

RESOLUTION NO. 2016-138

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING AMENDMENT NO. 1 TO THE COMMUNICATIONS SITE LEASE AGREEMENT BETWEEN CITY OF MARINA AND SPRINT SPECTRUM REALTY COMPANY, LLC, OF OVERLAND PARK, KANSAS, FOR A LEASE TERM EXTENSION, AUTHORIZING FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES, AND AUTHORIZING CITY MANAGER TO EXECUTE AMENDMENT NO. 1 AND RELATED DOCUMENTS ON BEHALF OF THE CITY, SUBJECT TO FINAL REVIEW AND APPROVAL BY CITY ATTORNEY

WHEREAS, at a regular meeting of March 20, 2001, the City Council adopted Resolution 2001-08, approving a Communications Site Lease (Lease) between Sprint Spectrum, L. P. (Sprint) DBA Tetra Tech Communications, LLC and City of Marina for use of a portion of Hangar Building 524 at the Marina Municipal Airport. The Lease provided for a base term of five years and two additional terms of five years each. The Lease was set to expire on June 27, 2016; and

WHEREAS, since the fall of 2015, Sprint through various commercial property companies has communicated the desire to extend the lease for up to fifteen years. Staff began negotiations of new terms for an amendment to the 2001 Lease; and

WHEREAS, the Airport has been successful in accommodating four current Communications Site Leases which generate annual rent revenue of approximately \$130,000. To date, there has been no conflict between the Communications Sites operations and Airport or Aviation operations, and

WHEREAS, staff, City Attorney and Sprint Legal have prepared and reviewed Amendment No. 1 ("First Amendment") to the 2001 Communications Site Lease Agreement ("**EXHIBIT A**"). The amendment provides for:

- Base Term of five years and two additional terms of five years each
- New Base Rent that is a six percent increase over the last month's rent paid
- Rent will increase annually by three and one-half percent (3.5%)
- Lessor's Relocation Right should the City deem it necessary to move the Cell Site from Hangar Building 524
- All other terms, conditions and agreements contained in the Lease remain in full force and effect; and

WHEREAS, anticipated rent revenue to the airport over the full term of Amendment No. 1 is approximately \$741,000. Communications Site rent revenue is recorded to FY16-17 Budget, Airport Operations Fund 555, Land Rents Antenna, Account No. 555.000.000.00-5450.100. The anticipated rent revenue for FY 2016-17 is \$38,400.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Marina does hereby:

1. Approve Amendment No. 1 to the Communications Site Lease Agreement between the City of Marina and Sprint Spectrum Realty Company, LLC, of Overland Park, Kansas, for a lease term extension; and
2. Authorize Finance Director to make necessary accounting and budgetary entries; and
3. Authorize City Manager to execute Amendment No. 1 and related documents on behalf of the City, subject to final review and approval by City Attorney.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 7th day of September 2016, by the following vote:

AYES, COUNCIL MEMBERS: Amadeo, Brown, Morton, O'Connell, Delgado

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

EXHIBITA

FIRST AMENDMENT
TO COMMUNICATIONS SITE LEASE AGREEMENT

THIS FIRST AMENDMENT TO COMMUNICATIONS SITE LEASE AGREEMENT ("Amendment") is made effective as of _____, 201__ ("Effective Date"), by and between the CITY OF MARINA, a California municipal corporation ("Lessor") and SPRINT SPECTRUM REALTY COMPANY, LLC, (formerly organized as limited partnership) a Delaware limited liability company, ("Lessee") successor in interest to Sprint Spectrum L.P., a Delaware limited partnership.

BACKGROUND

Pursuant to a Communications Site Lease Agreement dated March 22, 2001 ("Lease"), attached hereto as Exhibit A-1, Lessor leased to Lessee a certain portion of real property commonly known as Hangar 524, Marina Municipal Airport, City of Marina, County of Monterey, State of California, as more particularly described in Exhibit B to the Lease ("Premises").

Lessor and Lessee desire to amend the Lease as set forth herein. Words and phrases having a defined meaning in the Lease have the same respective meanings when used herein unless otherwise expressly stated.

AGREEMENT

The parties agree as follows:

- 1. **Term.** Paragraph 4 of the Lease is amended by adding the following:

Notwithstanding anything set forth in Paragraph 4 to the contrary, the current term of the Lease will expire on June 27, 2016. Commencing on June 28, 2016, the term of the Lease ("New Initial Term") is sixty (60) months. The Lease will be automatically renewed for up to two (2) additional terms (each an "Additional Renewal Term") of sixty (60) months each. Each Additional Renewal Term will be deemed automatically exercised without any action by either party unless Lessee gives written notice of its decision not to exercise any options to Lessor before expiration of the then current term.

- 2. **Rent.** Paragraph 5 of the Lease is amended by adding the following:

Notwithstanding anything set forth in Paragraph 5 to the contrary, effective June 28, 2016, the Rent shall be paid in equal monthly installments of Three Thousand Two Hundred and No/100 Dollars (\$3,200.00), and shall continue during the term (until increased as set forth herein), partial months to be prorated, in advance. Thereafter, commencing on June 28, 2017, the Rent will be increased annually by three and one-half percent (3.5%) of the then current Rent.

Lessor initials: _____

Lessee initials: _____

New Term	6/28/2016 - 6/27/2017	\$3,200.00
	6/28/2017 - 6/27/2018	\$3,312.00
	6/28/2018 - 6/27/2019	\$3,427.92
	6/28/2019 - 6/27/2020	\$3,547.90
	6/28/2020 - 6/27/2021	\$3,672.07
1 st Additonal Renewal Term	6/28/2021 - 6/27/2022	\$3,800.60
	6/28/2022 - 6/27/2023	\$3,933.62
	6/28/2023 - 6/27/2024	\$4,071.29
	6/28/2024 - 6/27/2025	\$4,213.79
	6/28/2025 - 6/27/2026	\$4,361.27
2 nd Additonal Renewal Term	6/28/2026 - 6/27/2027	\$4,513.92
	6/28/2027 - 6/27/2028	\$4,671.90
	6/28/2028 - 6/27/2029	\$4,835.42
	6/28/2029 - 6/27/2030	\$5,004.66
	6/28/2030 - 6/27/2031	\$5,179.82

3. **Lessor's Relocation Right.**

A. If Lessor desires to redevelop Lessor's Property, then Lessor will have the one-time right to relocate the Lessee's Facilities or any part thereof, to an alternate ground location on Lessor's Property or to space within or on top of a building or other existing structure situated on Lessor's Property (the "Building"), provided, however, that any relocation will: (a) be at Lessee's sole cost and expense; (b) be performed exclusively by Lessee or Lessee's contractors; (c) not result in any interruption of the communications service provided from the Lessee's Facilities; (d) not impair or in any manner alter the quality of communications service provided from the Lessee's Facilities; and (e) be done in strict accordance with the terms and conditions contained in paragraphs B and C, below. Upon relocation of the Lessee's Facilities, the access and utility easements provided to Lessee will be relocated as required, in the sole discretion of Lessee and at Lessee's sole expense.

B. Lessor will exercise its relocation right under paragraph A above by delivering written notice to Lessee at least 9 months prior to the proposed redevelopment/relocation date (the "Notice") setting forth the approximate effective date of the relocation (the "Target Effective Date"). In the Notice, Lessor will propose an alternate site on Lessor's Property to which Lessee may relocate the Lessee's Facilities. Lessee will have 60 days from the date it receives the Notice to evaluate Lessor's proposed relocation site, during which period Lessee will have the right to conduct all tests as Lessee deems necessary or desirable to determine the technological feasibility of the proposed relocation site. If Lessee fails to approve of the proposed relocation site in writing within the 60-day period, then Lessee will be deemed to have disapproved of the proposed relocation site. If Lessee disapproves of the relocation site, then Lessor may thereafter propose another relocation site in the manner set forth above. If the second proposed relocation site is disapproved by Lessee, then Lessee may terminate this Lease by giving written notice thereof to Lessor within 30 days from the date of Lessee's disapproval of the second proposed relocation site. In the event Lessee gives such notice of termination, then the Lease shall

Lessor initials: _____

Lessee initials: _____

terminate sixty (60) days following the Target Effective Date, and on such date Lessee shall surrender the Premises and Lessor’s Property in the condition required by the Lease. Any relocation site that Lessor and Lessee agree upon in writing is referred to as the "Relocation Site". Provided Lessee does not terminate the Lease pursuant to the foregoing, the Lease shall remain in full force and effect, however, Lessee shall surrender the Premises on a date (the “Surrender Date”) determined by the Lessor (which shall be no earlier than the Target Effective Date). On the Surrender Date Lessee shall surrender the Premises and Lessor’s Property in the condition required by the Lease. Prior to the Surrender Date Lessee and Lessor shall execute a written amendment to the Lease concerning the location and dimensions of the Relocation Site to relocate or cause to be relocated, at Lessee's expense, the Lessee’s Facilities to the Relocation Site. In the event Lessee is unable to commence commercial operation at the Relocation Site by the Surrender Date, Lessee may install and operate, at Lessee’s expense, a temporary communications facility in a mutually agreeable location on the Property until such time as Lessee is operating at the Relocation Site.

C. Upon relocation of the Lessee’s Facilities or any part thereof, to the Relocation Site, all references to the Premises in the Lease will be deemed to be references to the Relocation Site. Lessor and Lessee agree that the Relocation Site (including the access and utility easements) will be surveyed by a licensed surveyor at Lessee's sole expense. The survey will then replace Exhibit B and will become a part of the Lease and will control as to the description of the Premises. An accurate copy of all documents describing the Relocation Site will, at Lessee's sole expense, be recorded in the official land title records of the county where the Relocation Site is located.

4. **Notices.** Paragraph 17(c) of the Lease is deleted in its entirety and replaced with the following:

"All notices, requests, demands or other communications with respect to the Lease, whether or not herein expressly provided for, must be in writing and will be deemed to have been delivered upon receipt or refusal to accept delivery after being either mailed by United States first-class certified or registered mail, postage prepaid, return receipt requested or deposited with an overnight courier service for next-day delivery to the parties at the following addresses (the addresses may be changed by either party by giving written notice).

Lessor: City of Marina
City Hall
211 Hillcrest Avenue
Marina, California 93933

Lessee: Sprint Spectrum Realty Company, LLC
Sprint Property Services
Site ID: MO45XC008
Mailstop KSOPHT0101-Z2650
6391 Sprint Parkway
Overland Park, KS 66251-2650

Lessor initials: _____

Lessee initials: _____

with a copy to:

Sprint Law Department
Attn: Real Estate Attorney
Site ID: MO45XC008
Mailstop KSOPHT0101-Z2020
6391 Sprint Parkway
Overland Park, KS 66251-2020"

5. **Memorandum of Amendment.** Lessor agrees to promptly execute and deliver to Lessee a recordable Memorandum of Amendment in the form of Attachment 1, attached.

6. **Reaffirmation; Intention to be Bound.** Except as provided in this Amendment, each and every term, condition and agreement contained in the Lease will remain in full force and effect. The parties reaffirm that the representations and warranties made by each of the parties in the Lease are true and accurate as of the Effective Date. The parties executing this Amendment, on behalf of themselves, their assigns and successors, acknowledge and reaffirm their intention to be bound by the terms and conditions of the Lease.

SIGNATURES APPEAR ON THE FOLLOWING PAGE

Lessor initials: _____

Lessee initials: _____

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the Effective Date.

Lessor:

Lessee:

**City of Marina,
a California municipal corporation**

**Sprint Spectrum Realty Company, LLC,
a Delaware limited liability company**

By: _____
(please use blue ink)

By: _____

Name: _____
Title: _____
Date: _____

Name: Michael Mizzell
Title: Manager – Vendor Management
Date: _____

Lessor initials: _____

Lessee initials: _____

ATTACHMENT 1

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

Sprint Property Services
Mailstop KSOPHT0101-Z2650
6391 Sprint Parkway
Overland Park, Kansas 66251-2650

[space above this line for Recorder's use]

**MEMORANDUM OF FIRST AMENDMENT
TO COMMUNICATIONS SITE LEASE AGREEMENT**

This MEMORANDUM OF FIRST AMENDMENT TO COMMUNICATIONS SITE LEASE AGREEMENT ("Amended Memorandum"), by and between the CITY OF MARINA, a California municipal corporation ("Lessor") and SPRINT SPECTRUM REALTY COMPANY, LLC, a Delaware limited liability company, successor in interest to Sprint Spectrum L.P., a Delaware limited partnership ("Lessee"), evidences that the lease made and entered into by written Communications Site Lease Agreement between Lessor and Lessee or Lessee's affiliate, dated March 22, 2001 ("Lease"), has been amended by written agreement between the parties (the "Amendment"). The parties caused to be recorded a Memorandum of Agreement with the Office of Monterey County Recorder, California, as document number 2001044641 on June 4, 2001.

The terms and conditions of the Lease and Amendment are incorporated herein by reference.

The Amendment provides in part that Lessor leases to Lessee a certain portion of real property owned by Lessor, commonly known as Hangar 524, Marina Municipal Airport, City of Marina, County of Monterey, State of California, together with non-exclusive utility and access easements (the "Premises"). The real property which is the subject of the Lease is described in Exhibit A attached hereto. The Amendment grants Lessee the option to extend the Lease for two (2) additional sixty (60) month terms after the expiration of the new initial sixty (60) month term which will commence on June 28, 2016.

All notices to Lessee must be sent via U.S. Postal Service certified mail, return receipt requested with all postage prepaid to:

Sprint Spectrum Realty Company, LLC
Sprint Property Services
Site ID: MO45XC008
Mailstop KSOPHT0101-Z2650
6391 Sprint Parkway
Overland Park, KS 66251-2650

with a mandatory copy to:
Sprint Law Department
Attn: Real Estate Attorney
Site ID: MO45XC008
Mailstop KSOPHT0101-Z2020
6391 Sprint Parkway
Overland Park, KS 66251-2020

Lessor initials: _____

Lessee initials: _____

**EXHIBIT A
TO MEMORANDUM OF FIRST AMENDMENT
TO COMMUNICATIONS SITE LEASE AGREEMENT**

Description of Real Property

A portion of certain real property commonly known as Hangar 524, Marina Municipal Airport, City of Marina, County of Monterey, State of California, described as follows:

Parcel 1, as shown and designated on that certain map filed for record November 16, 1994 in Volume 19 of Surveys at page 20, filed in the office of the County Recorder.

Excepting therefrom those portions of land described as Sub Parcels A through J in Exhibit "A" of the "Quitclaim Deed for Surplus Airport Property" recorded September 6, 1995 in Reel 3272 of Official Records, at page 696.

Also excepting therefrom that portion lying within that certain map recorded June 17, 1996, in Volume 19 of "Cities and Towns", at page 22, in the office of the County Recorder, Monterey County, State of California.

Also excepting therefrom those portions of land described in the "Quitclaim Deed of Surplus Airport Property" recorded September 6, 1995 in Reel 3272 of Official Records, at page 696.

APNs: 031-111-012
031-111-013
031-111-026

Lessor initials: _____

Lessee initials: _____

ORIGINAL

COMMUNICATIONS SITE LEASE AGREEMENT

THIS COMMUNICATIONS SITE LEASE AGREEMENT ("Lease") dated as of Mar 22, 2001, is between SPRINT SPECTRUM L.P., a Delaware limited partnership ("Lessee") whose Northern California address is 4683 Chabot Drive, Suite 100, Pleasanton, California, 94588, and the CITY OF MARINA, a California Municipal Corporation ("Lessor") who address is 211 Hillcrest Avenue, Marina, California, 93933.

The parties hereto agree as follows:

1. Premises. Lessor owns the real property legally described in Exhibit "A" commonly known as Hangar 524, Marina Municipal Airport (Assessor's Parcel Number 031-111-026-000). Subject to the following terms and conditions, Lessor leases to Lessee that portion of Lessor's property ("Lessor's Property") depicted in Exhibit "B," including any applicable easements for access and utilities (the "Premises").

2. Use. The Premises may be used by Lessee for any lawful activity in connection with the provisions of mobile/wireless communications services, including without limitation, the transmission and the reception of radio communication signals on various frequencies and the construction, maintenance and operation of related communications facilities. Lessor agrees, at no expense to Lessor, to cooperate with Lessee, in making application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Lessee's intended use of the Premises.

3. Conditions Precedent. This Lease is conditioned upon Lessee, or Lessee's assigns, obtaining all governmental permits and approvals enabling Lessee, or its assigns, to construct and operate mobile/wireless communications facilities on the Premises.

4. Term. The term of this Lease ("Term") shall be five (5) years commencing with the issuance of a local building permit allowing Lessee to construct its mobile/wireless communications facilities on the Premises, or twelve (12) months from the date on which this Lease has been fully executed by the parties, whichever is earlier ("Commencement Date"). Lessee shall have the right to extend the Term of this Lease for two (2) additional terms ("Renewal Term") of five (5) years each. Each Renewal Term shall be on the same terms and conditions as set forth herein. This Lease shall automatically be extended for each successive five (5) year Renewal Term unless Lessee notifies Lessor in writing of Lessee's intention not to extend this Lease at least thirty (30) days prior to the expiration of the first five-year Term or any Renewal Term.

5. Rent.

(a) Upon the Commencement Date, Lessee shall pay Lessor, as rent, the sum of Two Thousand Two Hundred Dollars (\$2,200:00) ("Rent") per month. Rent shall be payable on the 1st day of each month, in advance, to Lessor's address specified in Paragraph 17, Miscellaneous.

If the Commencement Date is other than the first day of a calendar month, Lessee may pay on the first day of the Term the prorated Rent for the remainder of the calendar month in which the Term commences, and thereafter, Lessee shall pay a full month's Rent on the first day of each calendar month, except that payment shall be prorated for the final fractional month of this Lease, or if this Lease is terminated before the expiration of any month for which Rent should have been paid.

(b) During the Term or any Renewal Term, rent shall be increased every two (2) years on the Commencement Date by an amount equal to the percentage change in the CPI over the immediately preceding two (2) years. "CPI" shall mean the Bureau of Labor Statistics Consumer Price Index. All Urban Wage Earners, for the San Francisco-Oakland-San Jose Area (1982-84=100). If such CPI is discontinued or revised, such other governmental index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or revised.

(c) Lessee acknowledges that the late payment of rent will cause the Lessor to incur accounting and other processing costs not contemplated by this Lease, the exact amount of which is extremely difficult and impracticable to fix. Therefore, should any payments due under this Lease remain unpaid five (5) business days after written notice that it is overdue, a penalty of 10% shall be added to any payments past due and owing. Lessor and Lessee agree that this late charge represents a fair and reasonable estimate of costs that the Lessor will incur by reason of the late payment of rent by the Lessee. Acceptance of any such late charge shall not constitute a waiver of Lessee's default with respect to the overdue amount, nor prevent the Lessor from exercising any of the other rights and remedies available to it by reason of such default. Interest on any unpaid rents, charges and any penalty shall accrue at the rate of 1.5% per month thereafter until paid.

6. Improvements; Access.

(a) Lessee shall have the right (but not the obligation) at any time following the full execution of this Lease and prior to the Commencement Date, to enter the Premises for the purpose of making necessary inspections and engineering surveys (and soil tests where applicable) and other reasonably necessary tests (collectively "Tests") to determine the

suitability of the Premises for Lessee's Facilities (as defined herein) and for the purpose of preparing for the construction of Lessee's Facilities. During any Tests or pre-construction work, Lessee will have insurance as set forth in Section 12, Indemnification and Insurance. Lessee will notify Lessor of any proposed Tests or pre-construction work and will coordinate the scheduling of same with Lessor. If Lessee determines that the Premises are unsuitable for Lessee's contemplated use, then Lessee will notify Lessor and this Lease will terminate.

(b) Lessee has the right to construct, maintain and operate on the Premises radio communications facilities, including but not limited to, radio frequency transmitting and receiving equipment, batteries, utility lines, transmission lines, radio frequency transmitting and receiving antennas and supporting structures and improvements ("Lessee's Facilities"). In connection therewith, Lessee has the right to do all work necessary to prepare, add, maintain and alter the Premises for Lessee's communications operations and to install utility lines and transmission lines connecting antennas to transmitters and receivers. All of Lessee's construction and installation work shall be performed at Lessee's sole cost and expense and in a good and workmanlike manner. Title to Lessee's Facilities and any equipment placed on the Premises by Lessee shall be held by Lessee. All of Lessee's Facilities shall remain the property of Lessee and are not fixtures. Lessee has the right to remove all of Lessee's Facilities at its sole expense on or before the expiration or termination of this Lease.

(c) Lessor shall provide access to Lessee, Lessee's employees, agents, contractors and subcontractors to the Premises twenty-four (24) hours a day, seven (7) days a week, at no charge to Lessee. Lessor represents and warrants that it has full rights of ingress to and egress from the Premises, and hereby grants such rights to Lessee to the extent required to construct, maintain, install and operate Lessee's Facilities on the Premises. Lessee's exercise of such rights shall not cause undue inconvenience to Lessor.

(d) Lessor shall maintain all access roadways from the nearest public roadway to the Premises in a manner sufficient to allow access. Lessor shall be responsible for maintaining and repairing such roadways, at its sole expense, except for any damage caused by Lessee's use of such roadways. If Lessee causes any such damage, it shall promptly repair same.

(e) In the event Lessee's personnel or equipment damages Lessor's roof, Lessee shall repair the damage at Lessee's expense.

(f) Lessor shall allow Lessee to have sub-metering equipment installed on Lessor's existing utility services at Lessee's cost.

(g) Lessee shall have the right to install utilities, at Lessee's expense, and to improve the present utilities on or near the Premises (including, but not limited to the

installation of emergency back-up power). Subject to Lessor's approval of the location, which approval shall not be unreasonably withheld, Lessee shall have the right to place utilities on (or to bring utilities across) Lessor's Property in order to service the Premises and Lessee's Facilities. Upon Lessee's request, Lessor shall execute recordable easement(s) evidencing this right.

(h) Lessee shall fully and promptly pay for all utilities furnished to the Premises for the use, operation and maintenance of Lessee's Facilities.

(i) Upon the expiration, cancellation or termination of this Lease, Lessee shall surrender the Premises to Lessor in good condition, less ordinary wear and tear.

7. Interference With Communications.

(a) Lessee's Facilities shall not disturb the communications configurations, equipment and frequency which exist on Lessor's Property, specifically those of Pacific Bell Mobile Services or Alpine PCS, on the Commencement Date ("Pre-Existing Communications"), and Lessee's Facilities shall comply with all non-interference rules of the Federal Communications Commission ("FCC"). Lessor shall not otherwise permit the use of any portion of Lessor's Property in a way which interferes with the communications operations of Lessee described in Paragraph 2, above. Such interference with Lessee's communications operations shall be deemed a material breach by Lessor, and Lessor shall have the responsibility to promptly terminate said interference. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference will cause injury to Lessee, and therefore, Lessee shall have the right to bring action to enjoin such interference or to terminate the Lease immediately upon notice to Lessor. Notwithstanding the foregoing, Pre-Existing Communications operating in the same manner as on the Commencement Date shall not be deemed interference.

(b) Notwithstanding the foregoing, Lessee's facilities and communications equipment shall comply with all applicable regulations of the Federal Aviation Administration ("FAA") and shall at no time interfere with flight communication or official airport communications.

8. Taxes.

(a) Lessee shall pay personal property taxes assessed against Lessee's Facilities and Lessor shall pay when due, all real property taxes and all other taxes, fees and assessments attributable to the Premises and this Lease.

(b) This Lease may be deemed to have created a possessory interest on Lessee's behalf in these Premises, subject to property taxes pursuant to California Revenue and Taxation Code §107.5.

9. Termination. This Lease may be terminated without further liability on thirty (30) days' prior written notice as follows: (i) by either party upon a default of any covenant, condition or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default; (ii) by Lessee for any reason or for no reason, provided Lessee delivers written notice of termination to Lessor prior to the Commencement Date; (iii) by Lessee if it does not obtain or maintain, licenses; permits or other approvals necessary to the construction or operation of Lessee's Facilities; or (iv) by Lessee if Lessee is unable to occupy or utilize the Premises due to ruling or directive of the FCC or other governmental or regulatory agency, including, but not limited to, a take back of channels or change in frequencies; or (v) by Lessee if Lessee determines that the Premises are not appropriate for its operations for economic, environmental or technological reasons, including without limitation, signal strength or interference.

10. Destruction of Premises. If Premises or Lessor's Property is destroyed or damaged so as in Lessee's judgment, to hinder its effective use of Lessor's property, Lessee may elect to terminate this Lease as of date of damage or destruction by so notifying Lessor no more than thirty (30) days following the date of damage or destruction. In such event, all rights and obligations of the parties which do not survive termination of this Lease shall cease as of the date of the damage or destruction.

11. Condemnation. If a condemning authority takes all of Lessor's Property, or a portion which in Lessee's opinion is sufficient to render the Premises unsuitable for Lessee's use, then this Lease shall terminate as of the date when possession is delivered to the condemning authority. In any condemnation proceeding each party shall be entitled to make, a claim against the condemning authority for just compensation (which for Lessee shall include, the value of Lessee's Facilities, moving expenses, prepaid rent, business dislocation expenses, bonus value of the lease and any other amounts recoverable under condemnation law). Sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of the exercise of its power of eminent domain, shall be treated as a taking by a condemning authority.

12. Indemnification and Insurance.

(a) Lessee shall maintain the following insurance: (1) Commercial General Liability with limits of \$5,000,000 per occurrence, (2) Automobile Liability with a combined single limit of \$1,000,000 per accident, (3) Worker's Compensation as required by law, and (4) Employer's Liability with limits of \$1,000,000 per occurrence.

Lessee shall maintain standard form property insurance ("All Risk" coverage) equal to at least ninety (90%) percent of the replacement cost covering its property. Lessee shall name Lessor: City of Marina, its officers, officials, directors, employees and agents as additional insured with respect to the above Commercial General Liability insurance. Lessee shall have the right to self-insure with respect to any of the above insurance.

(b) Lessee's Indemnity. Lessee shall indemnify, defend and hold Lessor: City of Marina, its officers, officials, directors, employees and agents, successors and assigns harmless from and against any and all loss, cost, claim, liability, action, damage, injury to or death of any person (including reasonable attorney's fees) ("Claims"), occurring on the Premises and arising out of or connected with the negligence or willful misconduct of Lessee, its agents or contractors, except for Claims arising out of (i) the negligence or willful misconduct of Lessor, its agents or contractors, (ii) violation of law by Lessor, its agents or contractors, (iii) breach of any duty or obligation by Lessor under this Lease, or (iv) any condition relating to the Premises which Lessee has no obligation to repair or maintain. Notwithstanding the foregoing, it is specifically recognized that Lessor does not warrant that the roof, where the Premises or in part located, is of sufficient strength or safety for Lessee's activities and any injury or death resulting from Lessee's activities on such roof shall not be deemed to be excluded under (i), (ii), (iii) or (iv) herein.

(c) Lessor's Indemnity. Lessor shall indemnify, defend and hold Lessee, its employees, successors and assigns harmless from and against any and all loss, cost, claim, liability, action, damage, injury to or death of any person (including reasonable attorney's fees) ("Claims"), arising out of or connected with the (i) the negligence or willful misconduct of Lessor, its agents or contractors, (ii) violation of law by Lessor, its agents or contractors, (iii) breach of any duty or obligation by Lessor under this Lease, or (iv) any condition relating to the Premises which Lessor has no obligation to repair or maintain, except for Claims occurring on the Premises and arising out of or connected with the negligence or willful misconduct of Lessee, its agents or contractors.

(c) Survival. The foregoing indemnity in (a) and (b) will survive the termination, cancellation or expiration of this Lease.

13. Assignment. Lessee may assign this Lease at any time to any parent, subsidiary or affiliate of Lessee or to any party that acquires substantially all of the assets of Lessee. An "affiliate" is any entity directly or indirectly owned or controlled by Lessee or Lessee's parent corporations. Any other assignment requires Lessor's prior written approval which approval shall not be unreasonably withheld.

14. Title and Quiet Enjoyment.

(a) Lessor warrants that it has full right, power and authority to execute this Lease; Lessor further warrants that Lessee shall have quiet enjoyment of the Premises during the Term of the Lease or any Renewal Term.

(b) Lessee has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice. If, in the opinion of Lessee, such title report shows any defects of title or any liens or encumbrances which may adversely affect Lessee's use of the Premises; Lessee shall have the right to terminate this Lease immediately upon written notice to Lessor.

15. Repairs. Lessee shall not be required to make any repairs to the Premises except for damages to the Premises caused by Lessee, its employees, agents, contractors or subcontractors.

16. Hazardous Materials.

(a) Acceptance of Leased Property. Lessee understands that the leased property was formerly used the federal government as part of an Army air base, that surrounding lands which were also part of such Army air base have, in the past been found to contain concentrations of volatile organic chemicals which exceed standards prescribed by the environmental agencies and the state and federal governments. Structures may contain asbestos materials and lead-based paints. The City has provided to the Lessee an asbestos survey report prepared by the U.S. Army Corps of Engineers for Building #524 (copies of which are attached hereto and collectively referred to as Exhibit "C.") Lessee acknowledges that City has granted to Lessee the right to review all maps and records of the old Army air base as well as the right to inspect the Premises and perform any tests of the soils and improvements thereon or the groundwater thereunder, all in order to afford Lessee a full and complete opportunity to investigate and determine whether the leased property can be used for the purposes for which it is being leased.

(b) No Warranty. Lessee further understands and agrees that no representation, statement or warranty, express or implied, has been made by or on behalf of the City as to the condition of the Lessor's Property or suitability of the Premises for its intended use, save and except for the representation and warrant that no City officer, employee or agent has caused any condition of pollution or contamination which may now exist on the Lessor's Property. Such representation and warranty, however, shall not extend to any condition of pollution or contamination caused by the federal government or any other Lessee of City. Upon entering into occupancy, Lessee also agreed to accept the Premises in its present condition and "as is," with respect to all conditions which may now exist on or under

the Premises save and except for any condition of pollution or contamination caused by an officer, employee or agent of City. Moreover, Lessee agrees to waive any claim or right of action against the City, which Lessee now has or hereafter may acquire arising out of the condition of the Premises, its soils and/or the groundwater underlying Premises property, including, but not limited to, any claim of indemnity which Lessee may have by reason of costs incurred by Lessee arising out of the abatement or cleanup of any pollution or contamination condition discovered on the Premises hereafter required under applicable state, federal or city laws or regulations save and except for a claim or right of action arising out of a condition of pollution or containment caused by an officer, employee or agent of the City.

(c) Environmental. Lessee shall not bring any hazardous material onto Premises except for those contained in its back-up power batteries (lead-acid batteries) and common materials used in telecommunications operations, e.g., cleaning solvents. Lessee will treat all hazardous materials brought onto Premises by it in accordance with all federal, state and local laws and regulations.

17. Miscellaneous.

(a) If any provision of the Lease is invalid or unenforceable with respect to any party, the remainder of this Lease or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Lease shall be valid and enforceable to the fullest extent permitted.

(b) This Lease shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

(c) Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, confirmed fax, or reliable overnight mail to the address of the respective parties set forth below:

Lessor: City of Marina
City Hall
211 Hillcrest Avenue
Marina, California 93933

Lessee: Sprint PCS
4683 Chabot Drive, Suite 100
Pleasanton, CA 94588
Attention: Property Manager - Monterey County
MO-45-XC-008(A)

Lessor or Lessee may from time-to-time designate any other address for this purpose by written notice to the other party.

(d) This Lease shall be governed under the laws of the State of California. Any suit to be brought on this Lease shall be in Monterey County.

(e) The substantially prevailing party in any legal claim arising hereunder shall be entitled to its reasonable attorney's fees and court costs, including appeals, if any.

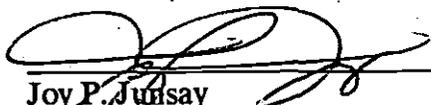
(f) Terms and conditions of this Lease which by their sense and context survive the termination, cancellation or expiration of this Lease will so survive.

(g) Upon request either party may require that a Memorandum of Lease be recorded in the form of Exhibit "D."

(h) This Lease constitutes the entire Lease and understanding between the parties, and supersedes all offers, negotiations and other Leases concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by both parties.

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

ATTEST



Joy P. Junsay
City Clerk

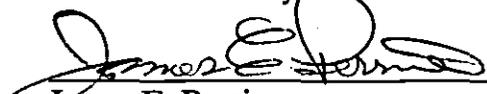
Date: 3/22/01

ATTEST

Name: _____

Date: _____

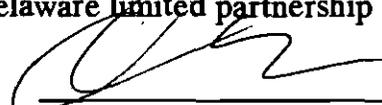
LESSOR: City of Marina



James E. Perrine
Mayor
Tax I.D. #: 94-2321991

Date: _____

LESSEE: Sprint Spectrum L.P.,
a Delaware limited partnership

By: 

Lawrence Doherty
Title: Regional Director of Site
Development

Date: 3 30 01

SPRINT PCS

ATTACHMENT C
TEMPORARY DELEGATION OF APPROVAL AUTHORITY

To: VP - Controller - Sprint PCS

Amy Doherty Authorizing Name (Print/Type) Director Title

in accordance with Sprint PCS Financial Policy, paragraph 9.1, do hereby delegate my fiscal approval authority to:

Cal Bernardino Employee Name (Print/Type) SD Manager Title

for the following department(s):

Department Number(s)	
<u>13239</u>	

This delegation is effective for the period March 8 to March 31st
(not to exceed 30 days) and is necessary due to Travel, Training & Meetings
(reason: e.g. absence, vacation, etc.)

[Signature] Signature of person receiving temporary delegation 3/7/01 Date

[Signature] Signature of person whose authority is being delegated 3/7/01 Date

A copy of this completed form should accompany all individual financial commitments or expenditure documentation approved under the above temporary delegation.

EXHIBIT A
Legal Description of Lessor's Property

The real property situated in the City of Marina, County of Monterey, State of California, more particularly described as:

Parcel 1, as shown and designated on that certain map filed for record November 16, 1994 in Volume 19 of Surveys at page 20, filed in the office of the County Recorder.

Excepting therefrom those portions of land described as Sub Parcels A through J in Exhibit "A" of the "Quitclaim Deed for Surplus Airport Property" recorded September 6, 1995 in Reel 3272 of Official Records, at page 696.

Also excepting therefrom that portion lying within that certain map recorded June 17, 1996, in Volume 19 of "Cities and Towns", at page 22, in the office of the County Recorder, Monterey County, State of California.

Also excepting therefrom those portions of land described in the "Quitclaim Deed of Surplus Airport Property" recorded September 6, 1995 in Reel 3272 of Official Records, at page 696.

APNs: 031-111-012
031-111-013
031-111-026

Lessor Initials

JSP

Lessee Initials

B

EXHIBIT B
Description of the Premises

[Plans consisting of 13 pages describing the leased Premises are attached hereto]

Lessor Initials



Lessee Initials



EXHIBIT C
Asbestos Survey Report Prepared by the U.S. Army Core of Engineers for Building
Number 524

[See Attached Consisting of _____ Pages]

Lessor Initials

Jed

Lessee Initials

G

EXHIBIT D
Memorandum of Lease

THIS MEMORANDUM OF LEASE is made and entered into as of _____, 2001 by and between CITY OF MARINA, ("Owner") and SPRINT SPECTRUM L.P., a Delaware limited partnership ("SSLP").

WITNESSETH:

That Owner hereby leases to SSSLP and SSSLP hereby leases from Owner a portion of that certain real property (the "Property") in the State of California, County of Monterey, City of Marina, a legal description of which is shown in Exhibit A attached hereto and incorporated herein by reference, under the terms and conditions of the unrecorded Communications Site Lease Agreement by and between Owner and SSSLP dated by Owner _____, 2001 and incorporated herein by reference (the "Agreement") for an initial term of five (5) years, and two (2) subsequent optional extension terms of five (5) years each, pursuant to the terms of the Agreement. The Agreement provides for grant of an easement for rights of access to the Property and to electrical and telephone facilities serving the Property.

IN WITNESS WHEREOF, the parties have executed the Memorandum as of the day and year first above written.

SSLP: SPRINT SPECTRUM L.P.,
a Delaware limited partnership

By: _____
Lawrence Doherty
Title: Regional Director of Site Development
Address: 4683 Chabot Drive, Suite 100
Pleasanton, California 94588

Owner: CITY OF MARINA

By: _____
Its: _____
Title: _____
Address: _____

[FORM DOCUMENT, PLEASE INITIAL ONLY - NOT FOR EXECUTION]

Lessor Initials

JD

Lessee Initials

S

September 2, 2016

Item No: **8g(3)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of September 7, 2016

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2016- ,
APPROVING AMENDMENT NO. 1 TO THE COMMUNICATIONS SITE
LEASE AGREEMENT BETWEEN CITY OF MARINA AND SPRINT
SPECTRUM REALTY COMPANY, LLC, OF OVERLAND PARK,
KANSAS, FOR A LEASE TERM EXTENSION, AUTHORIZING
FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND
BUDGETARY ENTRIES, AND AUTHROIZING CITY MANAGER TO
EXECUTE AMENDMENT NO. 1 AND RELATED DOCUMENTS ON
BEHALF OF THE CITY, SUBJECT TO FINAL REVIEW AND
APPROVAL BY CITY ATTORNEY**

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2016- , approving Amendment No. 1 to the Communications Site Lease Agreement between the City of Marina and Sprint Spectrum Realty Company, LLC, of Overland Park, Kansas, for a lease term extension; and
2. Authorizing Finance Director to make necessary accounting and budgetary entries; and
3. Authorizing City Manager to execute Amendment No. 1 and related documents on behalf of the City, subject to final review and approval by City Attorney.

BACKGROUND:

At a regular meeting of March 20, 2001, the City Council adopted Resolution 2001-08, approving a Communications Site Lease Agreement (Lease) between Sprint Spectrum, L. P. (Sprint) DBA Tetra Tech Communications, LLC and City of Marina for use of a portion of Hangar Building 524 at the Marina Municipal Airport. The Lease provided for a base term of five years and two additional terms of five years each. The Lease was set to expire on June 27, 2016.

Since the fall of 2015, Sprint through various commercial property companies has communicated the desire to extend the lease for up to fifteen years. Staff began negotiations of new terms for an amendment to the 2001 Lease.

At the regular meeting of June 7, 2016, City Council in Closed Session received a staff report and proposed amendment for discussion and provided direction to staff to move forward with an amendment to the Lease.

ANALYSIS:

The Airport has been successful in accommodating four current Communications Site Leases which generate annual rent revenue of approximately \$130,000. To date, there has been no known conflict between the Communications Sites operations and Airport or Aviation operations.

Staff, City Attorney and Sprint Legal have prepared and reviewed Amendment No. 1 (“First Amendment”) to the 2001 Communications Site Lease Agreement (“**EXHIBIT A**”). The amendment provides for:

- Base Term of five years and two additional terms of five years each
- New Base Rent that is a six percent increase over the last month’s rent paid
- Rent will increase annually by three and one-half percent (3.5%)
- Lessor’s Relocation Right should the City deem it necessary to move the Cell Site from Hangar Building 524
- All other terms, conditions and agreements contained in the Lease remain in full force and effect.

FISCAL IMPACT:

Should the City Council approve this request, anticipated rent revenue to the airport over the full term of Amendment No. 1 is approximately \$741,000.

Communications Site rent revenue is recorded to FY16-17 Budget, Airport Operations Fund 555, Land Rents Antenna, Account No. 555.000.000.00-5450.100. The anticipated rent revenue for FY 2016-17 is \$38,400.

CONCLUSION:

This request is submitted for the City Council consideration and approval.

Respectfully submitted,

Jeff Crechriou
Airport Services Manager
City of Marina

REVIEWED/CONCUR:

Layne Long
City Manager
City of Marina