



Midpeninsula Regional
Open Space District

R-11-53
Meeting 11-10
April 27, 2011

AGENDA ITEM 4

AGENDA ITEM

Approval of Communications Site Lease Agreement Amendment and Exercise of Option with Crown Castle MU LLC, at Rancho San Antonio Open Space Preserve

GENERAL MANAGER'S RECOMMENDATIONS

1. Determine that the recommended action is not a project under the California Environmental Quality Act (CEQA) because there is no possibility of a significant impact on the environment.
2. Adopt the attached Board Resolution authorizing execution of the attached Communications Site Lease Agreement Amendment and Exercise of Option with Crown Castle MU LLC.

SUMMARY

Crown Castle MU LLC (Lessee) is exercising the second five (5) year option to extend their 2000 Communications Site Lease (Lease). Staff has negotiated a new minimum monthly rental rate of \$4,292 (retroactive to October 1, 2010) for the first year of this option in addition to 4% annual increases for the remaining four (4) years. Additionally, the attached Board Resolution authorizes the General Manager to negotiate, in accordance with the Lease, and to approve or disapprove future Lessee elections to exercise its two remaining options to extend the Lease. The General Manager shall report to the Board following any subsequent exercise of an option by Lessee.

DISCUSSION

At the meeting of September 13, 2000 (R-00-118), the Board approved the Lease with Mountain Union Telecom, LLC (Original Lessee) for a communications facility located at Black Mountain, Rancho San Antonio Open Space Preserve for an Initial Term of five (5) years, with four (4) options to extend the Term for five years each. On or around November 2006, the Lessee became the successor-in-interest to Original Lessee and assumed the Original Lessee's rights, duties and obligations under the Lease. The Lessee has now exercised the second option to extend the Lease an additional five years.

The monthly rental rate is the greater of the following: 1) a minimum monthly rental rate; or 2) twenty-five percent (25%) of Lessee’s gross monthly fees received from its subtenants. The Lease allows for negotiation of the minimum monthly rental rate for the first year and the annual percentage increase for remaining four (4) years of this second five (five) year option. Staff has negotiated a new minimum monthly rental rate of \$4,292 (retroactive to October 1, 2010) for the first year of this option in addition to 4% annual increases for the remaining four (4) years as noted below. The new minimum monthly rental rate represents a 4% increase from the prior year’s minimum monthly rental rate of \$4,127.

October 1, 2010 to September 30, 2011	\$4,292 per month
October 1, 2011 to September 30, 2012	\$4,464 per month
October 1, 2012 to September 30, 2013	\$4,643 per month
October 1, 2013 to September 30, 2014	\$4,829 per month
October 1, 2014 to September 30, 2015	\$5,022 per month

It is in the best interest of the District to approve the Lease amendment because it provides the District with continued rental revenue at market rates with no new impacts to District land.

To facilitate any future exercise by Lessee of its remaining options to extend the Lease, the Board Resolution authorizes the General Manager to negotiate Rent in accordance with the Lease and to approve or disapprove any Lessee exercise of its two remaining options. The General Manager shall report in writing on any such exercise of an option to the Board of Directors following any exercise thereof.

FISCAL IMPACT

The Lessee has consistently paid the minimum monthly rent versus twenty-five percent (25%) of gross receipts. Negotiating a new minimum monthly rent guarantees the District an increase in revenues of approximately 4% annually for this site which totals \$10,740 over the term of this lease term. If twenty-five percent (25%) of the Lessee’s gross receipts is greater than the minimum monthly rental rate, then the District’s revenue will be greater than \$10,740 over the term of this lease term.

PUBLIC NOTICE

Public notice was provided as required by the Brown Act. No additional notice is required.

CEQA COMPLIANCE

The activity authorized is not a project for purposes of the CEQA (Guidelines Section 15378) because the extension of an existing communications lease pursuant to the exercise of an option does not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

NEXT STEPS

If the Crown Castle MU LLC Communications Site Lease Agreement Amendment is approved by the Board of Directors, staff will notify the Lessee of Board approval of this item.

Attachments:

1. Resolution
2. Communications Lease Agreement Amendment
3. Location Map

Prepared by:

Elaina Cuzick, Real Property Specialist

Contact person:

Elaina Cuzick, Real Property Specialist

RESOLUTION NO. 11-___

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
MIDPENINSULA REGIONAL OPEN SPACE DISTRICT APPROVING
THE COMMUNICATIONS SITE LEASE AMENDMENT AND
EXERCISE OF OPTION AND AGREEMENT WITH CROWN CASTLE
MU LLC (RANCHO SAN ANTONIO OPEN SPACE PRESERVE)**

The Board of Directors of the Midpeninsula Regional Open Space District does hereby resolve:

Section One. The District may, under the provisions of Section 5540 and 5563 of the Public Resources Code, lease property owned by the District for up to twenty-five (25) years, and the Board of Directors hereby finds that the premises remain presently unnecessary for open space purposes and that continuation of the Lease for communication facilities is in the best interests of the public.

Section Two. The Board of Directors of the Midpeninsula Regional Open Space District approves the Amendment between Midpeninsula Regional Open Space District and Crown Castle MU LLC, a copy of which is attached hereto and by this reference made a part hereof, and does hereby authorize the President or other appropriate officers to execute said Amendment on behalf of the District.

Section Three. The General Manager or the General Manager's designee is hereby authorized to negotiate and approve or disapprove the exercise of each of the two subsequent options of the Communications Site Lease as set forth in the Communications Site Lease. The General Manager is further authorized to execute any and all other documents necessary or appropriate to the completion of such transactions. The General Manager shall report in writing on any such exercise of an option to continue the subject Communication Site Lease to the Board of Directors at the meeting immediately following the exercise thereof.

* * * * *

**AMENDMENT No. 2 to
COMMUNICATIONS SITE LEASE AGREEMENT
AND
EXERCISE OF OPTION**

This Amendment No. 2 (“Amendment”) to that certain Communications Site Lease Agreement dated September 8, 2000, as amended (“Lease”) is made by and between Crown Castle MU LLC, a Delaware Limited Liability Company (“Lessee”) formerly known as Mountain Union Telecom LLC (“Lessee”), and the Midpeninsula Regional Open Space District, a special district, formed pursuant to Article 3 of Chapter 3 of Division 5 of the California Public Resources Code (“District”).

WHEREAS, District and Lessee are parties to the Lease which was amended pursuant to the Amendment to Communications Site Lease entered into on September 30, 2005.

WHEREAS, District is in receipt of a letter from Lessee dated July 14, 2010 indicating Lessee’s intent to exercise its option to extend the term of the Lease (“Term”).

WHEREAS, District and Lessee desire to amend said Lease to, among other things, reflect Lessee’s exercise of its option to extend the Term and to modify the rental terms, as more particularly set out herein.

NOW THEREFORE, District and Lessee amend the Lease as follows:

1. In accordance with Section 21(a) (Option to Extend Term) of the Lease, District and Lessee agree to extend the Term for an additional period of five (5) years, commencing October 1, 2010 (Extended Option Term).
2. In accordance with Section 21(b) of the Lease, Section 5 (b) of the Lease is deleted and replaced with the following provision:
3. Lessee shall pay District rent in monthly installments, in advance, on the first day of each month of the Term hereof. District and Lessee agree to amend the Lease so that the Minimum Rent for such extended Term is as follows:

October 1, 2010 to September 30, 2011	\$4,292 per month
October 1, 2011 to September 30, 2012	\$4,464 per month
October 1, 2012 to September 30, 2013	\$4,643 per month
October 1, 2013 to September 30, 2014	\$4,829 per month
October 1, 2014 to September 30, 2015	\$5,022 per month

4. Section 9 (Maintenance and Repair) of the Lease is hereby amended to add the following provision:

Lessee understands and acknowledges that defensible space of at least 100 feet in width around the perimeter of the Premises is required by State law (California Public Resource Code §4291). Accordingly, defensible space shall be maintained by Lessee free of all low-lying brush, dry weeds, and similar flammable materials, which shall be removed by Lessee at Lessee’s expense. Site inspections of the Premises may be conducted at anytime by District staff to determine whether the defensible space is properly maintained. As needed, the District will arrange for the removal of brush, weeds, and flammable materials. The cost incurred by District shall be pro-

rated, based on the size, topography and flammable material in each area requiring maintenance, and overlap with other communication site premises and allocated by District to Lessee accordingly. Lessee's share of such cost will be provided to Lessee for review before the work is performed. Upon completion of work, Lessee will be billed for the work performed which shall be paid by Lessee to District within 30-days of billing.

5. Section 22 (Notice) of the Lease is hereby amended to delete Lessee's notice addresses in their entirety and replaced with the following:

Lessee:

Corporate

Crown Castle MU LLC
c/o Crown Castle USA Inc.
E. Blake Hawk, General Counsel
Attn: Real Estate Department
2000 Corporate Drive
Canonsburg, PA 15317
(866) 482-8890

Local Office

Crown Castle MU LLC
BU: 839184
5820 Stoneridge Mall Rd., Suite 300
Pleasanton, CA 95458
(925) 737-1003

6. The Lease, except as amended herein, shall continue in full force and effect with all other terms and conditions unchanged. If a conflict between terms in the Lease and those in this Amendment arises, the provisions of this Amendment shall control the construction and interpretation thereof.
7. Capitalized terms used in this Amendment not otherwise defined herein shall have the meanings ascribed to them in the Lease.
8. This Amendment may be executed in duplicate counterparts, each of which will be deemed an original.
9. Each of the parties represent and warrant that they have the right, power, legal capacity and authority to enter into and perform their respective obligations under this Amendment.

IN WITNESS WHEREOF, District and Lessee execute this Amendment.

DISTRICT:

Midpeninsula Regional
Open Space District

Stephen E. Abbors
General Manager

Date: _____

LESSEE:

Crown Castle MU LLC, a Delaware
limited liability company

By: _____

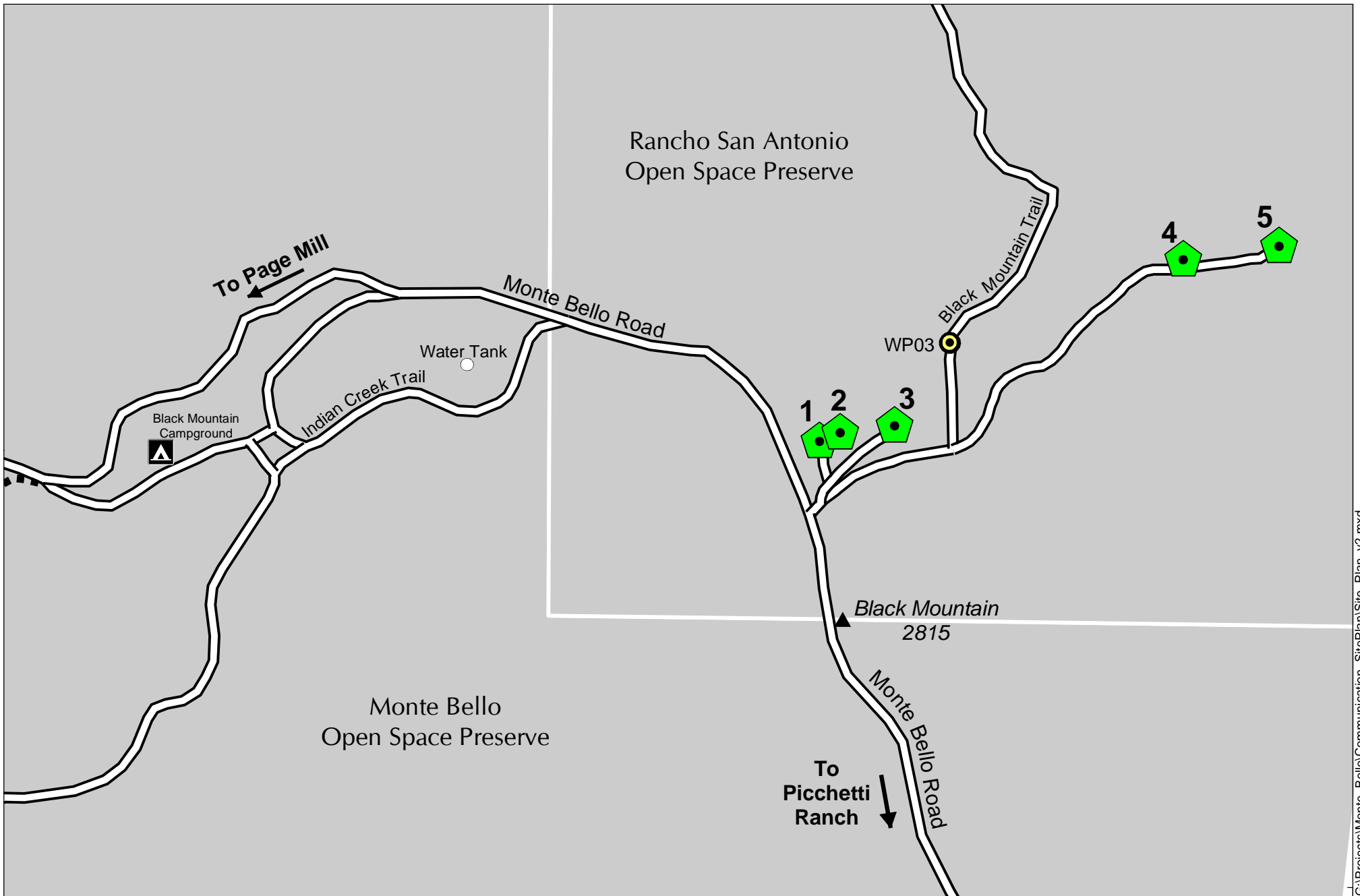
Date: _____

Attest:

Michelle Radcliffe
District Clerk

Approved as to form:

Susan M. Schectman
General Counsel



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Exhibit A: Black Mountain Communications Site Plan
Rancho San Antonio Open Space Preserve

Map produced by Midpeninsula Regional Open Space District 04/13/10



- Site #1 - Stanford Communications
- Site #2 - C & C Equipment Company, Inc.
- Site #3 - FAA Communications
- Site #4 - Crown Castle International
- Site #5 - Communication and Control Inc.