistant County Executive Officer/EDA

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 8,012	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2012/13

COMPANION ITEM ON BOARD AGENDA: No

SOURCE OF FUNDS: PSEC Budget

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

C.E.O. RECOMMENDATION: APPROVE

BY: Jennifer V. Sargent
Jennifer V. Sargent

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Tavaglione, seconded by Supervisor Stone and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Stone and Ashley
Nays: None
Absent: Benoit
Date: May 7, 2013

Kecia Harper-Ihem
Clerk of the Board
By: Kecia Harper-Ihem
Deputy

EDA, RCIT, Auditor

Prev. Agn. Ref.:

District: 2/2

Agenda Number:

3-9

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

FORM APPROVED COUNTY COUNSEL
 8/18/13
 BY: PATRICIA MUNROE
 Kevin Crawford, Chief Information Technology Officer
 Riverside County Information Technology

Dept's Recomm.:
 Per Exec. Ofc.:
 Policy:

BACKGROUND:

The County holds an expired leasehold interest, as Lessee, under a lease between the County and FISERV ISS & Co, FBO David B. Luce, for the communication facility located at 2109 5th Street, Norco. The original intent of the County was to purchase property for this site, but land entitlement issues prevented EDA from completing the acquisition on a timely basis, thus a short term six month lease was entered into. While the land entitlement issue was being resolved, the PSEC budget was strained to the point where it no longer was feasible to acquire the land, so it is now necessary to extend the term of the lease.

This First Amendment to Lease extends the term through March 31, 2017 and provides four consecutive five year options through March 31, 2037.

Location: 2109 5th Street, Norco

Lessor: FISERV ISS & Co, FBO David B. Luce
1875 Century Park East, Suite 1350
Los Angeles, CA 90067

Size: 3,375 square feet + a 20' wide access easement

Rent: \$1,502.86 per month, 3% annual increases + retroactive rent for
February and March 2013 at \$1,600.00 per month

Term: Five years commencing April 1, 2013.

The attached First Amendment to Lease has been reviewed and approved by County Counsel as to legal form.

FINANCIAL DATA:

All associated costs for this lease will be fully funded through the PSEC budget. While EDA will front the costs for this lease with the property owner, PSEC will reimburse EDA for all associated lease costs. The amount of the cost increase is immaterial; therefore EDA is not requesting a budget adjustment at this time.

Attachments
Exhibit A
First Amendment to Lease

Exhibit A

PSEC Lease Cost Analysis FY2012/13 2109 5th Street, Norco

Total Square Footage to be Leased:

EXPECTED AMOUNTS

Current land area: 3,375 SQFT
Total Expected Lease Cost for FY 2012/13 \$ -

ACTUAL AMOUNTS

Current Land Area: 3,375 SQFT
Proposed Land Area: 3,375 SQFT

Approximate Cost per SQFT (Feb-March) \$ 0.47
Approximate Cost per SQFT (April-June) \$ 0.45

Lease Cost per Month (Feb-March) \$ 1,600.00
Lease Cost per Month (April-June) \$ 1,502.86

Total Lease Cost (Feb-March) \$ 3,200.00
Total Lease Cost (April-June) \$ 4,508.58
Total Actual Lease Cost for FY 2012/13 \$ 7,708.58
Total Lease Cost Variance for FY 2012/13 \$ 7,708.58

Estimated Additional Costs:

EXPECTED AMOUNTS

EDA Lease Management Fee (Based @ 3.93%) \$ -
Total Estimated Expected Cost for FY 2012/13 \$ -

ACTUAL AMOUNTS

EDA Lease Management Fee (Based @ 3.93%) \$ 302.95
Total Estimated Actual Cost for FY 2012/13 \$ 302.95

Total Estimated Cost Variance for FY 2012/13 \$ 302.95

TOTAL ESTIMATED COST FOR FY 2012/13 \$ 8,011.53

FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE ("First Amendment"), dated as of May 7, 2013, is entered by and between FISERV ISS & Co., FBO David B. Luce, as Lessor, and County of Riverside, a political subdivision of the State of California, as Lessee, sometimes collectively referred to as the "Parties".

RECITALS

- A. Lessor and Lessee have entered into that certain Lease, dated November 1, 2010, (the "Original Lease") pursuant to which Lessor agreed to lease to Lessee and Lessee agreed to lease from Lessor that certain ground space as described and depicted therein (the "Original Premises") with the intent that a portion of the surrounding property would be purchased by Lessee.
- B. Whereas a purchase of that certain portion of the surrounding property is not currently viable for Lessee, Lessee desires to lease from Lessor and Lessor desires to lease to Lessee a reduced footprint of the communication facility that has been built, along with any necessary access and utility easements on or over Lessor's property, as legally described and depicted on Exhibits A and B (the "Revised Premises") on the terms and conditions set forth herein.
- C. The Original Lease together with this First Amendment is collectively referred to herein as the "Lease."
- D. The Parties now desire to amend the Lease to set forth the rent and term and to clarify other matters.

NOW THEREFORE, for good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

I

- 1. RECITALS. Recital D is deleted in its entirety.
- 2. TERM. Section 3 of the Original Lease is hereby amended by the following:

The term of this Lease was extended month to month until March 31, 2012 on the same terms and shall be extended for five years commencing on April 1, 2012 and terminating on March 31, 2017 under the terms hereof.

- 3. RENT. Section 4 of the Original Lease is hereby amended by the following:

Such section is confirmed as being effective until March 31, 2012 and thereafter is no longer applicable. Thereafter Lessee shall pay to Lessor the monthly sum of one thousand six hundred dollars (\$1,600.00) for the period of April 1, 2012

MAY 07 2013 3-9

through March 31, 2013. The monthly rent shall be increased by three percent (3%) on April 1 of (i) each subsequent year of the initial term hereof and the second through fifth years of any option terms hereof.

4. RENT CREDIT. Since the original lease contemplated an eventual purchase that will not materialize, and since Lessee paid an additional sum of three thousand four hundred dollars (\$3,400.00) each month from November 2010 through March 2012 earmarked toward the purchase, a credit balance of fifty-seven thousand eight hundred dollars (\$57,800) existed on or about March 1, 2012. The Parties acknowledge this fact and agree that this credit balance shall remain in effect as described in Paragraph 4 below.

5. In consideration for Lessor entering into this Agreement, having not received any payments whatsoever from Lessee since March 2012, Lessee and Lessor hereby acknowledge that this Lease is in default but that with this executed amendment and the consideration provided by Lessee as provided here the Lease shall become current. The revised terms are:
 - (i) The Lease shall be a true Lease and Lessee shall no longer have any purchase rights for the property.

 - (ii) Lessee shall be granted four (4) additional five (5) year options commencing respectively on April 1, 2017, April 1, 2022, 2027 and 2032 computing the rent as provided in paragraph (v) herein below. After the rent is computed for the first year's term (April 1) of each renewed term, the monthly rent shall be increased 3% per annum thereafter on each ensuing April 1st of the remaining four (4) years of each such term.

 - (iii) While Lessor maintains the legal position that all payments made could be legally forfeited, as an accommodation to Lessee, Lessor is willing to allow Lessee to recover its credit balance over the extended terms of the lease. The credit balance that Lessee still has accrued as of January 1, 2013 is \$41,800 as of January 31, 2013. Excluding February and March 2013, the total number of months remaining in the current term and the four (4) five (5) year option terms is 288 months. Lessor and Lessee have agreed to amortize the \$41,800 by the total amount of months remaining in the existing term and the four (4) option terms. The result is a credit of \$145.14 per month times 288 months which shall cause the \$41,800 credit made in advance to be fully amortized. In the event that the Lessee chooses to not exercise any or all of its options to renew the lease, the amount of the future rent payment credit shall be foregone and Lessor shall have no obligation to credit any remaining back to Lessee or to pay it back in any way whatsoever.

 - (iv) Lessee shall pay rent of \$1,600 on February 1, 2013, and \$1,600 on March 1, 2013. Commencing April 1, 2013, the normal computed rent with

a 3% increase shall be \$1,648.00, provided, however, such shall be reduced by the monthly credit of \$145.14 making the monthly payment due from April 1, 2013 to March 1, 2014 \$1,502.86. That commencing April 1, 2014 should be \$1,697.44 less \$145.15 equals \$1,552.30 and commensurately on April 1st, 2015 the actual rent payment shall be \$1,603.22. On April 1, 2016 shall be \$1,655.67 per month until and through March 1st, 2017, the same \$145.14 per month credit shall be applied on each month of each renewal term thereafter.

- (v) Effective April 1, 2017, Lessor shall have the option to renew the Lease for an additional 5 year term with written notice to Landlord ninety (90) days before the expiration of this initial term. On the commencement of said renewal term, the base rent shall be increased by the Consumer Price Index of the Bureau of Labor Statistics of U.S. Department of Labor for wage earner and clerical workers, Riverside County (1967 = 100) all items hereinafter referred to as ("CPI"). The monthly rent commencing on April 1, 2017 shall be computed by multiplying the \$1,600 by the fraction, the numerator of which shall be the CPI of the calendar month for March 2017 and the denominator of which shall be the CPI for March 2012. The sum so calculated shall constitute the new monthly rent at the commencement of the first option term initially (April 1, 2017), but in no event shall such new monthly rent be less than the rent payable for the month immediately preceding the date of the rate adjustment. This formula shall be repeated for the ensuing 3 additional 5 year option terms by using the CPI for March of the month proceeding each renewal term (March 2022, 2027 and 2032).
- (vi) The monthly rent on each anniversary of each extended term of the Lease shall be computed pursuant to the above terms and then the credit of \$145.14 shall be applied to each month's rent amount, provided, however, for the purposes of computing the monthly rent hereunder for any defaults of Lessee hereunder, the monthly rent will be defined as the computed rent prior to any credit, as that will be the actual amount of rent owing. Again on the annual anniversary of the lease term during each extended term the monthly rent should be increased by 3%.
- (vii) Lessor at any time shall have the option to pay any remaining balance owing of the Credit and thereafter there would be no payment reduction to the computed rent payments. In the event that Lessee chooses to not exercise any or all of its options to renew the lease, the amount of the future rent payment credit shall be foregone and Lessor shall have no obligation to credit such back to Lessee or to pay it in any way whatsoever.

6. CAPITALIZED TERMS. First Amendment to Prevail. Unless defined herein or the context requires otherwise, all capitalized terms herein shall have the

meaning defined in the Lease, as heretofore amended. The provisions of this First Amendment shall prevail over any inconsistency or conflicting provisions of the Lease, as heretofore amended, and shall supplement the remaining provisions thereof.

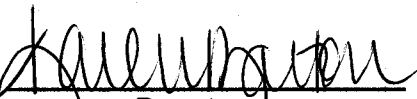
7. MISCELLANEOUS. Except as amended or modified herein, all the terms of the Original Lease shall remain in full force and effect and shall apply with the same force and effect. Time is of the essence in this Amendment and the Lease and each and all of their respective provisions. Subject to the provisions of the Lease as to assignment, the agreements, conditions and provisions herein contained shall apply to and bind the heirs, executors, administrators, successors and assigns of the parties hereto. If any provisions of this Amendment or the Lease shall be determined to be illegal or unenforceable, such determination shall not affect any other provision of the Lease and all such other provisions shall remain in full force and effect. The language in all parts of the Lease shall be construed according to its normal and usual meaning and not strictly for or against either Lessor or Lessee. Neither this Amendment, nor the Original Lease, nor any notice nor memorandum regarding the terms hereof, shall be recorded by Lessee.
8. EFFECTIVE DATE. This First Amendment to Lease shall not be binding or consummated until its approval by the Riverside County Board of Supervisors and fully executed by the Parties.

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the date first written above.

LESSOR:
COUNTY OF RIVERSIDE

By: 
John J. Benoit, Chairman
Board of Supervisors

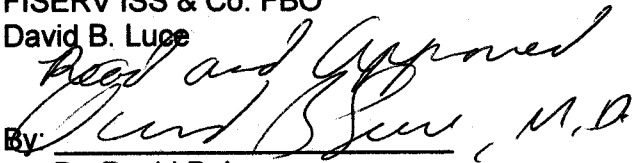
ATTEST:
Kecia Harper-Ihem
Clerk of the Board

By: 
Deputy

APPROVED AS TO FORM:
Pamela J. Walls
County Counsel

By: 
Patricia Munroe
Deputy County Counsel

LESSEE:
FISERV ISS & Co. FBO
David B. Luce




Read and Approved
By: 
Dr. David B. Luce

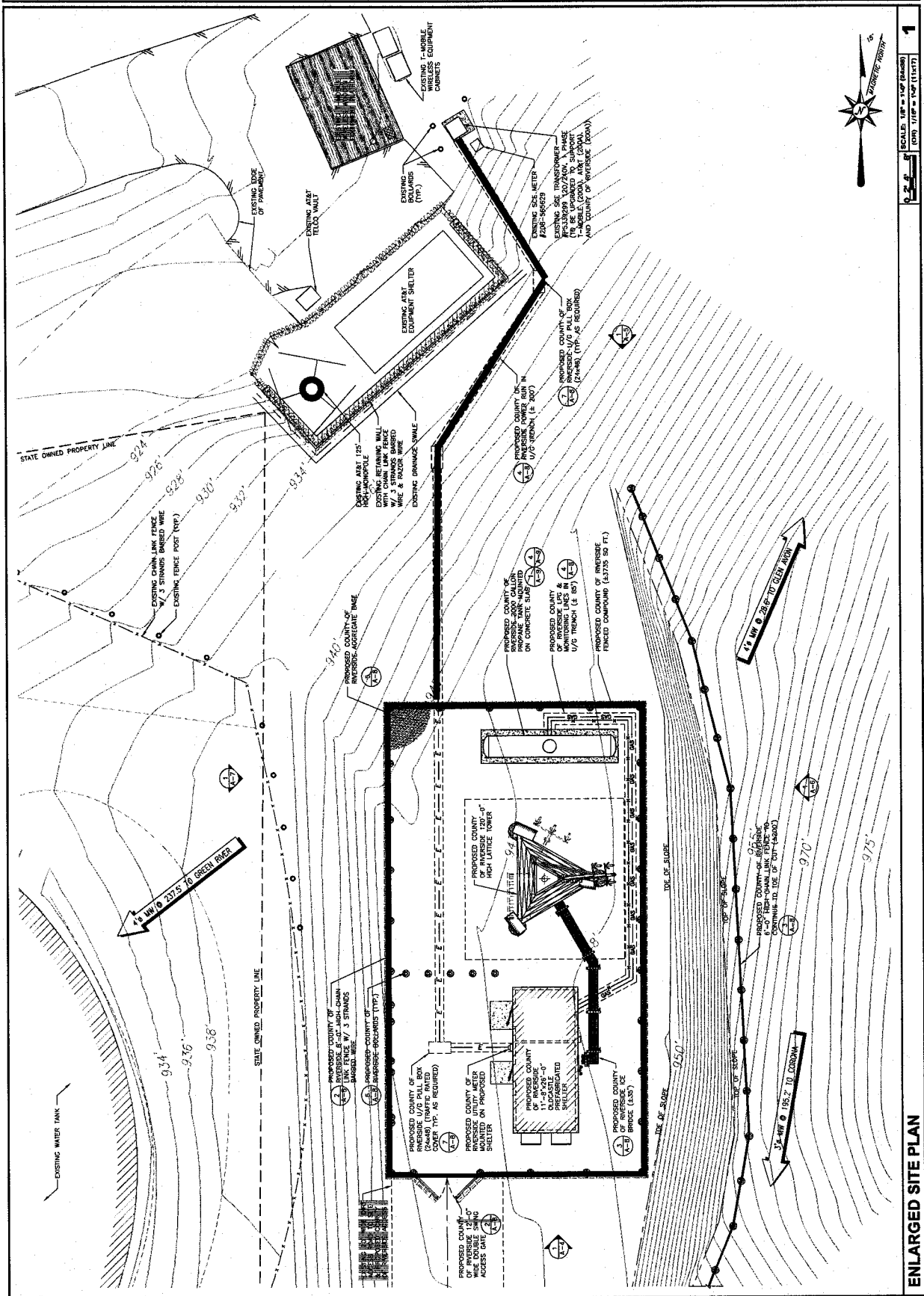
Its: Sole Beneficiary

By: 
Patrick M. Stacker

Its: IRA Designator

EXHIBIT "A"

 MOTOROLA INC. 6450 SEQUENCE DR SAN DIEGO, CA 92121	 PSECO PUBLIC SAFETY ELECTRONIC COMMUNICATIONS 7185 ALESSANDRO BLVD, SITE A RIVERSIDE, CA 92506	 SAC PLANS PREPARED BY WILKINS GROUP 6885 AVENUE PICHANA, SUITE 1400 CALIFORNIA, CA 92506 Tel: (951) 941-0000	COUNTY OF RIVERSIDE BEACON HILL B SITE ID# NR3703 2100 CITY STREET COUNTY OF RIVERSIDE	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> <th>BY</th> </tr> </thead> <tbody> <tr> <td>0</td> <td>10/23/09</td> <td>ISSUED FOR REVIEW</td> <td>RIS</td> </tr> <tr> <td>1</td> <td>01/09/10</td> <td>COUNTY COMMENTS</td> <td>RIS</td> </tr> <tr> <td>2</td> <td>03/24/11</td> <td>SITE REDISIGN</td> <td>RIS</td> </tr> <tr> <td>3</td> <td>04/09/11</td> <td>COUNTY COMMENTS</td> <td>RIS</td> </tr> <tr> <td>4</td> <td>05/09/11</td> <td>COUNTY COMMENTS</td> <td>RIS</td> </tr> <tr> <td>5</td> <td>05/18/11</td> <td>COUNTY COMMENTS</td> <td>RIS</td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	NO.	DATE	DESCRIPTION	BY	0	10/23/09	ISSUED FOR REVIEW	RIS	1	01/09/10	COUNTY COMMENTS	RIS	2	03/24/11	SITE REDISIGN	RIS	3	04/09/11	COUNTY COMMENTS	RIS	4	05/09/11	COUNTY COMMENTS	RIS	5	05/18/11	COUNTY COMMENTS	RIS									SEAL
NO.	DATE	DESCRIPTION	BY																																						
0	10/23/09	ISSUED FOR REVIEW	RIS																																						
1	01/09/10	COUNTY COMMENTS	RIS																																						
2	03/24/11	SITE REDISIGN	RIS																																						
3	04/09/11	COUNTY COMMENTS	RIS																																						
4	05/09/11	COUNTY COMMENTS	RIS																																						
5	05/18/11	COUNTY COMMENTS	RIS																																						
ENLARGED SITE PLAN				SHEET TITLE	SHEET NUMBER A-2																																				

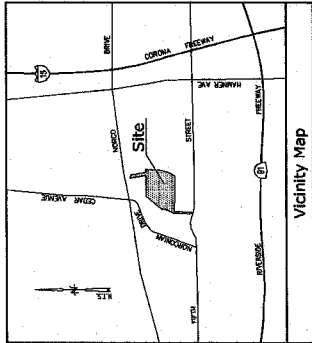
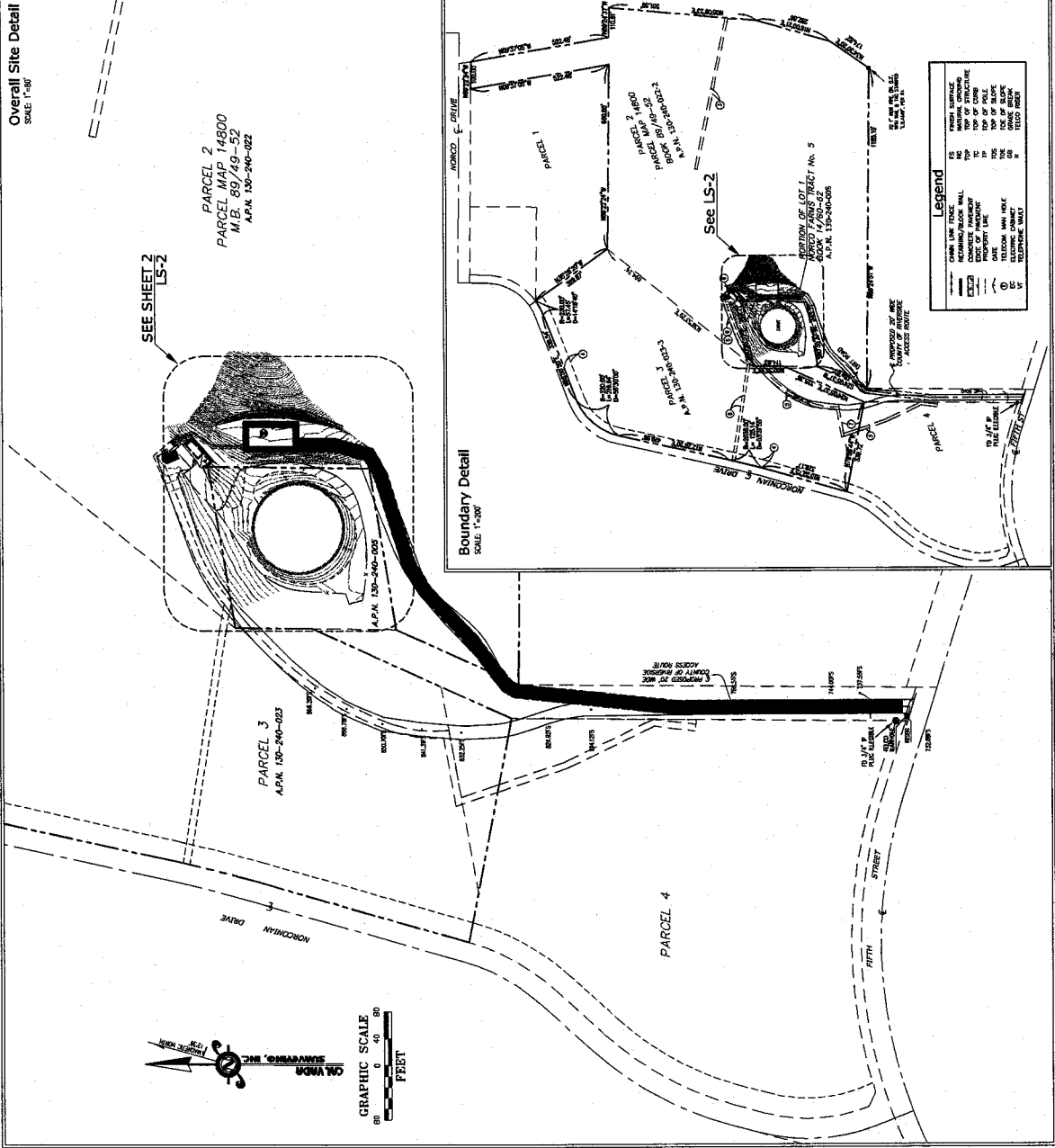


SCALE: 1/8" = 10' (BASED ON 11/8" = 10' (11/17))

ENLARGED SITE PLAN

1

EXHIBIT "B"



Title Report
 PREPARED BY: LANDERS TITLE
 COMPANY, INC.
 DATE: NOVEMBER 4, 2009

Legal Description

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

Easements

- 2- AN EASEMENT FOR WATER IMPROVEMENT RECORDED FEBRUARY 1, 2010 IN BOOK 289 PAGE 28, WITH A BOOK END PAGE 280 (PART OF DEEDS (EASEMENT IN FUTURE))
- 3- AN EASEMENT FOR UTILITIES PURPOSES RECORDED JULY 15, 1999 AS INSTRUMENT NO. 1508 IN BOOK 210 PAGE 53 (PART OF DEEDS (EASEMENT IN FUTURE))
- 4- AN EASEMENT FOR UTILITIES PURPOSES RECORDED JULY 15, 1999 AS INSTRUMENT NO. 1508 IN BOOK 210 PAGE 53 (PART OF DEEDS (EASEMENT IN FUTURE))
- 5- AN EASEMENT FOR UTILITIES PURPOSES RECORDED JULY 15, 1999 AS INSTRUMENT NO. 1508 IN BOOK 210 PAGE 53 (PART OF DEEDS (EASEMENT IN FUTURE))
- 6- AN EASEMENT FOR UTILITIES PURPOSES RECORDED JULY 15, 1999 AS INSTRUMENT NO. 1508 IN BOOK 210 PAGE 53 (PART OF DEEDS (EASEMENT IN FUTURE))
- 7- AN EASEMENT FOR UTILITIES PURPOSES RECORDED JULY 15, 1999 AS INSTRUMENT NO. 1508 IN BOOK 210 PAGE 53 (PART OF DEEDS (EASEMENT IN FUTURE))

Assessor's Parcel Nos.

130-240-002-1 AND 130-240-002-3

Access Route

AS SHOWN

Utility Route

AS SHOWN

Geographic Coordinates at Proposed Tower

NAD 83 - UTM ZONE 11Q, EASTING: 642,117.57, NORTHING: 11,757,421.17

THE LATITUDE AND LONGITUDE SHOWN ABOVE ARE ACCORDING TO THE NAD 83 DATUM. THE DATUM IS THE INTERNATIONAL DATUM (GEOGRAPHIC COORDINATES) IS IN TERMS OF THE DATUM OF 1983. THE DATUM OF 1983 IS THE DATUM OF THE NATIONAL BUREAU OF SURVEYING (NAD 83) AND IS ESTABLISHED TO THE NEAREST CENTIMETER OF A FOOT.

Basis of Bearings

THE STATE PLANE COORDINATE SYSTEM OF 1983 (NAD 83), CALIFORNIA ZONE 6.

Benchmark

THE CALIFORNIA STATE PLANE COORDINATE CENTER CLASS "MOUNT" ELEVATION = 7558.1 FEET (BAND 98)

Dates of Survey

NOVEMBER 23, 2011

MOTOROLA INC.
 6450 SERRAVALLO DRIVE
 SAN DIEGO, CA 92121

PS&EG
 PUBLIC SAFETY ENGINEERING CONSULTANTS
 7195 ALESSANDRO BLVD, STE. A
 RIVERSIDE, CA 92506

WIRELESS
 1800 WIRELESS BLVD
 CARLSBAD, CA 92008
 TEL: (760) 931-4200
 FAX: (760) 931-4200

COUNTY OF RIVERSIDE

BEACON HILL
SITE ID# NR3703
 6-1124 17TH STREET
 MORCO, CA 92560
 COUNTY OF RIVERSIDE

NO.	DATE	DESCRIPTION	BY
1	6/23/09	PRELIMINARY	HP
2	3/01/11	ADD TOPO	DC
3	03/24/11	ADD ACCESS & UTILITY EASEMENTS & USE AREA	AL
4	04/19/11	CLEAR DIMENSIONS	SM
5	04/25/11	TITLE REVIEW/FINAL	HP
6	09/09/11	USE PER UPRIDE	MN
7	05/11/11	3 RABBIT'S HOLE	AL
8	09/29/11	CLEAR DIMENSIONS	AL

CALVADA SURVAYING, INC.
 811 Avenida de las Americas, Corona, CA 92626
 Corona, CA 92626
 TEL: (951) 261-2222
 FAX: (951) 261-2222
 CALVADA@CALVADASURVAYING.COM

TOPOGRAPHIC SURVEY

LS-1
 SHEET NUMBER
 SHEET 1 OF 2